

## **Trade Union Revitalization in Kenya: Acquisition and Utilization of Power Resources**

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### **Abstract**

A consensus has emerged in trade union research that trade unions are not solely at the mercy of major societal trends, but always have the option of making strategic choice(s) to revitalize and ensure improvement in the socio-economic welfare of their members. The key question is, which power resources and means of exerting such power are available to trade unions in the different context they face to reposition and revitalize themselves? This paper uses the power resources approach to identify the power resources that were acquired, developed and utilized by the Kenya National Private Security Workers Union to revitalize. The revitalization process, which started in 2011 saw the union transform from an outfit characterized by leadership wrangles, coup d'états, demarcation conflicts and low membership density to one with relatively high membership, stronger cohesion and solidarity, and unity amongst the leadership and the rank and file members. Based on the analysis, the revitalization of the Kenya National Private Security Workers Union reinforced the fact that associational power is best sustained through institutional power. The revitalization process also saw a double framing function by allowing the union to gain more sympathy and relevance from members of the public, while internally presenting it with articulation capabilities to bring together national officials, shop stewards and rank-and-file members. These changes made the union to increase its density by almost tenfold between 2011 and 2017. It also enabled the union to emerge as a strong, cohesive and vibrant union capable of turning challenges into opportunities.

**Keywords:** Trade union revitalization, power resources, acquisition and utilization of power resources

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### **Study Context**

The role of security as an anchor of good governance, social welfare and economic development cannot be gainsaid. Security is key to achieving rapid and sustained economic growth, national productivity and competitiveness, and the socio-economic and political transformations that Kenya aspires to (Republic of Kenya, 2007). The private security industry in Kenya has grown in size and importance, particularly since 2009 when Kenya started to become a target of terror groups, especially Somali Islamist extremists, due to its international engagement in the restoration of security in Somalia.

Kenya has a large and growing private security industry, with employment level estimated at over 500,000 employees and 2,000 registered companies. Majority of the private security companies are local with only five being multinational.<sup>16</sup> The industry has a burgeoning informal economy characterized by individual companies that are neither duly registered nor operate from a recognized physical address. The private security industry is also characterized by triangular forms of employment such as labour brokerage, subcontracting and outsourcing. Kenya's private security market is segmented, pitting big, medium, small and micro-sized firms against each other. While subcontracting, labour brokerage and outsourcing are manifestations of atypical forms of employment, the private security firms use the segmented market structure to undercut others and bid down costs, especially workers' wages. These practices increase the vulnerability of private security industry employees.

A constant issue in Kenya's private security industry since 1960 has been the ineffective organization and representation of industry employees with regard to their trade union and collective bargaining rights. Industry employees have suffered weak representation manifested in multiple trade unions within the sector; leadership wrangles; coup d'états in union leadership; and demarcation conflicts in regard to union membership organizational boundaries.

As a consequence, working conditions in the sector deteriorated: at one point, most private security guards earned basic wages as low as US\$ 37 a month. This was about one-third of the legislated minimum wage of approximately US\$ 110<sup>17</sup> as of 2016 (Republic of Kenya, 2016). Guards work for an average of 71 hours per week, contrary to 52 hours provided for in the Regulation of Wages (Protective Security Services) Order of 1998 as amended by Legal Notice No. 53 of 2003 (Omolo, 2015). Although the Wages Order provides for payment of overtime for extra hours worked, most of the industry employers do not comply (Omolo, 2015). A majority of private security guards also access their annual leave entitlements through off-days and not actual leave days. This is contrary to Section 28(3) of the Employment Act (2007), which require that part of the annual leave taken by an employee should consist of at least two uninterrupted working weeks. Maternity, paternity and sick leaves are also severely restricted (Omolo, 2015), contrary to the provisions of Sections 28, 29 and 30 of the Employment Act (2007). All these constitute major violations of the fundamental principles and rights of workers, and created a strategic issue for union transformation and revitalization.

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<sup>16</sup> These include Bob Morgan Services Ltd; G4S Security Services (K) Ltd; KK Security Ltd; Securex Agencies (K) Ltd; and Security Group of Companies Ltd.

<sup>17</sup> Exchange rate as of September 2016.

The year 2011 marked a turnaround for the private security industry employees in Kenya. The turnaround was mainly attributed to the strategic acquisition, development and utilization of power resources by the Kenya National Private Security Workers' Union (KNPSWU). This case study explores the power resources and capabilities that the KNPSWU acquired and developed, and how they have been used to build the union and improve the welfare of its members.

### **Power Resources Approach**

Labour revitalization studies emphasize the ability of trade unions to act strategically (Voss and Sherman, 2000; Frege and Kelly, 2004; Turner, 2006; Chun, 2009; and Lévesque and Murray, 2013). Critical to this line of thinking is the question as to which possible actions and means of exerting power the trade unions have available to them in the different contexts they face to reposition and revitalize themselves as organisations.

The power resources approach is based on the premise that workers, inclusive of their trade unions can successfully defend their interests by collective mobilisation of power resources. Power, in this context, mean every opportunity within a social relationship to assert one's own will, even in the face of resistance (Weber, 1968). The concepts of structural and associational power developed by Erik Olin Wright and Beverly Silver (Wright, 2000; Silver, 2003) provide the anchor to the power resources approach. Institutional and social power have since been added through ensuing debates and academic discourses (McGuire, 2014).

McGuire (2014) quoting Dorne, Holst and Nachtwey (2009) explains that structural power rests on the power of the trade union to cause disruption. It is exercised in terms of workplace bargaining power and market place bargaining power. According to McGuire (2014), associational power arises from the solidarity and collective action of workers while the institutional power is the outcome of struggles and negotiations based on structural and associational power. The social power is the latitudes for action enjoyed by the union arising from networks and partnerships between the union and other actors (McGuire, 2014).

Lévesque and Murray (2010) contend that power resources alone are not enough. According to the authors, trade unions must have the capability to recognize and use power resources strategically to their advantage. Lévesque and Murray (2010) identify intermediating, framing, articulating and learning as the strategic capabilities that are critical in the mobilization of union power resources. Though not advanced by Lévesque and Murray (2010), scholars have separately argued in favour of organizational flexibility as another capability.

A major gap in the power resources approach, however, is its predominant application to explain and anchor the experiences of the Global North. Only isolated cases of application of the approach can be cited in the processes in the Global South (Webster and Ludwig, 2017). It is this void that this study seeks to fill using the case of the KNPSWU. The sections that follow detail the initial situation of the union before the transformation, the power resources and capabilities acquired, developed and utilized, and the successes realized.

### **The Initial Situation**

The KNPSWU was founded in 1960 as the Night Watchmen Union. The broad mandate of the union is to secure, promote and protect the fundamental principles and rights of private security guards in Kenya. For about 51 years of its history, the union's operations were marked by splinters, leadership wrangles degenerating to coup d'états, and mergers punctuated with massive membership withdrawals.

The very first splinter experienced by the union was in its founding year. This culminated in about six trade unions organizing guards in the private security industry in Kenya. The desire to strengthen trade union representation in the industry generated the need for a merger of the six unions. This was realized in 1965 through the formation of the Kenya Union of Commercial Food and Allied Workers (KUCFAW). However, 34 years later in 1999, the union experienced a more serious challenge of massive membership withdrawal. The membership withdrawals triggered formation of a new splinter union, the Kenya Guards and Allied Workers' Union (KEGAWU). Leadership wrangles persisted in the union such that between 1999 and 2006, KEGAWU had a record 13 leadership coups bringing in an equivalent number of general secretaries at the helm of the union. This meant that each of the general secretaries led the union for barely six months. The challenges experienced by the union led to the birth of a new splinter union in 2006, the Union of Diplomatic International Private and Allied Security Officers of Kenya (UDIPAS). The life of UDIPAS was, however, short-lived as it merged with KEGAWU in July 2007 to form the KNPSWU, which also experienced some leadership conflict between 2007 and 2011 but successfully weathered it.

It may be safe to argue that the turbulence in the private security industry unions was mainly attributed to perceptions of ineffective representation; loss of confidence in the union leadership by the rank-and-file members; and the desire to have a guards' union that is owned, led and run by guards themselves and not outsiders. As would be predicted, the aforementioned issues led to serious difficulties in union membership organization and recruitment. The union membership plummeted to a low of 327 by 2011 compared to a potential of 30,000, implying a union density of about one per cent. Also, despite the poor terms and conditions of employment for the guards, the union had not entered into any collective bargaining agreement (CBA) with industry employers.<sup>18</sup> This meant that the guards had to continue relying on the statutory minimum wages and terms and conditions of employment prescribed by the government. Besides being severely low, the regulations on wages and conditions of employment are hardly enforced by the government, and weakly complied with by industry employers. The low level of enforcement is mainly due to weak capacity of the ministry responsible for labour matters; high levels of unemployment and poverty; and other structural problems in Kenya.

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<sup>18</sup> In Kenya, trade unions and employer(s) must sign a recognition agreement before undertaking collective bargaining. A recognition agreement is a legally binding agreement between a trade union and an employer or group of employers, which grants the union the legal mandate and legitimacy to represent the unionisable employees of the firm in all matters relating to their terms and conditions of employment. It is entered into when the union has recruited into its membership a simple majority (50%+1) of the unionisable employees of the firm(s) in question.

### **Union Revitalization and Utilization of Power Resources**

Three key success stories can be gathered from the KNPSWU experience. These are massive growth in union membership; the ability to build internal cohesion and solidarity; and the gaining of and strategic utilization of institutional power. More details on these successes and the processes behind them follow in the sections that follow.

#### ***Building union membership and cohesion through associational power***

The KNPSWU experienced massive membership growth since 2011. The membership rose from a paltry 327 in 2011 to 500 in 2012. Thereafter, it shot to 36,267 in 2015, 45,000 in 2016 and 50,000 in 2017. The union density, therefore, increased by tenfold from one per cent in 2011 to 10 per cent in 2017 based on an estimated employment level of 30,000 and 500,000 in 2011 and 2017, respectively. According to the general secretary of the union, the revealed membership is a conservative figure that only considers members of the union that are remitting monthly subscription fees on a regular basis and those actively involved in the institutional capacity building activities of the union. Such activities include attending meetings, training, and lobbying and advocacy campaigns. The reported membership figure does not include those who do not pay union subscription dues on a regular basis and those who are passive in terms of participation in trade union meetings and campaigns.

About one third of the union members are female, supporting the argument that the security sector is increasingly moving away from the traditional masculine orientation, and that women are breaking the occupational segregation barriers to enter into the hitherto male-dominated occupations. This may be as a result of modernization of the security industry, high levels of unemployment, and integration of the community, all allowing more women to participate in the security sector.

The informal sector accounts for a fairly low proportion of the union membership, estimated at less than five per cent. This means that upwards of 95 per cent of the members of KNPSWU are drawn from the large, medium and small private security firms in the formal sector. Interviews with the general secretary and the leadership of KNPSWU revealed that the union had made a strategic choice to focus on organizing and recruiting workers from the formal sector-based private security firms first. The leaders reasoned that, unlike the informal sector firms, the formal private security firms at least have a framework to allow for some level of compliance with the country's laws and regulations. The union, therefore, envisaged fewer difficulties in sensitizing the firms about the fundamental principles and rights of the workers with regard to freedom of association. The union thus wanted to ride on this advantage, recruit the workers in these firms and use it to showcase to the workers in the informal sector.

One of the power resources that the KNPSWU effectively utilized to build and strengthen its membership base is associational power. The strategy was executed through organizational flexibility by restructuring the branch network; designing and communicating a rallying membership organization and recruitment campaign message; and empowering union members and establishing workplace committees.

***Organizational flexibility and membership empowerment***

The KNPSWU inherited a structure with more than 13 branches. According to union officials, establishment of the branches was neither informed by strategic analysis nor actual or potential union membership at the branches, but had more to do with political expediency. The lack of strategic analysis in branch establishment rendered the branch network financially unsustainable. To address this anomaly, the new leadership de-registered all the union branches and restructured them into seven with clear operational and geographical boundaries. The new branches were in the cities and major towns in Kenya namely, Nairobi, Mombasa, Kisumu, Eldoret, Nakuru, Thika and Kakamega. Establishment of the branches targeted areas with high potential membership and greatest potential impact in service delivery to the union members.

The branch restructuring also focused on the financial sustainability of the branch based on the number of active members therein. In so doing, the union managed to cut down on branch operational and administrative costs and dedicate many more resources to support the operations of the remaining branches. This led to enhanced operational efficiency of the branches; increased member confidence in the organizational ability of the union; and increased visibility of the union at the grassroots level, with the desired effect on membership organization and recruitment. These measures increased the sustainability and organizational efficiency of the union while also seeking to enhance the empowerment of its members.

One of the methods used by the union to enhance participation and empowerment of union members was through institutionalization of shop steward workplace committees. The strategy was executed by entrenching the position of shop steward in the union constitution; defining the term of office for shop stewards and putting in place a mechanism for their election. Other strategies were establishing a network of stewards; ensuring payment of monthly allowances to the shop stewards; and institutionalizing shop stewards training in the union training calendar. By 2016, the KNPSWU had about 120 elected shop stewards. Shop stewards serve for terms of 2½ years and get monthly stipends equivalent to US\$ 40 from the union to cover operational expenses.

As would be argued by McCullum (2013), institutionalization of shop steward workplace committees and entrenching the position of the shop steward in the union constitution facilitated union members to exercise power at the local level. The organizational process executed at the workplace through workplace committees was reinforced by personal visits by leaders of the union to each of the private security companies, as well as mobilization of guards to participate in union meetings including processions during Labour Day celebrations.

Interviews with selected shop stewards (in November 2017) revealed that they felt more empowered to perform their functions, especially with regard to membership recruitment and grievance handling. This feeling has been buttressed by the resolve of the union leadership to involve the shop stewards in all matters and decisions regarding their firms, including negotiations. As part of the union policy, no union official is allowed to visit a firm without the prior knowledge of the local shop steward regarding the date and objective of the visit. Also, as a general rule, the local shop steward must be involved in any meeting between the union officials and company management, including negotiations and grievance handling. This action has two

positive effects: firstly, it gives the rank and file members more confidence about the representation ability of the union, and secondly, it enhances employee-employee recruitment strategies by shop stewards and the rank-and-file members.

As a consequence, much of the membership organization and recruitment in the private security industry is done by the shop stewards and union members. To enhance this recruitment strategy and to tap into the burgeoning informal sector, the union diversified the modes of payment of membership subscription fees to check-off, mobile banking and direct cash payments, especially at the branch level where membership registers are maintained. The employee-employee recruitment strategy and more flexible membership subscription methods have proven useful to the union, mainly due to the nature of work schedules of private security guards as well as the widespread experience in the informal sector of employers being unwilling or unable to effectively operationalize a check-off.

Employer-employee relations in the private security industry were generally hostile and anti-union, meaning that guards would be dismissed, discriminated against, transferred or penalized because of union membership and/or involvement in union activities. This undermined the union's membership organization and recruitment efforts. As part of the learning capability, the KNPSWU managed to obtain an order from the Employment and Labour Relations Court (ELRC) to prohibit any employer from victimizing and/or transferring any employee who has indicated their willingness to join the union on account of the employee's union preferences. The union adopted this strategy in 2015 after realizing the extent of this workplace discrimination based on union membership. Such court orders had been obtained and successfully applied in ten cases in the past, including in big companies such as Lavington Security Ltd and Wells Fargo.

***Building unity and cohesion: the relevance of intermediation and articulation***

The dual nature of the private security industry where formal sector firms operate alongside informal sector firms, and the industry's segmented market structure characterized by high, medium and low-end clients, means that the interests of the union members and the extent to which their basic needs are met under the status quo are completely at variance. To develop a common ground and ensure collective interest arises out of the conflicting demands, the KNPSWU crafted a campaign message directed at the members of the public. The message framed the conception that the union stands for recognition of guards as "important" members of the society. To the union members, it framed itself as a champion of the fundamental principles and rights of guards as well as a union formed, owned, run and led by private security guards themselves rather than outsiders. The message crafted also depicted the union as one that stands for reform of the private security industry.

Messages targeted towards union membership were delivered by union officials, branch committee members and shop stewards during union meetings at national, regional, branch and shop floor levels. They were also disseminated through bulk short text messages; social media platforms such as Facebook; and in some cases radio and television talk shows. Messages addressing the general public were mainly delivered through press conferences and meetings organized by the union or other partners, but involving participation of other stakeholders other than trade unions.

The public messages resonated well with the target, largely because of the complementary role private security guards play in maintaining security, especially in the face of heightened security threats. The messages developed and directed towards the union membership were also received well by guards and acted as an effective internal unifying and recruiting strategy. Specifically, the areas of welfare enhancement targeted by the union in their campaign strategy were core issues such as basic salary, working hours, overtime payment and leave entitlement. These rallying issues corresponded well to the real concerns of most guards given the deteriorating terms and conditions of employment faced by the industry workers.

It can be seen, at least in the context of the KNPSWU, that this framing had a double function. Externally, it allowed the union to gain more sympathy and relevance from the members of the public. This contributed positively to the union's lobbying and advocacy campaigns, including membership organization and recruitment. Internally, it presented the union with articulation capabilities to construct multi-level interaction and understanding between the national office and the guards at enterprise level.

The history of trade unionism in the private security industry is marked by the multiplicity of unions, union rivalry and splinters, leadership wrangles, and coups. To restore its associational power internally, the KNPSWU had to intermeditate between conflicting interests in order to build unity. Many of problems that had bedeviled the union since 1960 were put down to the fact that the union had been led by people from outside the private security sector who had never been guards.

The union learnt vital lessons from previous power struggles. A key lesson learnt was that the guards wanted "their own union"- a union formed, led and run by guards. The union used this message to change its constitution to require anybody seeking an elective post in the union to be, or have been, employed in the industry. The change in the constitution effectively prohibited the former officials of UDIPAS and KEGAWU or any other person who is not, or has not been, employed as a guard from contesting an internal union election. This restriction has contributed to some degree of stability in the union leadership. It has also helped to consolidate membership of the union into a cohesive group with a clear identity.

Furthermore, the union had to build unity between its former union officials. Due to leadership wrangles, the union had 13 general secretaries in the seven years between 1999 and 2006. It is noted that formation of KNPSWU was instigated by UDIPAS splintering from KUCFAW and the merger between UDIPAS and KEGAWU. Intermediation capabilities exercised by the KNPSWU leadership, all of whom were guards, was necessary to initiate dialogue with the former KEGAWU and UDIPAS officials. The main achievement was reaching some ideological common ground of building a strong and cohesive KNPSWU. The intermediation strategy emphasized the fact that, despite differences in individual interest and demands, all the officials needed to promote union stability and cohesiveness in the union leadership. This represented one of the surest methods to avoid problems associated with path dependence in the union.



Four key strategies were used to achieve unity and cohesion in the union leadership. One was to integrate eligible former KEGAWU and UDIPAS officials into the leadership of KNPSWU through elections. The second strategy was to offer some of the officials who could not vie for elective posts due to the new constitutional restriction full time employment opportunities in the union. This, however, came at a price for the union in terms of paying the officials in question relatively higher salaries than the ordinary secretariat. The third strategy was to empower the union officials and assign them specific roles for enhanced accountability. To facilitate effective performance of the officials and efficient delivery of services, the union put in place a strong secretariat to provide technical assistance to both the union officers and the officials-turned-staff. The secretariat, totaling 36 staff members, consists of qualified lawyers, industrial relations specialists, economists and accountants. Finally, the articulation capability is exercised by the general secretary of the union who is also the head of the secretariat by ensuring multi-level interaction and understanding between and among the union officials and staff.

In conclusion, KNPSWU was able to significantly activate its associational power through a process of internal restructuring that increased not only the efficiency of the organization but also membership participation and control at all levels of union representation. Security guards felt that it was them owning the union and they got actively involved in the union's activities, inclusive of membership organization and recruitment. This provided the impetus for the union to grow significantly in a short space of time. The union leadership was furthermore able to build unity and cohesion within the union by integrating the former officials of the defunct private security industry unions into its leadership and secretariat.

#### ***Gaining and strategically utilizing institutional power***

Institutional power is the result of struggles and negotiation processes based on structural power and associational power. It exists in situations where authority has been socially approved and accepted as legitimate. Institutional power is, therefore, the capacity of workers and/or their trade union to influence the behavior of an employer by invoking the formal or informal rules that structure their relationships and interactions. It includes lobbying, invoking terms of an existing legal framework, and leveraging the informal relationship between management and a union or works council.

The KNPSWU was able to win institutional power through stratification of the private security industry; entering into framework agreements for recognition and negotiation of collective bargaining agreements; lobbying and advocating for establishment of institutions, which had regulatory and social dialogue mandates; and involving trade union actors at the supranational level.

#### ***Stratification of the industry and negotiation of framework agreements***

The KNPSWU stratified the private security industry as part of the strategy for effective membership organization and recruitment targeting. The stratification was a simple process conducted internally by the union officials and secretariat. The stratification process relied on the experience of the union officials and followed the organizational boundaries of the private

security industry associations.<sup>19</sup> The strategy in this stratification was twofold: one to negotiate and sign a framework recognition agreement with the formal private security firms through their industry associations; and two, to negotiate a full CBA with the association that represents the large firms and a partial CBA that only guarantees payment of at least statutory minimum wages with the industry association that represents the medium and small private security firms.

The union's strategy first targeted the private security companies organized under the Kenya Security Industry Association (KSIA). This was due to the perceived receptiveness and sensitivity to workers' issues by the KSIA members, relative to firms who are members of the Protective Security Industry Association (PSIA). The union posits that majority of the employers in PSIA are militant, arrogant and have anti-union tendencies. According to the union, majority of the members of PSIA also engage in unfair labour practices, which undermine enjoyment of the fundamental principles and rights at work by the guards.

The entry point for the union was to negotiate a framework recognition agreement with KSIA to cover all the companies under the association. The importance of the framework recognition agreement is that once entered into, the KNPSWU does not have to negotiate and sign recognition agreements with the individual KSIA member companies before initiating negotiations towards concluding a CBA. Secondly, the recognition agreement mandates the union to negotiate a single CBA with the KSIA, which then is applied to all the 30 members of the association. In respect of institutional power, the agreement grants the union access to all the KSIA members. This means that the union can plan and conduct its membership organization, recruitment campaigns, and other trade union development activities with any of the members of the KSIA without undue resistance.

The strategy to organize and sign a framework recognition agreement with the KSIA was executed between 2011 and 2016, and realized with the signing of a recognition agreement on 6<sup>th</sup> July 2016. The agreement covers all the 30 companies under the association. The second notable success was the initiation of collective bargaining process by the parties. The inaugural negotiation meeting was held in November 2016 and a follow up one in December 2016 with the agreement being at the final stages of conclusion.

The KNPSWU's focus for membership organization and recruitment through stratification strategy shifted to PSIA with effect from September 2016. An initial notable success of the effort is that one of the companies in the association, Lavington Security Ltd, started implementing a check-off with the union. This is a positive sign, since implementation of a check-off is first line step of recognition by an employer of the right of a union to organize and undertake collective bargaining on behalf of its members.

In all these efforts, the union sustained pressure through a multi-pronged lobbying approach targeting the government, parliamentarians, the International Labour Organization (ILO) and the Federation of Kenya Employers (FKE), which the KSIA and PSIA are members of. However,

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<sup>19</sup> There are two private security industry associations. The Kenya Security Industry Association (KSIA) mainly covers large private security firms. The association had a total of 30 members as of 2016. The Protective Security Industry Association (PSIA) mainly organizes medium and small private security firms. It had a total of 80 members as of 2016.

the successes did not, come without a cost to the union. The process of membership recruitment and agitation for recognition was long and difficult, especially given that the employers were initially hostile to the union representatives. Consequently, a considerable number of shop stewards lost their jobs; others were demoted; and some were redeployed in areas considered operationally difficult. Between January and March 2015, for example, close to 200 guards had been sacked for joining the union. Interviews with the General Secretary of the union (in January 2017) revealed that the union absorbed a few of the sacked shop stewards into its secretariat, and continues to pay nominal stipend to support the others who could not be employed by the union. This action, at least, gave some hope to the other union organizers, shop stewards and rank-and-file employees.

***Establishment of the protective and security services wages council***

The KNPSWU successfully lobbied for the establishment of the Protective and Security Services Wages Council (Republic of Kenya, 2013). In so doing, the KNPSWU increased its leverage by winning the support of industry players such as the KSIA, PSIA, FKE, and Central Organization of Trade Unions (COTU (K)). The KNPSWU was able to articulate to the KSIA and PSIA members that establishment of the council would be beneficial to them given the heterogeneous and segmented nature of the private security industry market. The KNPSWU considered that though KSIA and PSIA are operating in the same market, the clients targeted have different tastes and preferences as well as different willingness and ability to pay for the services offered by the private security industry companies.

The KNPSWU advanced the argument that the private security industry market has three distinct segments. The first segment is that of high-end clients such as High Commissions, Embassies, United Nations (UN) and international Organizations. The second segment consists of Government Ministries, Departments and Agencies; and commercial banks. According to the union, the third segment of the private security industry market consists of the commercial and industrial organizations, residential estates and individual clients in residential homes. The three segments of the market have different willingness and abilities to pay. According to the union, establishing a standard statutory minimum wage and other terms and conditions of employment to be enforced on all firms is not equitable both to employees and industry employers.

The union, therefore, advocated for segmentation of the market into the three bands and establishment of statutory minimum terms and conditions of employment based on the bands. Research work associated with this would involve mapping of firms that have clients in the respective bands and negotiating pay and benefits, which reflect the conditions within them. This strategy was supported by all the tripartite partners, including the industry associations: the KSIA and PSIA. This position was adopted and is being discussed by the Protective and Security Services Wages Council. The Council has had several meetings but are yet to undertake the mapping survey and clustering due to financial constraints. The direct benefit of the market segmentation and clustering of firms is that it will help establish standard rates of pay based on market segment. It will also help reduce undercutting by firms.

The KNPSWU also used its intermediating capabilities to successfully lobby government to make it mandatory for public procurement entities in Kenya to obtain a certificate of attestation

from the Ministry of Labour and Social Protection (MoL&SP) confirming adherence to and compliance with statutory minimum terms and conditions of employment before being awarded any service contract. The KNPSWU, KSIA and PSIA all acknowledge that the private security industry is highly competitive. They also underscore the fact that there is a lot of business under-cutting in the industry, in which firms tend to bid down their fees in order to win service tenders. The ultimate losers, however, are the workers whose wages and other terms and conditions of employment would be the first targets for cutting. The union, therefore, came up with the strategy to address the under-cutting, ensure compliance with the statutory terms and conditions of employment, and protect the welfare of workers. This strategy was adopted and is being enforced by the MoL&SP. The only challenge is how to extend and enforce it on the private sector entities and informal sector firms who do not procure their contracts from public institutions.

Other forms of institutional power used by the KNPSWU is negotiating framework agreements, namely recognition agreements and CBAs. In Kenya, recognition agreements are used as instruments that guarantee the union the right and legitimacy to represent employees in question in any negotiations regarding their terms and conditions of employment. This, therefore, is a step towards ensuring that the rights of workers are protected and their welfare is improved.

The union, for example, negotiated a CBA with KK Security Ltd in respect to employees of the company posted at the Embassy of the United States of America in Nairobi. The KK Security Ltd is a multinational company with over 23,000 across East and Central Africa. The CBA between KNPSWU and KK Security Ltd raised the monthly salaries of the security guards at the Embassy of the United States of America in Nairobi by about 50 per cent. The conclusion and subsequent implementation of the CBA afforded the union much publicity and visibility. This helped in enhancing the confidence of the industry employees on the collective bargaining and representational ability of the union, and in terms of recruiting members.

### ***Lobbying for establishment of industry regulatory authority***

Another form of institutional power used by the KNPSWU to increase its influence was lobbying for the enactment of the Private Security Regulation Act (2016) and establishment of the Private Security Regulatory Authority. The KNPSWU is on record having mobilized guards to participate in a procession in 2013 to hand over The Private Security Bill to the speaker of the national assembly. In 2015 and supported by the ILO, the union organized a stakeholder consultative forum on the Bill. Industry players such as the PSIA, KSIA, FKE, COTU (K), MoL&SP, other relevant government ministries and departments, and stakeholders participated in the dialogue.

The Private Security Regulation Act (2016) was assented to on 18<sup>th</sup> May 2016 and entered into law on 3<sup>rd</sup> June 2016. It provides for the regulation of the private security industry, and framework for cooperation with the national security organs. The enactment of this piece of legislation was an important gain for the KNPSWU. The Act seeks to organize or formalize the private security industry. Section 9(b) of the Act, for example, empowers the Private Security Regulatory Authority to formulate and enforce standards for the conduct of private security

services in the country. Section 9(c) empowers the Authority to register and license all persons involved in or conducting private security services in the country.

The implication is that with proper enforcement, all the private security firms will be registered and licensed at least after meeting some set criteria. It also follows that with the registration and licensing, the firms will at least be much more visible. The other gain from the registration and licensing is that the union can obtain a list of all private security providers to facilitate its mapping, especially for membership organization and recruitment, and collective bargaining activities. By being represented in the Authority, the union can also influence the standards to be developed and enforced to include the basic terms and conditions, and committing of service bonds to protect security guards against unexpected closure and/or relocation of private security firms.

***Involving trade union actors at supranational level***

Another institutional power resource used by the KNPSWU is involvement of trade union actors at the supranational level. McCullum (2013) argues that labour is an agent of global governance. The author avers that workers are not simply victims of global dynamics but can also change the rules of global engagement. In this case, the KNPSWU used institutional power from a different source by invoking formal and informal rules inherent in the Global Framework Agreement (GFA) signed between the Union Network International (UNI)<sup>20</sup> and Group 4 Securicor (G4S) in 2008. The KNPSWU is an affiliate of UNI while the G4S is a major employer of security guards in Kenya and Africa.

The KNPSWU recognized that the GFA guaranteed new rules that allowed G4S employees to form and/or join trade unions without undue interference by the company management. It is, therefore, part of the institutional power strategy to expand the scope, bargaining power and influence of local unions. Specifically, the UNI/G4S framework agreement cover labour relations and employment standards. It also covers union rights such as freedom of association, union access and union recognition.

To execute the institutional power, the KNPSWU approached (in 2013) the management of G4S in Kenya with a copy of the framework agreement and an introductory letter from UNI. It used this power resource to leverage its organizing plan at the company. It also used the GFA to expand its bargaining power by forcing the G4S to play by the union rules. In the words of the general secretary of the KNPSWU, “the union used the framework agreement to advance its interests in recruiting G4S employees into the union”. Specifically, the union utilized the agreement as a platform for gaining unfettered access to G4S employees, visiting the G4S guards across the country, holding union meetings, marketing the union agenda, and conducting union membership organization and recruitment campaigns. The union membership recruitment drive at the G4S was also boosted by a two-year grant given to the union and other affiliates of UNI to facilitate them with membership organization and recruitment of G4S workers.

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<sup>20</sup> UNI is a global union federation for skills and services, bringing together national and regional trade unions. It was launched as Union Network International on 1<sup>st</sup> January 2000.

The KNPSWU acknowledges that the framework agreement contributed to the unrestricted access granted to it and the non-interference by the management of the G4S in the recruitment drive and related union activities. It also enabled both the union organizers to talk to the G4S employees without fear of management reprisal. The G4S guards also attended union membership recruitment campaign meetings and enlisted into the union membership without fear of victimization by the management. The KNPSWU's membership organization and recruitment campaigns at the G4S through the GFA was successful because it helped to neutralize the anti-union management of the G4S while simultaneously creating the conditions for workers to organize, and build internal union structures and networks (McCullum, 2013).

The institutional power developed and utilized by the KNPSWU on G4S enabled it to recruit into the union 14,000 of the 16,000 employees of G4S in Kenya. This means that the union enlisted into its membership 87.5 per cent of the unionisable employees of the company. In keeping with Section 54 of the Kenyan Labour Relations Act (No. 14 of 2007), the KNPSWU applied for recognition by the G4S. Section 54(1) of the Act require an employer or a group of employers to recognize a trade union for purposes of collective bargaining if the trade union represents a simple majority (50%+1) of the unionisable employees of the company or the group of employers. Consequently, the KNPSWU and G4S signed recognition agreement in 2013.

The recognition agreement between the KNPSWU and G4S helped in making new rules in the company-governance struggles. The governance struggles achieved by the union enabled it to exercise much more power in the company, and gain much more access to the workers and the workplace. This means that the union was able to fill the governance gap in an environment where workers' rights were not being recognized (McCullum, 2013). Thus, with the recognition agreement in place, the KNPSWU was now able to and indeed negotiated a CBA with the G4S. Overall, the gaining of access into the G4S by the KNPSWU and the subsequent recruitment of its employees, signing of recognition agreement and CBA gave the union substantial leverage in its mandate to secure, promote and protect the welfare of private security guards in Kenya.

The foregoing discussions show that the KNPSWU was able to consolidate its grip by gaining and strategically utilizing institutional power to its advantage. The key strategies used were stratification of the industry, signing recognition and collective bargaining agreements, building the union's lobbying and advocacy capacity, and involving trade union actors at the supranational level. The actions endeared the union, at least to the partners and union members, as a strong and focused workers' organization. It also gave the union members some element of confidence on the representational ability of the union, including being a strong advocate for the protection and improvement of welfare of its members.

### **Conclusion**

Two power resources, associational power and institutional power, are credited with the revitalization realized by the KNPSWU. Capabilities such as organizational flexibility, intermediation, articulation and organizational learning were particularly important in building union membership, strengthening internal cohesion and solidarity, and promoting unity amongst the union secretariat, rank-and-file members, shop stewards and national officials. In the context of the KNPSWU, it developed and utilized to its advantage institutional power arising from the

framework agreement between UNI and G4S. The union utilized this power resource to fill the governance gap, sign recognition agreements, and enter into and conclude CBA with the G4S for the benefit of workers.

Institutional power was mainly exercised through stratification of the private security industry; signing of framework agreements; and establishment of institutions to promote social dialogue and regulation of the industry. It was useful in reinforcing the benefits that accrued from utilization and exploitation of associational power resources, facilitating the establishment of a platform for provision of union products and services to members. Institutional power resources were also used to enhance the policy influencing ability of the union thereby endearing it as a strong, cohesive and vibrant union capable of turning challenges into opportunities.

The development and utilization of the power resources at the KNPSWU revealed the double function of framing. Externally, it allowed the union to gain more sympathy and relevance from the members of the public. This contributed positively to the union's lobbying and advocacy campaigns, including membership organization and recruitment. Internally, it presented the union with articulation capabilities to construct multi-level interaction and understanding between the national officials, shop stewards, and the rank-and-file members.

#### **List of Abbreviations**

CBA	Collective Bargaining Agreement
COTU (K)	Central Organization of Trade Unions (Kenya)
ELRC	Employment and Labour Relations Court
FKE	Federation of Kenya Employers
G4S	Group 4 Securicor
KEGAWU	Kenya Guards and Allied Workers Union
KNPSWU	Kenya National Private Security Workers' Union
KSIA	Kenya Security Industry Association
KUCFAWU	Kenya Union of Commercial Food and Allied Workers
MoL&SP	Ministry of Labour and Social Protection
PSIA	Protective Security Industry Association
UDIPAS	Union of Diplomatic International Private and Allied Security Officers
UN	United Nations
UNI	Union Network International

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