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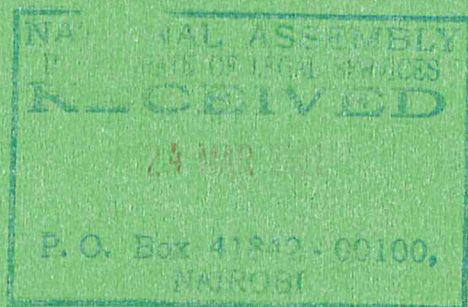
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THE FOREIGN SERVICE BILL, 2021**A Bill for**

AN ACT of Parliament to provide for the establishment management, administration, accountability and functioning of a professional foreign service of the Republic of Kenya and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Foreign Service Act, 2021. Short title.

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

“Academy” means the Foreign Service Academy established under section 31;

“attaché” means a public officer other than a mainstream foreign service officer deployed to a Kenya Mission abroad for specialized duties;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to foreign affairs;

“consular post” means any consulate-general, consulate, vice-consulate or consular agency;

“Council” means the Council of the Academy established under section 33;

“dependant child” means—

- (a) a biological offspring;
- (b) a legally adopted child under the age of twenty two years who is unmarried or school going child under the age of twenty four; or
- (c) a child with special needs,

who is wholly dependent on an Officer;

“diplomatic agent” means the Head of a Mission or a member of the diplomatic staff of the mission;

“Foreign Service” means the Foreign Service established by section 3.

“Government” means the Government of the Republic of Kenya;

“Head of Mission” means an Ambassador, High Commissioner, Permanent Representative, a Consul-General or an Officer acting in that capacity;

“International Organization” means an intergovernmental organization;

“Locally engaged staff” means staff employed on local terms in a Kenya Mission abroad or within the Republic”;

“Ministry” means the Ministry responsible for matters relating to foreign affairs as designated by the President;

“Mission” means a Mission of the Republic of Kenya abroad and shall also refer to an Embassy of the Republic of Kenya;

“Officer” means an officer employed in the Foreign Service or in a Kenyan Mission;

“Public Service Commission” means the Public Service Commission established under Article 233 of the Constitution;

“Republic of Kenya” or “the Republic” means any land territory within the territorial limits of the Republic of Kenya, and includes the internal waters and territorial sea of the Republic of Kenya;

“spouse” means wife or husband of an Officer as declared by the Officer

“tour of duty” means the period of time—

- (a) between when an Officer is assigned to a diplomatic or consular service outside Kenya; and
- (b) when the Officer is recalled to Ministry headquarters.

PART II—THE FOREIGN SERVICE

3. (1) There is hereby established a Foreign Service of the Republic of Kenya within the Ministry.

Establishment of
the Foreign
Service.

(2) The Foreign Service shall—

- (a) be headed by the Cabinet Secretary;

- (b) be a specialized professional service within the public service; and
- (c) consist of political and technical officials, attachés and other staff in the Ministry.

(3) In the performance of its functions, the Foreign Service shall be guided by the national values and principles of governance enshrined in the Constitution.

4. The Service shall comprise—

Composition of
the Foreign
Service.

- (a) High commissioners, ambassadors and diplomatic and consular representatives;
- (b) Honorary Consuls;
- (c) Special Envoys;
- (d) Officers;
- (e) Attachés; and
- (f) any officer as designated by the Cabinet Secretary.

5. In addition to any other responsibilities designated in writing by the President to the Ministry responsible for matters relating to foreign affairs, the Foreign Service shall be responsible for—

Functions of the
Foreign Service.

- (a) establishing, promoting and maintaining good relations between the Republic and other States and governments;
- (b) pursuing the foreign policy objectives of the Republic of Kenya;
- (c) developing, promoting and pursuing the economic, social and political interests of the Republic within the region and internationally;
- (d) actively seeking bilateral, multilateral and international assistance to support national developmental goals of the Republic;
- (e) providing consular services abroad;
- (f) providing representation for the Republic in regional and international organizations where it is a party;
- (g) the promotion of international trade and the export of Kenyan products abroad;

- (h) the promotion of Kenya as an international investment destination;
- (i) acting as a foreign service agent of ministries and other state organs;
- (j) facilitating the integration of Kenyans in the diaspora in the social, political and economic development of the country;
- (k) negotiating and concluding international treaties and agreements with a view to pursuing foreign policy objectives of the Republic and protecting its national interests;
- (l) acting as the national and political focal point of the Republic in all organizations, agreements and conventions in which the Republic is a party;
- (m) promotion of the Republic as a hub for multilateral diplomacy;
- (n) advancing the candidature of the Republic and its citizens in the international system;
- (o) negotiating and concluding agreements to host the headquarters or offices of intergovernmental organizations and agencies;
- (p) overseeing attachés;
- (q) managing Kenya's Missions and embassies abroad including acquisition of assets such as Chanceries residences;
- (r) liaising with foreign Missions in Kenya;
- (s) administering diplomatic privileges and immunities;
- (t) coordinating state and official visits;
 - (u) protocol matters;
- (v) managing joint commissions with other countries;
- (w) managing official communications on foreign affairs and global issues;
- (x) facilitating Kenya's migrant labour;
- (y) monitoring the progress made in fulfilling Kenya's international obligations pursuant to Article 132 of the Constitution; and

(z) the emergency evacuation of Kenyans in the diaspora.

6.(1) In addition to any powers or functions designated in writing by the President, the Cabinet Secretary shall be responsible for—

Powers and
functions of the
Cabinet Secretary.

(a) conducting the foreign affairs of the Republic, including—

- (i) consulting with and advising the Public Service Commission on appropriate officers to be appointed to the foreign service;
- (ii) ensuring the Ministry and its Missions pursue the foreign policy objectives of the Republic, in coordination with other Ministries and agencies in the Republic;
- (iii) advising the President on the establishment of Missions of the Republic abroad;
- (iv) providing policy advice to the President and Cabinet on matters to be included in the Republic's foreign policy objectives and on issues of national interest in respect of the Republic's foreign policy objectives;
- (v) conducting diplomatic and consular relations on behalf of the Republic;
- (vi) conducting and coordinating communications between the government of the Republic and governments of other countries and intergovernmental organizations and agencies;
- (vii) overseeing and implementing directives by the President relating to the appointment or recall of high commissioners, ambassadors and diplomatic and consular representatives;
- (viii) administering, managing and developing the capacity of the Foreign Service;
- (ix) approving the accreditation of a high commissioner, ambassador, diplomatic or consular representative to serve more than one country or jurisdiction; and

- (b) negotiating, concluding and signing international agreements on behalf of the Republic subject to ratification by the National Assembly.

7. The Principal Secretary in the Ministry responsible for matters relating to foreign affairs shall be responsible to the Cabinet Secretary and shall—

Functions of the
Principal
Secretary.

- (a) oversee the administration and management of the Ministry and its Missions including—
 - (i) recruitment, development and maintenance of effective foreign service staff;
 - (ii) ensuring that the Ministry responds to diplomatic and official correspondences received by the Ministry;
 - (iii) ensuring timely action or advice is received from appropriate Ministries, agencies and organizations within the Republic and conveyed to relevant international organizations as requested;
 - (iv) establishing performance output criteria and assessment guidelines for the promotion of officers;
 - (v) ensuring that Heads of Missions, Embassies and posts are adequately briefed prior to being posted abroad;
 - (vi) establishing and maintaining a list of current Missions and their jurisdictional areas of responsibility;
 - (vii) ensuring that in executing its functions, Heads of Missions and officers of the Ministry adhere to proper diplomatic protocol in accordance with the Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations and any applicable national legislation on diplomatic protocol;
 - (viii) acting as the point of contact for the Ministry; and
 - (ix) establishing and maintaining a list of honorary consuls of the Republic;

- (b) act as the principal policy adviser to the Cabinet Secretary in formulating recommendations for adoption and inclusion in the Republic's foreign policy objectives;
- (c) ensure that all officers of the Ministry and its Missions pursue the Republic's foreign policy objectives and are aware of the Republic's position on foreign policy issues;
- (d) recommend legislative and policy changes to the Cabinet Secretary as appropriate, for the attainment of an effective and efficient Ministry; and
- (e) perform any other functions as delegated by the Cabinet Secretary.

PART III—MINISTRY HEADQUARTERS AND MISSIONS

8. The Cabinet Secretary shall prescribe the organizational structure of the Ministry headquarters and its overseas Missions in regulations.

Organizational
Structure.

9. (1) For the effective administration of this Act, the Ministry headquarters shall establish offices for the core functions of—

Administrative
Divisions of the
Ministry
Headquarters

- (a) providing foreign policy advice and coordinating political diplomacy;
- (b) coordinating protocol matters for efficient diplomatic engagement;
- (c) advancing economic and commercial diplomacy; and
- (d) central planning and coordination of Ministry projects.

(2) The Ministry headquarters may establish any other offices necessary for the discharge of its functions under this Act.

10. (1) The national government may, on the recommendation of the Cabinet Secretary, establish a Mission in accordance with the provisions of the Vienna Convention on Diplomatic Relations, 1961, the Vienna Convention on Consular Relations, 1963, and the provisions

Establishment of
Missions of the
Republic.

of treaties and conventions establishing intergovernmental organizations and agencies.

(2) In recommending the establishment of a Mission and any office of the Foreign Service abroad, the Cabinet Secretary shall be guided by the strategic interests of the Republic, including—

- (a) the geopolitical and security interests of the Republic;
- (b) economic, trade and investment considerations; and
- (c) the presence of and numbers of Kenyan nationals in the host country.

(3) The Cabinet shall prescribe the territorial accreditation boundaries of a Mission.

(4) The national government may on the recommendation of the Cabinet Secretary, close or downgrade a Mission.

11. A Mission shall be responsible for—

Functions of a Mission.

- (a) establishing, promoting and maintaining good relations between the Republic and the host country and jurisdictional area of responsibility;
- (b) pursuing foreign policy objectives of the Republic in the host country and jurisdictional area of responsibility;
- (c) seeking bilateral, multilateral and international assistance to support national developmental goals of the Republic;
- (d) transmitting official communications between the Republic of Kenya and the governments of other countries and international organizations;
- (e) promoting and protecting the interests of Kenyan citizens residing in the host country and jurisdictional areas of responsibility;
- (f) providing consular services for citizens of the Republic abroad; and
- (g) any other functions as directed by the Cabinet Secretary.

PART IV—STAFFING AND CONDITIONS OF SERVICE

12. (1) The Cabinet Secretary shall establish a career structure within the Ministry for the development of the Foreign Service.

Establishment of a career foreign service.

(2) The Public Service Commission, shall, in consultation with the Cabinet Secretary, appoint suitably qualified officers to execute the functions of the Foreign Service.

(3) The officers appointed under subsection (2) shall, in addition to the Act and Regulations, be bound by regulations governing the public service.

13. (1) The Public Service Commission shall, in consultation with the Cabinet Secretary, prescribe the conditions of service for officers, high commissioners, ambassadors, diplomatic and consular representatives and other diplomatic personnel.

Conditions of service for officers.

(2) The Cabinet Secretary shall, on the advise of the Salaries and Remuneration Commission, prescribe the level of allowances and other entitlements applicable to—

(a) high commissioners, ambassadors and diplomatic and consular representatives; and

(b) staff members assigned, engaged or seconded to serve at a Mission of the Republic.

(3) Every three years, the Cabinet Secretary shall undertake a review of the level of allowances and other entitlements of its overseas staff and shall in consultation with the Salaries and Remuneration Commission vary them as appropriate.

14. The Principal Secretary may, with the concurrence of the Public Service Commission, second officers of the Ministry to any intergovernmental organization or agency.

Secondment of officers to International organizations.

15. (1) The Principal Secretary may, with notification to the Public Service Commission, assign any officer of the Ministry to any Mission.

Assignment of officers within the Ministry to serve at Missions.

(2) The Principal Secretary may extend or terminate any overseas assignment under subsection (1), and require an officer to return to headquarters.

(3) Any officer of the Ministry assigned to serve at a Mission shall be required to sign an employment contract with the Public Service Commission.

(4) The employment contract shall include the term of the assignment, duties and responsibilities, remuneration and applicable tax deductions, entitlements for service abroad, and any other terms agreed upon by the Ministry.

(5) Any officer of the Ministry assigned overseas shall, in addition to provisions under his or her employment contract, continue to be bound by the regulations governing the public service.

(6) The Principal Secretary may, in consultation with the Cabinet Secretary, recall an officer assigned to serve at a Mission prior to the end of his or her term as prescribed in regulations.

16. (1) The Principal Secretary shall ensure that all members of staff receive appropriate diplomatic and other training relevant to each officer's position.

Training.

(2) The Principal Secretary shall give priority consideration to—

- (a) specialized diplomatic training programs;
- (b) attachments or postings to selected regional organizations;
- (c) utilization of experienced returned senior diplomats, including retirees, to conduct on the job training and mentoring in Ministry headquarters; and
- (d) diplomatic or other training offered by bilateral sources.

17. (1) The Public Service Commission may, with the concurrence of the relevant Cabinet Secretary, second staff from any other Ministry to any Mission.

Secondment of officers from other Ministries.

(2) Where a person is attached to a Mission under subsection (1), the two Ministries shall agree on the employment and financial conditions that will apply for the duration of the attachment.

18. (1) The Head of a Mission—

Locally engaged staff.

(a) shall constitute a recruitment committee comprising senior administrative staff; and

(b) may, on the recommendation of the committee, employ suitably qualified persons at any Mission.

(2) The Head of the Mission shall conduct a background check, including obtaining criminal records and relevant qualifications and references from previous employers before employing a person under this section.

(3) A person employed under this section shall be required to sign an employment contract with the Ministry outlining—

(a) the term of employment,

(b) duties and responsibilities,

(c) remuneration,

(d) applicable entitlements; and

(e) any other terms agreed upon by the Ministry.

(4) a person employed under this section—

(a) is an independent contractor and not a member of the public service of the Republic; and

(b) shall not be bound by the regulations governing the public service.

(5) The Head of Mission may terminate the employment of a locally engaged staff.

19. An Officer or an accompanying spouse or dependent child shall not during the Officer's tour of duty be deprived of any of their privileges, immunities, allowances, benefits or any form of status expressly provided for in the relevant treaty or convention.

Privileges and immunities of Officers spouse and children.

20. An officer returning to Kenya on completion of a tour of duty or upon recall before completion of the tour—

Exemption from duties and tax

(a) shall be exempted from customs duty and all taxes relating to the repatriation of all household and personal effects and one motor vehicle for personal use; and

(b) may, where they do not repatriate a motor vehicle upon return from their tour, purchase one motor vehicle for personal use locally or from a third

country within ninety days of their return to Kenya free from duty.

21. (1) The Cabinet Secretary shall prescribe a code of conduct to bind all officers and independent contractors engaged by the Ministry. Code of conduct.

(2) The code may prescribe the responsibilities of officers and contractors in relation to—

- (a) professional conduct;
- (b) political neutrality;
- (c) conflict of interest;
- (d) conduct of private affairs;
- (e) dealings with foreigners;
- (f) submissions of declarations; and
- (g) management of the order of precedence.

22. (1) All officers, including independent contractors engaged by the Ministry shall keep all information and instructions received in the course of their employment confidential. Confidentiality.

(2) A person who discloses confidential information shall be liable to disciplinary action.

PART V—APPOINTMENT OF HIGH COMMISSIONERS, AMBASSADORS AND DIPLOMATIC AND CONSULAR REPRESENTATIVES

23. (1) Pursuant to Article 132 (2) (e) of the Constitution, the President shall nominate, and subject to the approval of the National Assembly, appoint high commissioners, ambassadors and diplomatic and consular representatives. Appointment.

(2) The President shall maintain a fair balance between career diplomats and other appointees in nominating persons for appointment as high commissioners, ambassadors and diplomatic and consular representatives.

(3) A person nominated for appointment under subsection (1) shall—

- (a) be a citizen of the Republic of Kenya and shall not, during the duration of their appointment, be a citizen of another country;
- (b) be of a reputable character and standing within the Republic;
- (c) in the case of a career diplomat, have served within the Ministry for at least ten years; and
- (d) where he or she is not a career diplomat, be suited by training or at least ten years' experience in public affairs.

(4) The Principal Secretary shall ensure that a high commissioner, ambassador, diplomatic or consular representative is, before assuming his or her post, inducted on—

- (a) the functions of the Mission;
- (b) the organizational structure of the Mission, proper line of authority and functions of its officers;
- (c) the foreign policy objectives of Republic as applicable to the host country or jurisdictional area of responsibility;
- (d) the national development objectives of the Republic;
- (e) the relevant history, culture and traditions of the host country;
- (f) the procedures relating to the presentation of credentials and other diplomatic protocol of the Ministry;
- (g) the Vienna Convention on Diplomatic Relations and Vienna Convention on Consular Relations; and
- (h) any other issues relevant to the diplomatic posting.

(5) The Head of a Mission shall—

- (a) actively pursue the foreign policy objectives of the Republic in the host country;
- (b) act as the official representative of the Republic at official functions in the host country;

(c) ensure that each Mission discharges its functions under this Act; and

(d) be accountable for any expenditure of the Mission and ensure that the budget of the Mission is administered in accordance with the Public Finance Management Act, 2012 and all other applicable laws and regulations.

(6) The President may where necessary appoint special envoys to perform functions specified in their instrument of appointment.

(7) The Cabinet Secretary shall prescribe regulations governing the terms and conditions applicable to a special envoy.

24. (1) Unless terminated earlier under section 25, a high commissioner, ambassador, diplomatic or consular representative shall serve for a term of four years.

Duration of
appointment.

(2) On the expiry of the term of a high commissioner, ambassador, diplomatic or consular representative the President may either—

(a) appoint a replacement, subject to the approval of the National Assembly; or

(b) re-appoint a high commissioner, ambassador, diplomatic or consular representative previously approved for appointment by the National Assembly in accordance with this Act.

(3) The re-appointment of a high commissioner, ambassador, diplomatic or consular representative under subsection (2)(b) shall not require the approval by the National Assembly.

(4) Where a person is not reappointed as a high commissioner, ambassador, diplomatic or consular representative—

(a) in the case of a career diplomat, he or she shall be recalled to Ministry headquarters and will continue to serve the Ministry as designated by the Principal Secretary; and

(b) in any other case, he or she shall be recalled but shall not continue to be employed by the Ministry.

25. (1) The President may terminate the appointment of a high commissioner, ambassador, diplomatic or consular representative before the end of his or her term.

Termination of
appointment.

(2) Where an appointment is terminated under subsection (1)—

- (a) in the case of a career diplomat, he or she shall be recalled to Ministry headquarters and will continue to serve the Ministry as designated by the Principal Secretary; and
- (b) in any other case, the high commissioner, ambassador, diplomatic or consular representative shall be recalled but shall not continue to be employed by the Ministry.

26. A Mission, and its respective Head of Mission, may be accredited to one or more states and international organisations.

Accreditation.

PART VI—HONORARY CONSULS

27. (1) The President may appoint suitable persons as Honorary Consuls for the Republic.

Appointment of
Honorary
Consuls.

(2) When recommending a person for appointment under subsection (1), the Cabinet Secretary shall provide evidence that the person—

- (a) is of independent means;
- (b) is of high standing in his or her country;
- (c) has relevant contacts within and beyond the government of the host country;
- (d) is committed and has the ability to promote, pursue and articulate the interests of the Republic in the host country, in accordance with the foreign policy objectives of the Republic.

(3) Each Honorary Consul shall report directly to the Head of Mission responsible for that country.

28. (1) The functions and responsibilities of an Honorary Consul shall be to—

Functions and
responsibilities of
Honorary
Consuls.

- (a) actively pursue the foreign policy objectives of the Republic in the host country;

- (b) act as an official representative of the Republic at official functions in the host country;
- (c) report to the Head of Mission on business, training, vocational and other opportunities available to nationals of the Republic in the host country; and
- (d) any other function or responsibility contained in his or her instrument of appointment.

(2) The President may, in writing, terminate the appointment of an honorary consul.

PART VII—FOREIGN POLICY OF THE REPUBLIC

29. The Cabinet shall formulate the foreign policy objectives of the Republic on the recommendation of the Cabinet Secretary.

Policy to be published.

(2) The Cabinet Secretary shall publish the Republic's foreign policy objectives in one or more of—

- (a) the *Gazette*;
- (b) a document available to the public at offices of the Ministry; or
- (c) an official government website.

(3) The Republic's foreign policy objectives shall include—

- (a) general or specific objectives of the national government relating to foreign policy;
- (b) priorities for national development and advancement;
- (c) articulation of the national government's position on relevant foreign policy issues;
- (d) external trade priorities in the Republic's bilateral, regional and multilateral relations;
- (e) directives to Missions, Embassies, posts and consular services of the Republic abroad;
- (f) determination of technical and financial assistance required for national development priorities in the Republic;

- (g) promotion of sub-regional and regional integration and co-operation;
- (h) enhancement of regional and global peace and security;
- (i) advancement of the economic prosperity of Kenya and her people;
- (j) projection of Kenya's image and prestige;
- (k) promotion of international cooperation and multilateralism;
- (l) promotion and protection of the interests of Kenyans abroad;
- (m) enhancement of partnership with the Kenyan Diaspora and descendants; and
- (n) any other matters relevant to the overall foreign objectives of the Republic.

30. (1) Unless otherwise directed by the Cabinet Secretary—

Diplomatic reporting, notifications and communications.

- (a) all diplomatic or official correspondences sent directly to the Republic's Missions shall be forwarded to or channeled through the Ministry headquarters;
- (b) all diplomatic or official correspondences originating from Embassies within the Republic to any Ministry or agency in the Republic shall be forwarded or channeled through the Ministry headquarters; and
- (c) all diplomatic or official correspondences originating from domestic Ministries, agencies, or Missions and international organizations that are channeled through Ministry headquarters shall, where appropriate, be forwarded to relevant Embassies for their information.

(2) The Head of a Mission or his or her designate shall be the first point of contact for a Mission of the Republic.

(3) The Principal Secretary shall be the first point of contact for the Ministry headquarters.

PART VIII—THE FOREIGN SERVICE ACADEMY

31. (1) There is established, under the Ministry, an Academy to be known as the Foreign Service Academy.

Establishment of the Academy.

(2) The Academy shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property in and out of Kenya;
- (c) borrowing or receiving grants; and
- (d) doing or causing to be done or performing all such other things or acts for the proper performance of its functions under this Act, as may be lawfully done or performed by a body corporate.

32. The Academy shall—

Functions of the Academy.

- (a) undertake training and other programmes aimed at enhancing skills, capacity and professionalism of officers in the foreign service;
- (b) undertake foreign policy research, analysis and dissemination of information on Kenya's foreign policy to stakeholders;
- (c) advise the national government on the Foreign Service and foreign policy;
- (d) facilitate the liaison, co-operation and coordinated working of all ministries, agencies and persons involved in the training of personnel in foreign affairs;
- (e) establish a databank and a system of all present and past Kenyan foreign service professionals;
- (f) establish and manage such training programmes as may be necessary for—
 - (i) training officers and persons provisionally selected for appointment as officers;
 - (ii) promoting a better understanding of the Foreign Service, diplomatic practice and etiquette; and

- (iii) continuing foreign service education and other relevant courses for serving officers;
- (g) conducting examinations for the grant of such academic awards as may be prescribed; and
- (h) propagating the country's policy and coordinating the dissemination of information by other ministries in establishing related programmes, projects and institutions.

33. (1) The Academy shall be administered by a Council comprising—

Composition of
the Council.

- (a) a chairperson appointed by the Cabinet Secretary from amongst the persons appointed under paragraph (d);
- (b) the principal secretary in the Ministry responsible for matters relating to foreign affairs or a representative designated in writing;
- (c) the principal secretary in the National Treasury or a representative designated in writing;
- (d) two persons appointed by the Cabinet Secretary;
- (e) one person who teaches diplomacy or international relations in a university, recognized in Kenya;
- (f) the Secretary of the Public Service Commission;
- (g) the Director-General of the Kenya school of Government; and
- (h) the Director-General, who shall be an ex-officio member and secretary to the Council.

(2) A person shall not be appointed to the Council under subsection (1)(d) unless such person—

- (a) meets the requirements of Chapter Six of the Constitution;
- (b) possesses a post graduate degree from a recognised university in—
 - (i) international relations;
 - (ii) international law;

- (iii) international diplomacy;
 - (iv) economics;
 - (v) social sciences; or
 - (vi) a relevant field; and
- (c) possesses experience, knowledge or expertise in matters relating to foreign and diplomatic service.

(3) The chairperson and members of the Council shall hold office for a term of three years from the date of appointment and shall be eligible for re-appointment for one further term.

34. (1) The Council shall have all powers necessary for the proper performance of the functions of the Academy under this Act.

Powers of the Council.

(2) Without prejudice to the generality of the foregoing, the Council shall have power to—

- (a) control, supervise and administer the assets of the Academy in such manner as best promotes the purposes for which the Academy is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Academy;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom with the approval of the Cabinet Secretary;
- (d) open such banking accounts for its funds as may be necessary with the approval of the Cabinet Secretary for the National Treasury;
- (e) invest any of its funds not immediately required for its purposes with the approval of the Cabinet Secretary and the Cabinet Secretary for the National Treasury;
- (f) undertake any activity necessary for the fulfilment of any of its functions under this Act; and
- (g) determine the content, scope and relevance of foreign service programmes.

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

Conduct of
business and
affairs of the
Council.

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

36. The Council shall pay its members such remuneration, fees or allowances as may be determined by the Salaries and Remuneration Commission.

Remuneration of
the Council.

37. (1) There shall be a Director-General of the Academy who shall be competitively recruited and appointed by the Cabinet Secretary, on recommendation by the Council.

Director-General.

(2) The Director-General shall serve for a five year term, renewable once on the basis of satisfactory performance.

(3) A person shall qualify for appointment as Director-General if the person—

(a) possesses a post graduate degree from a recognised university in—

- (i) international relations;
- (ii) international law;
- (iii) international diplomacy;
- (iv) economics;
- (v) social sciences; or
- (vi) a relevant field; and

(b) has at least ten years post graduate working experience; and

(c) meets the requirements of Chapter Six of the Constitution.

38. The Director-General shall—

Functions of
Director-General.

(a) be the secretary to the Council; and

(b) subject to the directions of the Council, be responsible for the day to day management of the affairs and staff of the Academy.

39. (1) The common seal of the Academy shall be kept in such custody as the Council may direct and shall not be used except on the order of the Council.

Common Seal.

(2) The affixing of the common seal of the Academy shall be authenticated by the signature of the Chairperson and the Director-General and any document not required by law to be made under seal and all decisions of the Council may be authenticated by the signatures of both the Chairperson and the Director-General.

(3) Notwithstanding the provisions of subsection (2) the Council shall, in the absence of either the Chairperson or the Director-General in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Director-General.

(4) The common seal of the Academy when affixed to a document and duly authenticated shall be judicially noticed and unless the contrary is proved, any necessary order or authorization by the Council under this section shall be presumed to have been duly given.

40. The Council may appoint such officers and other staff as may be necessary for the proper discharge of the functions of the Academy under this Act, upon such terms and conditions of service as it may determine upon the advice of the Salaries and Remuneration Commission.

Staff of the Academy.

41. The Council may, by resolution either generally or in any particular case, delegate to any committee or member of the Council or to any Officer, employee or agent of the Academy, the exercise of any of the powers or the performance of any of the functions or duties of the Academy under this Act or under any other written law.

Delegation by the Council.

42. (1) The Council or members of staff shall not be liable for loss or damage sustained by any person as a result of any action or omission done or made in good faith and without negligence in the performance of any duty or power conferred by this Act.

Protection from liability.

(2) Any expenses incurred by any person in any suit or prosecution brought against that person in any court in respect of any act which is done or purported to be done by that person under the direction of the Council shall, if the court holds that such act was done in good faith, be paid out of the general funds of the Council unless such expenses are recovered by him or her in such suit or prosecution

43. (1) The funds of the Academy shall comprise—

Funds of the Academy.

- (a) such moneys as may be appropriated by the National Assembly for purposes of the Academy;
- (b) such moneys, revenue or assets as may accrue to or vest in the Academy in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
- (c) funds accruing from investments made by the Academy;
- (d) such gifts, grants, loans or donations, made to the Academy;
- (e) money from any other source received by the Academy in the performance of its functions under this Act; and
- (f) monies from any other sources that the Council may approve.

44. The financial year of the Academy shall be the period of twelve months ending on the thirtieth of June each year.

Financial year.

45. (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Academy for that year.

Annual Estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Academy for the financial year and in particular, the estimates shall provide for –

- (a) the payment of the allowances and other charges in respect of members of the Council;
- (b) the payment of salaries, allowances, pensions, gratuities and other charges in respect of the staff of the Academy;
- (c) the proper maintenance of the buildings and grounds of the Academy;
- (d) the maintenance, repair and replacement of the equipment, machinery and other property of the Academy; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement

benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate.

(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Council shall not increase the annual estimates of the Academy without the consent of the Cabinet Secretary.

46. (1) The Council shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Academy.

Accounts and
audit.

(2) Within a period of four months from the end of each financial year, the Council shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Academy together with—

- (a) a statement of the income and expenditure of the Academy during that year; and
- (b) a balance sheet of the Academy on the last day of that year.

(3) The accounts of the Academy shall be audited and reported upon in accordance with the Public Audit Act, 2015.

No. 34 of 2015.

PART IX—MISCELLANEOUS

47. The Cabinet Secretary shall be responsible for the administration of this Act.

Administration of
Act.

(2) In administering this Act, the Cabinet Secretary shall, as far as it is applicable, execute its functions in a manner consistent with provisions of the—

- (a) Privileges and Immunities Act; Cap. 179
- (b) Income Tax Act; Cap. 470
- (c) Public Finance Management Act, 2012; No. 18 of 2012
- (d) Treaty Making and Ratification Act, 2012; No. 45 of 2012
- (e) Public Procurement and Asset Disposal Act, 2015; No. 33 of 2015

(f) Vienna Convention on Diplomatic Relations; and

(g) Vienna Convention on Consular Relations.

48. The National Treasury shall, subject to the approval of the National Assembly, allocate funds from the Consolidated Fund or reimburse the Ministry for any expenses incurred in conducting the emergency evacuation of Kenyans abroad where the evacuation has been approved by the Cabinet.

Costs of
emergency
evacuation.

49. The National Treasury shall compensate the Ministry for any loss incurred resulting from foreign exchange adjustment, from monies sent to its Missions abroad.

Foreign exchange
fluctuations.

PART X—PROVISIONS ON DELEGATED POWERS

50. (1) The Cabinet Secretary may make regulations prescribing—

Regulations.

- (a) matters of procedure in relation to any application under this Act;
- (b) conditions of employment, allowances and entitlements for overseas staff;
- (c) the nature, conditions and term of deployment of Officers to serve in Kenya Missions; and
- (d) any other matter which is necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

(2) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;
- (c) the principles and standards applicable to the regulations made under this section are those set out

in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

PART XI—TRANSITION

51. (1) A high commissioner, ambassador and diplomatic or consular representative appointed prior to the commencement of this Act shall serve the remainder of their unexpired term of office unless otherwise recalled or removed from office in accordance with the Constitution, written law or contract of service.

Transition.

(2) The staff of the Ministry prior to the commencement of this Act shall be the staff of the Foreign Service.

SCHEDULE [s. 35(1)]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

1. The office of a member of the Council shall become vacant if the member—

Vacation of office.

- (a) dies;
- (b) resigns in writing to the Chairperson or the Cabinet Secretary;
- (c) is absent without the permission of the chairperson from three or more consecutive meetings of the Council;
- (d) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (e) is convicted of an offence which in the opinion of the Council renders him unsuitable to continue to hold office;
- (f) becomes for any reason including infirmity of body or mind, incompetent or incapable of performing the functions of the office; or
- (g) is otherwise unable to discharge his functions.

2. The Council shall, at its first meeting, elect a Vice Chairperson from amongst the persons appointed under section 33(1)(d) and (e) of the Act.

Vice chairperson.

3. (1) The Council shall meet at least four times in each year. Meetings.

(2) The Chairperson may at any time convene a special meeting of the Council and shall do so within fifteen days of a written requisition for the meeting signed by at least three members.

(3) The Chairperson shall preside at all meetings of the Council, which he or she is present and in the case of his or her absence, the Vice Chairperson shall preside.

(4) At a meeting of the Council at which neither the Chairperson or Vice chairperson is present, the members of the Council present shall elect one of their number to preside, and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted.

4. The quorum for the conduct of the business of the Council shall be four members. Quorum.

5. The decisions of the Council shall be by a majority of votes, and the Chairperson of the meeting shall have an original and a casting vote. Voting procedure.

6. The validity of any proceedings of the Council shall not be affected by any vacancy among the membership thereof, or by any defect in the appointment of a member thereof. Validity of proceedings.

7. Minutes of the proceedings at meetings of the Council shall be kept in such a manner as the Council directs. Minutes.

8. The Council may establish such committees as may be necessary for the performance of the functions of the Council and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee. Committees of the Council.

9. Subject to the provisions of this Schedule, the Council shall regulate its own procedure. Power of the Council to regulate own procedure.

10. (1) If a member of the Council is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the Disclosure of interest.

commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) A member who does not disclose his or her interest in a contract or other matter or who benefits from non-disclosure under sub-paragraph (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year or both.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to provide for the establishment, management, administration, accountability and functioning of a professional foreign service of the Republic of Kenya and for connected purposes.

PART II (Clause 3-7) of the Bill contains provisions on the establishment and composition on the Foreign Service and the key functions of the Cabinet Secretary and the Principal Secretary in relation to the Service and Kenya's foreign relations.

PART III (Clause 8-11) of the Bill outlines the relationship between the Ministry responsible for foreign affairs and overseas Missions.

PART IV (Clause 12-22) of the Bill contains provisions on the staffing conditions of the personnel of the Foreign Service.

PART V (Clause 23-26) of the Bill contains provisions relating to the appointment and termination of high commissioners, ambassadors and other diplomatic and consular representatives by the President. The part additionally provides for matters relating to the accreditation of appointed diplomats.

PART VI (Clause 27-28) of the Bill contains provisions on the appointment and functions of honorary consuls.

PART VII (Clause 29-30) of the Bill contains provisions underpinning the formulation, publication and dissemination of the foreign policy objectives of the Republic.

PART VIII (Clause 31-46) of the Bill contains provisions on the establishment, functions and administration of the Foreign Service Academy. The Academy is to be administered by a Council and its day-to-day affairs run by a Director-General.

PART IX (Clause 47-49) of the Bill contains miscellaneous provisions.

PART X (Clause 50) of the Bill contains provisions on the powers delegated to the Cabinet Secretary responsible for foreign affairs.

PART XI (Clause 51) of the Bill contains transitional provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative power to the Cabinet Secretary responsible for foreign affairs to make regulations for the carrying into effect of its provisions. The Bill does not limit any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 16th February, 2021.

KATOO OLE METITO,
Chairperson,
Defence and Foreign Relations Committee.

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