

THE NATIONAL SECURITY COUNCIL BILL, 2011

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A Bill for

AN ACT of Parliament to give effect to the Constitution; to provide for the functions of the National Security Council; to provide for the appointment of Secretary to the Council; to provide for the establishment and functions of the County Security Committees; and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

PART I – PRELIMINARY

Short title and commencement.

1. This Act may be cited as the National Security Council Act, 2011 and shall come into force upon publication in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Classified information” means information of such a sensitive nature and value that the unauthorized publication or disclosure thereof would lead to a security risk being posed to the State.

“Council” means the National Security Council established under Article 240(1) of the Constitution.

“Committee” means the County Security Committee established under section 8.

“Constitution” means the Constitution of Kenya, 2010.

“National Security” means the protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.

“National security organs” means the Kenya Defence Forces, the National Intelligence Service and the National Police Service.

“Public officer” means any person holding or acting in any public office.

“Republic” means the Republic of Kenya.

“Secretary” means the Secretary to the Council appointed under section 6.

“Secretariat” means the Joint Security Secretariat established under section 7.

“State officer” has the same meaning assigned to it by Article 260 of the Constitution.

PART II—COMPOSITION AND ADMINISTRATION

Composition of the
Council

3. Pursuant to Article 240(1) of the Constitution, the Council shall consist of—

- (a) the President;
- (b) the Deputy President;
- (c) the Cabinet Secretary responsible for defence;
- (d) the Cabinet Secretary responsible for foreign affairs;
- (e) the Cabinet Secretary responsible for internal security;
- (f) the Attorney General;
- (g) the Chief of Kenya Defence Forces;
- (h) the Director General of the National Intelligence Service; and
- (i) the Inspector General of the National Police Service.

4. (1) The Council—

- (a) shall exercise supervisory control over national security organs;
- (b) shall integrate domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate and function effectively;
- (c) shall assess and appraise the objectives, commitments and risks to the Republic in respect of actual and potential national security capabilities;
- (d) shall consider policies on matters of common interest to the State organs and agencies concerned with national security;
- (e) shall establish priorities among the programs, projects and activities that address the internal, foreign and defence interests of the Republic;
- (f) shall formulate domestic, foreign and defence policies relating to national security;
- (g) shall identify and develop strategies to enable the Republic respond to internal and external threats to its sovereignty and territorial integrity;
- (h) shall conduct an annual review of the internal, foreign and defence interests of the Republic;
- (i) may with the approval of Parliament—
 - (i) deploy national forces outside Kenya for regional or international peace support operations or other support operations;
 - (ii) approve the deployment of foreign forces in Kenya.

(j) may perform such other functions as may be conferred on it by this Act or any other written law.

(2) For the better carrying out of its functions under this Act, the Council may establish such functional committees of the Council and security forums as it may deem necessary.

(3) The Council may co-opt into the membership of the committees established under sub-section (2) any State or public officer whose presence and participation is in its opinion necessary for the proper performance of the functions of the Council.

Conduct of the
affairs of the
Council

5. The conduct and regulation of the business and affairs of the Council and any committees thereof shall be as provided in the First Schedule, but subject thereto, the Council may regulate its own procedure.

Secretary to the
Council

6. (1) There shall be a Secretary to the Council who shall be appointed by the Council.

(2) The Secretary shall be responsible to the Council for—

(a) day to day administration and co-ordination of the affairs of the Council;

(b) recording of the Council's proceedings;

(c) the custody of all records, minutes and documents of the Council;

(d) preparation and circulation of the agenda for Council meetings;

(e) preparation and management of the Council budget;

(f) follow-up on implementation of Council decisions;

(g) procurement and maintenance of facilities and services required for the discharge of the Council's

functions;

(h) performance of such other duties as may be assigned by the Council from time to time.

(3) The Secretary may with the authorization of the Council, dispose of procedural or administrative matters in accordance with this Act.

(4) The functions of the Secretary under this Act may in the Secretary's absence, be performed by any member of the Secretariat whom the Council may authorize for that purpose.

Joint Security
Secretariat

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

(2) The Secretariat shall be headed by the Secretary to the Council and shall comprise—

(a) such number of officers seconded from the national security organs as the Council may deem necessary; and

(b) such other public officers as may upon the request of the Council be seconded to Secretariat.

(3) A public officer seconded to the Secretariat under subsection (2), shall be deemed to be a staff of the Council and subject to its direction and control.

(4) Notwithstanding the provisions of subsection (3), a public officer seconded to the Secretariat under subsection (2) shall remain subject to the laws, regulations and orders applicable to the seconding organ or body.

County Security
Committee

8. (1) There is established in respect of every County, a committee to be known as the County Security Committee.

- (2) The Committee shall be an organ of the Council and shall consist of—
- (a) a chairperson appointed by the Council;
 - (b) the Head of the Kenya Police Service in the County;
 - (c) the Head of the Administration Police Service in the County;
 - (d) the Head of Criminal Investigations Department in the County;
 - (e) the Head of the National Intelligence Service in the County;
 - (f) a representative of the National Government
 - (g) where applicable, a representative of the Kenya Defence Forces;
 - (h) where applicable, a representative of the Department of Immigration Service in the County;
 - (i) such other persons as may be co-opted from time to time.
- (3) The Secretary to the Committee shall be a representative of the National Intelligence Service.
- (4) The Committee shall—
- (a) co-ordinate, review and manage matters involving national security in the County, including designing and developing contingency plans;
 - (b) collate and deliberate on operational reports from the national security organs for the purpose of advising and making recommendations to the Council;

- (c) monitor and co-ordinate security and disaster management matters in the County;
- (d) liaise with Government Departments and Agencies in the County on matters of national security;
- (e) deliberate on and initiate action on issues as directed by the Council;
- (f) perform such other functions as the Council may from time to time determine to be in the national interest.

(5) The Committee shall meet as often as necessary for the performance of its function but it shall meet at least once in every month.

(6) The Council shall in regulations, prescribe the manner of discharging the functions of the Committee under this section, including the procedure for meetings of the Committee.

PART III—MISCELLANEOUS PROVISIONS

Oath of Office

9. The Secretary and staff of the Council shall on, first appointment, make and subscribe to the oath or affirmation set out in the Second Schedule.

Confidentiality

10. (1) A Member or staff of the Council or Committee, shall not without the consent in writing given by, or on behalf of the Council, publish or disclose to any person otherwise than in the course of the person's duties the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall, on conviction, be liable to mandatory imprisonment for a term not

exceeding seven years.

Classification of Council documents, records of **11.** All documents and records of the Council shall bear appropriate classification as the Council may, in regulations prescribe.

Retention of classified information, record etc. **12.** (1) Classified information, records and minutes of the Council shall be retained for a period of thirty years after which the Council shall review their declassification.

(2) The Council shall in regulations, prescribe the procedures for the management and declassification of classified information and other records.

Limitation of the right of access to information. **13.** (1) Subject to Article 24 of the Constitution, the rights and fundamental freedoms of a person to whom this Act applies may be limited for the purposes, in the manner and to the extent set out in this Section.

(2) A limitation of right or fundamental freedom under subsection (1) shall be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and shall be limited only for purposes of ensuring—

- (a) the protection of classified information;
- (b) the maintenance and preservation of national security;
- (c) the security and safety of officers of the Council;
- (d) the independence and integrity of the Council; and
- (e) the enjoyment of the rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others.

(3) Limitation of the right to access to information under this Section shall be in respect of and to the extent of protecting the Council and its officers from—

- (a) demands to furnish persons with information held by the State; and
- (b) publishing and publicizing information affecting the

nation, where that information is likely to prejudice national security.

Reporting.

14. (1) The Council shall report annually to Parliament on the state of the Security of Kenya.

(2) For purposes of subsection (1), the report shall be made by the President, in an address to a sitting of Parliament or in any other manner as the Council may, in regulations prescribe.

(3) Notwithstanding the provisions of subsection (1) the Council may at any time submit to Parliament a report on a particular issue.

Offences

15. A person who—

(i) without justification or lawful excuse, obstruct or hinder, or assault or threaten a member or staff of the Council acting under this Act;

(ii) submit false or misleading information; or

(iii) misrepresents to or knowingly misleads a member or staff of the Council acting under this Act.

commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Regulations

16. (1) The Council may make regulations, not inconsistent with this Act, prescribing anything required by this Act to be prescribed or generally for the better carrying out of the provisions of this Act.

(2) The power to make regulations conferred to the Council under this Act shall be—

(a) for the purpose and objective of giving effect to the Constitution and this Act;

- (b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and
- (c) based on the general principles and standards contained in the Constitution and this Act.

FIRST SCHEDULE (S.5)

**CONDUCT OF THE BUSINESS AND AFFAIRS OF
THE COUNCIL**

Meetings

1. (1) The Council shall meet not less than 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:

Provided that the President may convene a special meeting of the Council where he deems it expedient for the transaction of the business of the Council.

President preside	to	2. The President shall preside over all meetings of the Council in which he is present and in the absence of the President, the Deputy President shall preside.
Venue of meetings		3. A meeting of the Council shall be held at any place within Kenya and on such date and at such time as the President shall decide.
Quorum		4. The quorum of the meeting of the Council is five members, including the President.
Vacancy		5. The proceedings of the Council shall not be invalidated by reason of a vacancy among the members.
Minutes		6. The Council shall cause minutes of all proceedings of its meetings to be recorded and kept.
Decisions		7. Decisions of the Council shall be by consensus.
Attendance		8. Attendance of meetings of the Council shall be in person.
Invitation of other persons		9. The Council may invite any person whose presence is in its opinion desirable, to attend any of its meetings and to participate in its deliberations.
Council regulate its procedure	may own	10. Subject to the provisions of the Act and this Schedule, the Council may regulate its own procedure.

SECOND SCHEDULE

(S.9)

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 under the National Security Council Act, 2011, do (swear/ solemnly affirm) that, except with the authority of the Council, I will not directly or indirectly reveal the nature or contents of any business, proceedings or documents of the Council committed to my secrecy, except as may be required for the due discharge of my duties as Secretary/member of staff and that I will faithfully, impartially and to the best of my knowledge and ability, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (IN THE CASE OF AN OATH— SO HELP ME GOD).

Sworn/Declared by the said

Before me this Day of

MEMORANDUM OF OBJECTS AND REASONS

The primary object of this Bill is to provide for the functions and administration of the National Security Council established under Article 240 of the Constitution. The Council is the grand strategic forum for formulation and integration of Kenya's domestic, foreign and military policies relating to national security.

Part I deals with preliminary matters. **Clause 1** provides for the short title of the Bill while **Clause 2** defines terms as used in the Bill.

Part II provides for the composition and administration of the Council. **Clause 3** restates the composition of the Council as provided for in the Constitution while **Clause 4** sets out the functions of the Council which include supervisory control over national security organs and deployment of national forces outside Kenya. **Clause 5** provides for the conduct and regulation of the business and affairs of the Council. **Clause 6** provides for the appointment and duties of the Secretary of the Council.

Clause 7 provides for the establishment of Joint Security Secretariat to be headed by the Secretary of the Council. The Secretariat shall comprise of public officers seconded from national security organs and government and shall assist the Council in the discharge of its functions. **Clauses 8** provides for the establishment, membership and functions of the County Security Committee. The Committee will be established in respect of every county and will primarily co-ordinate security matters in the County.

Part III deals with miscellaneous matters. **Clause 9** requires the Secretary and staff of the Council to make and subscribe to an oath before assuming the duties of their offices. **Clause 10** requires members, Secretary and staff of the Council to observe confidentiality in the handling of Council matters while **Clause 11** provides for classification of Council documents and records.

Clause 12 prescribes the period for retention of Council records and their declassification.

Clause 13 provides for instances when the right of access to information held by the Council may be limited. These include; protection of classified information, maintenance and preservation of national security, ensuring security and safety of officers of the Council, maintaining the integrity of the Council and for purposes of ensuring that enjoyment of rights and freedoms does not prejudice the rights and freedoms of others.

Clause 14 restates the constitutional obligation of the Council to report to Parliament. The report shall be made by the President in an address to a sitting of Parliament or in any other manner as the Council may prescribe.

Clause 15 provides for offences against obstruction, assault, false information or misrepresentation to a member or staff of the Council. Finally, **Clause 16** empowers the Commission to make regulations with regard to anything required by the Act to be prescribed.

The enactment of this Bill will occasion additional expenditure of public funds to be provided through the estimates.

Dated the.....

PROF. GEORGE SAITOTI
Minister Provincial Administration and Internal Security.