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NO. 23 OF 2012

NATIONAL SECURITY COUNCIL ACT

[Date of assent: 27th August, 2012.]

[Date of commencement: See Section 1.]

An Act of Parliament to make further provision with respect to the functions of the National Security Council pursuant to Article 240 of the Constitution, and for connected purposes

[Act No. 23 of 2012, Act No. 18 of 2014.]

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the National Security Council Act, 2012 and shall come into operation upon the final announcement of the results of the first elections under the Constitution.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to internal security;

“**classified information**” has the meaning assigned to it under section 14(2);

“**Council**” means the National Security Council established by Article 240(1) of the Constitution;

“**national security**” has the meaning assigned to it under Article 238(1) of the Constitution;

“**national security organs**” means the Kenya Defence Forces, the National Intelligence Service and the National Police Service established by Articles 241, 242 and 243 of the Constitution respectively;

“**public officer**” has the meaning assigned to it under Article 260 of the Constitution;

“**Republic**” has the meaning assigned to it under Article 260 of the Constitution;

“**Secretariat**” means the Joint Security Secretariat established under section 9;

“**secretary**” means the secretary to the Council appointed by the Council under Article 240(5) of the Constitution and in accordance with section 7;

“**State officer**” has the meaning assigned to it under Article 260 of the Constitution.

3. Guiding principles

The Council shall, in fulfilling its mandate under the Constitution, this Act or any other written law, observe and uphold the Bill of Rights and observe the values and principles of governance in Article 10(2), the values and principles of public

service in Article 232(1) and the principles of national security in Article 238 of the Constitution.

PART II – FUNCTIONS AND ADMINISTRATION OF THE COUNCIL

4. Functions of the Council

(1) In addition to the functions specified under Article 240(3), (6) and (8) of the Constitution, the Council shall—

- (a) review and make recommendations on policies on matters relating to national security;
- (b) prioritize the programs or activities that address the internal, foreign and defence interests on the national security of the Republic;
- (c) receive reports from security organs on the implementation of the Council's policy directives;
- (d) develop and from time to time review the national security policy;
- (e) identify and develop strategies to enable the security organs to respond to internal and external threats to the country's sovereignty and territorial integrity;
- (f) conduct an annual review of the internal, foreign and defence priorities relating to the national security of the Republic;
- (g) advise the President on the declaration of a state of emergency; and
- (h) perform such other functions as may be conferred on it by this Act or any other written law.

(2) The supervisory function conferred on the Council by Article 240(3) of the Constitution shall not extend to operational control of the national security organs.

(3) Subject to Article 6 of the Constitution, the Council shall devolve its services so far as it is appropriate to do so having regard to the nature of the services.

5. Committees of the Council

(1) The Council may, from time to time, establish such committees of the Council as it may consider necessary for the effective discharge of its functions under the Constitution, this Act or any other written law.

(2) The Council may co-opt into the committees established under subsection (1) other persons whose presence, participation, knowledge or skills are necessary for the proper performance of the functions of the Council.

(3) A person co-opted under subsection (2) may attend the meetings of the committee and participate in the deliberations but shall have no right to vote at the meeting.

6. Conduct of the affairs of the Council

(1) The conduct and regulation of the business and affairs of the Council shall be as provided in the First Schedule.

(2) Except as is provided in the First Schedule, the Council may regulate its own procedure.

7. Secretary to the Council

Until the Council appoints its secretary, the Secretary to the Cabinet shall be the secretary to the Council.

[Act No. 18 of 2014, Sch.]

8. Functions of the secretary

(1) The secretary shall be responsible to the Council for—

- (a) the recording of the proceedings of the Council;
- (b) the custody of all records, minutes and documents of the Council;
- (c) the preparation and circulation of the agenda for the meetings of the Council;
- (d) arranging the business of the Council; and
- (e) the performance of such other duties as may, from time to time, be assigned to him or her by the Council.

(2) The functions of the secretary under this Act may, in the absence of the secretary, be performed by any member of the Secretariat authorized by the Council for that purpose.

9. Joint Security Secretariat

(1) There shall be a Secretariat of the Council to be known as the Joint Security Secretariat.

(2) The secretary shall be the head of the Secretariat.

(3) The secretariat shall comprise of—

- (a) such number of officers as may, upon request by the Council, be deployed from the national security organs; and
- (b) such public officers as may, upon the request of the Council, be deployed to the Secretariat.

(4) A public officer deployed to the Secretariat under subsection (3) shall be deemed to be an officer and public officer of the Council and shall be subject to the direction and control of the Council.

(5) Notwithstanding the provisions of subsection (4), an officer deployed to the Secretariat under subsection (3) shall remain subject to the laws, regulations and orders applicable to the deploying organ or body.

10. Functions of the Secretariat

The Secretariat shall be subject to the direction of the Council and shall be responsible for—

- (a) the day to day administration and co-ordination of the affairs of the Council;
- (b) the preparation and management of the budget of the Council;
- (c) the procurement and maintenance of facilities and services required for the discharge of the functions of the Council;
- (d) conveying the decisions of the Council to the relevant agencies or State departments;
- (e) following up on the implementation of the decisions of the Council; and
- (f) the performance of such other function as may be assigned by the Council.

PART III – MISCELLANEOUS PROVISIONS**11. Oath of office**

The secretary and staff of the Council shall, upon their appointment, make and subscribe to the oath or affirmation set out in the Second Schedule.

12. Confidentiality

(1) A member or staff of the Council, shall not, without the consent of the Council in writing, publish or disclose to any person other than in the course of his or her duties, the contents of any document, communication, or information which relates to, and which has come to his or her knowledge in the course of his or her duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

13. Classification of Council documents and records

(1) The Council shall by Regulations, prescribe the procedures for the management, classification and declassification of documents and other records of the Council.

(2) The Regulations made under this section shall be approved by Parliament.

14. Limitation of the right of access to information

(1) The right of access to information under Article 35(1) and (3) of the Constitution shall be limited in respect of classified information or information under the custody of the Council under the following circumstances—

- (a) the protection of classified information;
- (b) the maintenance and preservation of national security;
- (c) where the disclosure is prejudicial to ongoing investigations or security operations; and
- (d) where the enjoyment of rights and freedoms does not prejudice the rights and freedoms of other persons disclosing or publicizing information, the disclosure or publication of which would be prejudicial to national security.

(2) For the purposes of this Act, “**classified information**” means any information of a particular security classification whose unauthorized disclosure would prejudice national security.

(3) The Cabinet Secretary may by Regulations determine the categories of security classification.

(4) The categories of classified information referred to under subsection (3) may include—

- (a) “**top secret**” which means information whose unauthorized disclosure would cause exceptionally grave damage to the interests of the State;
- (b) “**secret**” which means information whose unauthorized disclosure would cause serious injury to the interests of the State;
- (c) “**confidential**” which means information whose unauthorized disclosure would be prejudicial to the interests of the State; and
- (d) “**restricted**” which means information whose unauthorized disclosure would be undesirable in the interests of the State.

(5) The limitation under this section shall—

- (a) comply with Article 24 of the Constitution; and
- (b) satisfy the following criteria—

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- (i) ensure the protection, maintenance of and promotion of national security, public safety, public order and protection of the rights and freedoms of others;
- (ii) be necessary to achieve the mandate of the Council;
- (iii) operate without discrimination; and
- (iv) be exceptional and not derogate the core or essential content of the right or freedom being limited.

15. Financial provisions

(1) The expenses incurred by the Council in accordance with the Constitution and this Act shall be borne by the Office of the President.

(2) The members of the Council may be paid such allowances as may be determined by the Cabinet Secretary responsible for matters relating to finance in consultation with the Salaries and Remuneration Commission.

16. Annual reporting to Parliament

(1) In addition to the report by the Council required under Article 240(7) of the Constitution, the Council shall report to Parliament on—

- (a) any particular issue referred to it by Parliament; and
- (b) any other matter related to its functions or national security.

17. Regulations

The Cabinet Secretary may, with the approval of the Council, make regulations, prescribing anything required by this Act to be prescribed or generally for the better carrying out of the provisions of this Act.

FIRST SCHEDULE

[Section 6(1).]

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COUNCIL**1. Meetings**

(1) The Council shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The President may convene a special meeting of the Council where it is expedient for the transaction of the business of the Council.

2. President to preside

The President shall preside at the meetings of the Council.

3. Venue of meetings

A meeting of the Council shall be held at any place within Kenya and on such date and at such time as the President may determine.

4. Quorum

The quorum of the meeting of the Council is five members, including the chairperson.

5. Vacancy

The proceedings of the Council shall not be invalidated by reason of a vacancy among the members.

6. Minutes

The secretary shall take and keep the minutes of the meetings of the Council.

7. Decisions

The decisions of the Council shall be made by a majority of the members present.

8. Attendance

Attendance of meetings of the Council shall be in person.

9. Invitation of other persons

The Council may invite any person to attend any of its meetings and to participate in its deliberations but shall not participate in the making of decisions by the Council.



SECOND SCHEDULE

[Section 11.]

**OATH OR SOLEMN AFFIRMATION OF DUE EXECUTION
OF OFFICE OF THE SECRETARY/MEMBER OF STAFF**

I (name in full) having been appointed the secretary to/member of staff of) the Council, do (swear/solemnly affirm) THAT I will at all times do my best to preserve the national security of Kenya; THAT I shall discharge all the duties devolving upon me by virtue of my appointment according to the Constitution and law without fear, favour, affection or ill-will: THAT I will not, without due authority, disclose or make known to any person any information acquired by me reason of the duties performed by me on behalf or under the direction of Council. THAT I shall subject myself to the Constitution, the Act and to all other laws SO HELP ME GOD. (IN THE CASE OF AN OATH — SO HELP ME GOD).

Sworn/ Declared by the said

Before me this Day of



