



THE REPUBLIC OF KENYA

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PRESERVATION OF PUBLIC SECURITY ACT

CHAPTER 57

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CHAPTER 57

PRESERVATION OF PUBLIC SECURITY ACT

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CHAPTER 57

PRESERVATION OF PUBLIC SECURITY ACT

[Date of assent: 8th January, 1960.]

[Date of commencement: 11th January, 1960.]

An Act of Parliament to make provision for the preservation of public security

[Act No. 2 of 1960, L.N. 2/1964, Act No. 18 of 1966, L.N. 766/1963, Act No. 10 of 1997.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Preservation of Public Security Act.

2. Interpretation

In this Act, “**the preservation of public security**” includes—

- (a) the defence of the territory and people of Kenya;
- (b) the securing of the fundamental rights and freedoms of the individual;
- (c) the securing of the safety of persons and property;
- (d) the prevention and suppression of rebellion, mutiny, violence, intimidation, disorder and crime, and unlawful attempts and conspiracies to overthrow the Government or the Constitution;
- (e) the maintenance of the administration of justice;
- (f) the provision of a sufficiency of the supplies and services essential to the life and well-being of the community, their equitable distribution and availability at fair prices; and
- (g) the provision of administrative and remedial measures during periods of actual or apprehensible national danger or calamity, or in consequence of any disaster or destruction arising from natural causes.

[Act No. 18 of 1966, Second Sch.]

PART II – PUBLIC SECURITY MEASURES

3. Public security regulations

(1) If at any time it appears to the President that it is necessary for the preservation of public security to do so, he may by notice published in the *Gazette* declare that the provisions this Part of this Act shall come into operation in Kenya or in any part thereof.

(2) Where a notice under subsection (1) of this section has been published, and so long as the notice is in force, it shall be lawful for the President, to the extent to which the provisions of this Act is brought into operation, and subject to the provisions of the Constitution, to make regulations for the preservation of public security.

(3) Subject to the provisions of this section, regulations made under this Part of this Act may make provision for any of the matters specified in section 4(2):

Provided that subject to subsection (4) of this section such regulations shall not make any provision which—

- (a) is inconsistent with or in contravention of section 16 of the Constitution (which protects the right to personal liberty), or section 26 of the Constitution (which provides protection from discrimination), or any other provision of the Constitution; or
- (b) purports to amend, modify, or suspend the operation of, any written law other than regulations made under this Act.

(4) The proviso to subsection (3) of this section shall not apply during any period when Kenya is at war or to any regulations in so far as they apply to the parts of Kenya to which section 19 of the Kenya Independence Order in Council applies.

(5) Subject to subsection (3) of this section, any notice published under this section may limit the power to make regulations to such of the matters specified in section 4(2) as the President may specify in the notice of this Act.

(6) A notice published under this section may at any time be revoked by the President by a notice published in the *Gazette*.

[Act No. 18 of 1966, Second Sch, L.N. 766/1963, s. 2.]

PART III – SPECIAL PUBLIC SECURITY MEASURES

4. Special public security regulations

(1) Where an order under section 29 of the Constitution (which relates to the bringing into operation of this Part of this Act) has been made by the President, and so long as the order is in force, it shall be lawful for the President, to the extent to which the provisions of this Part is brought into operation and subject to the provisions of Constitution, to make regulations for the preservation of public security.

(2) Regulations for the preservation of public security may make provision for—

- (a) *deleted by Act No. 10 of 1997, Sch.;*
- (b) the registration, restriction of movement (into, out of or within Kenya), and compulsory movement of persons, including the imposition of curfews:
Provided that no person shall be restricted on account of his political beliefs or activities;
- (c) the control of aliens, including the removal of diplomatic privileges;
- (d) the censorship, control or prohibition of the communication of any information, or of any means of communicating or of recording ideas or information, including any publication or document, and the prevention of the dissemination of false reports;
- (e) the control or prohibition of any procession, assembly, meeting, association or society;
- (f) the control or prohibition of the acquisition, possession, disposition or use of any movable or immovable property or undertaking;
- (g) the compulsory acquisition, requisitioning, control or disposition of any movable or immovable property or any undertaking;
- (h) requiring persons to do work or render services, including the direction of labour and supplies, the conscription of persons into any of the disciplined forces (including the National Youth Service) and the billeting of persons;

- (i) the control and regulation of harbours, ports and the movement of vessels;
- (j) the control and regulation of transport by land, air or water;
- (k) the control of trading and of the prices of goods and services, including the regulation of the exportation, importation, production, manufacture or use of any property or thing;
- (l) amending, applying with or without modification or suspending the operation of any law (including legislation of the East African Common Services Organization) other than this Act or the Constitution;
- (m) any matter, not being a matter specified in any of the foregoing paragraphs of this subsection, for which provision is necessary or expedient for the preservation of public security.

[Act No. 18 of 1966, Second Sch., Act No. 10 of 1997, Sch.]

PART IV – GENERAL PROVISIONS

5. Interpretation and application of Part IV

In this Part of this Act “**subsidiary legislation**” means any regulations made under this Act and any rule or order made under such regulations, and this Part of this Act shall apply to any such subsidiary legislation.

[Act No. 18 of 1966, Second Sch.]

6. Subsidiary legislation to be laid before Parliament

(1) All subsidiary legislation shall be laid before each House of the National Assembly as soon as may be after it is made, and, if each House of the Assembly within the period of twenty days commencing with the day on which the Assembly first sits after the subsidiary legislation is laid before that House, resolves that it be annulled, it shall cease to have effect.

(2) Subsection (1) of this section shall not apply to any subsidiary legislation of which a draft has been laid before both Houses of the National Assembly and approved by resolution of both Houses before it was made.

[Act No. 18 of 1966, Second Sch.]

7. Miscellaneous provisions relating to subsidiary legislation

(1) Subsidiary legislation may—

- (a) be made to apply to Kenya generally or to any part thereof, to any ship or aircraft in or over Kenya, to any Kenyan ship or aircraft wherever it may be, and to any person on board any such ship or aircraft;
- (b) make different provisions with respect to different cases or classes of case and for different purposes of this Act, and, subject to the Constitution, may make different provisions with respect to different classes or descriptions of persons.

(2) Regulations made under this Act may—

- (a) make provision for the apprehension and punishment of persons offending against the regulations, for the imposition of penalties (including the penalty of death and the forfeiture of any property connected in any way with any offence) exceeding those otherwise permitted by law to be imposed by regulations, and for the trial of such offenders by such courts, not being courts martial, and in accordance

with such procedure as may be provided for by the regulations, and for the proceedings of such courts to be subject to such review as may be provided for, so, however that provision shall be made for such proceedings being reviewed by not less than two persons who hold or have held high judicial office, in all cases in which sentence of death is passed, and in such other circumstances as may be provided by the regulations;

- (b) authorize the search of persons and the entering and search of any premises, vessel, vehicle or aircraft;
- (c) provide for the payment of compensation and remuneration to persons affected by the regulations;
- (d) provide for charging in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;
- (e) provide for the formation of tribunals and other bodies for the purpose of deciding such matters as may be specified in the regulations (but having no powers to inflict penalties);
- (f) provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorized by this Act to be made;
- (g) contain such incidental and supplementary provisions as appear to the President to be necessary or expedient for the purposes of the regulations.

(3) Subsidiary legislation shall have effect notwithstanding anything inconsistent therewith contained in any law (including any law of the East African Services Organization) other than this Act or the Constitution, and any provision of any such law which may be inconsistent with any subsidiary legislation shall, whether that provision has or has not been amended, modified or suspended in its operation by any subsidiary legislation, to the extent of the inconsistency having no effect so long as such subsidiary legislation remains in force.

(4) The expiry or revocation of any subsidiary legislation shall be without prejudice to anything previously done thereunder or to the making of new subsidiary legislation.

[Act No. 18 of 1966, Second Sch.]

8. Proof of instruments

(1) Every document purporting to be an instrument made or issued by the President or by any Minister or other authority or person in pursuance of any provision contained in, or having effect under, this Act, and purporting to be signed by or on behalf of the President, said the Minister, authority or person, shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the President, or by that Minister, authority or person.

(2) *Prima facie* evidence of any such instrument as is referred to in subsection (1) may, in any legal proceedings, be given by the production of a document purporting to be certified to be a true copy of the instrument by, or on behalf of, the

President, the Minister or other authority or person having power to make or issue the instrument.

[Act No. 18 of 1966, Second Sch.]

9. Expenses

There shall be defrayed out of moneys provided by Parliament any expenses incurred by the Government in consequence of the passing of this Act, and any increase attributable to the passing of this Act, in any sums authorized or required by any other written law to be paid out of moneys provided by Parliament.

[Act No. 18 of 1966, Second Sch.]
