



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE OFFICIAL SECRETS ACT

CHAPTER 187

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CHAPTER 187

OFFICIAL SECRETS ACT

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CHAPTER 187

OFFICIAL SECRETS ACT

[Date of assent: 6th February, 1968.]

[Date of commencement: 16th February, 1968.]

An Act of Parliament to provide for the preservation of State secrets and State security

[Act No. 11 of 1968, Act No. 7 of 1987, Act No. 31 of 2016, Act No. 20 of 2020.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Official Secrets Act.

2. Interpretation

(1) In this Act, except where the context otherwise requires—

"agent of a foreign power" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act whether within or outside Kenya prejudicial to the safety or interests of the Republic of Kenya, or who has or is reasonably suspected of having within or outside Kenya committed or attempted to commit such an act in the interests of a foreign power;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to internal security;

"code word" means an official secret or classified code, code word, password or cipher, including any group of letters or figures or both constituting part of a code;

"court" means a subordinate court;

"data" means information recorded in a format in which it can be processed by equipment operating automatically in response to instructions given for that purpose, and includes representations of facts, information and concepts held in any removable storage medium;

"munitions of war" means arms, ammunition, implements or munitions of war, or stores of the armed forces or the police, or any articles deemed capable of being converted into any of those things or made useful in the production thereof;

"office under the Government" means any office or employment in or under the Government or in or under any Ministry, department or branch of the Government, and any office or employment in, on or under any board, commission, corporation or other body that is an agent, or emanation of the Government, whether the office or employment is within or outside Kenya;

"official document" includes a passport, naval, army, air force, police or official pass, permit, certificate or licence, or other document of a similar character;

"plan" includes sketch, model, design, pattern and specimen;

"prohibited place" means—

- (a) any place belonging to or occupied or used by or on behalf of the Government which is used for or in connexion with the maintenance of public security, including arsenals, establishments or stations of the armed forces or the police, factories, dockyards, mines,

minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations or offices, and places used for the purpose of building, repairing, making or storing any munitions of war or any plans or documents relating thereto, or for the purposes of getting any metals, oil or minerals for use in time of war or emergency; or

- (b) any place not belonging to the Government where any munitions of war or any plans or documents relating thereto are being made, repaired, received or stored under contract with, or with any person acting on behalf of, the Government; or
- (c) any place that is for the time being declared by the Cabinet Secretary, by order, to be a prohibited place on the ground that information with respect thereto or damage thereto would be prejudicial to the safety and interests of the Republic;

"sketch" includes photograph and any other mode of representing any place or thing;

"subversive" has the same meaning as in section 77(3) of the Penal Code (Cap. 63);

"telecommunication apparatus" means apparatus constructed or adapted for use in transmitting anything which is transmissible by a telecommunication system or in conveying anything which is transmitted through such a system;

"telegraph apparatus" *deleted by Act No. 20 of 2020, Sch.*

(2) In this Act—

- (a) expressions referring to communicating or receiving include any communicating or receiving whether in whole or in part and whether the plan, article, document or information itself or only the substance, effect or description thereof is communicated or received;
- (b) expressions referring to obtaining or retaining any plan, article or document include copying or causing to be copied the whole or any part of any plan, article or document; and
- (c) expressions referring to the communication of any plan, article or document include the transfer or transmission of the plan, article or document.

[Act No. 7 of 1987, Sch, Act No. 20 of 2020, Sch.]

PART II – PROTECTION OF THE SAFETY AND INTERESTS OF THE REPUBLIC

3. Acts prejudicial to Republic

(1) Any person who, for any purpose prejudicial to the safety or interests of the Republic—

- (a) approaches, inspects, passes over, is in the neighbourhood of or enters a prohibited place; or
- (b) makes any plan that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person; or
- (c) obtains, collects, records, publishes or communicates in whatever manner to any other person any code word, plan, article, document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person, shall be guilty of an offence.

(2) Any person who takes a photograph of a prohibited place or who takes a photograph in a prohibited place, without having first obtained the authority of the officer in charge of the prohibited place, shall be guilty of an offence.

(3) Any person who has in his possession or under his control any code word, plan, article, document or information which—

- (a) relates to or is used in a prohibited place or anything in a prohibited place; or
- (b) has been made or obtained in contravention of this Act; or
- (c) has been entrusted in confidence to him by any person holding office under the Government; or
- (d) has been entrusted in confidence to him owing to his position as a person who holds or has held a contract made on behalf of the Government or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such an office or contract, and who for any purpose or in any manner prejudicial to the safety or interests of the Republic—
 - (i) uses the code word, plan, article, document or information; or
 - (ii) retains the plan, article or document in his possession or under his control when he has no right so to retain it or when it is contrary to his duty so to retain it, or fails to comply with all directions issued by lawful authority with regard to its return or disposal,

shall be guilty of an offence.

(4) Any person who, having in his possession or under his control any plan, article, document or information that relates to munitions of war, communicates it directly or indirectly to any foreign power, or to any other person for any purpose or in any manner prejudicial to the safety or interests of the Republic, shall be guilty of an offence.

(5) Any person who receives any code word, plan, article, document or information, knowing or having reasonable grounds for believing at the time when he receives it, that the code word, plan, article, document or information is communicated to him in contravention of this Act, shall be guilty of an offence, unless he proves that the communication to him of the code word, plan, article, document or information was contrary to his wishes.

(6) Any person who has in his possession or under his control any code word, plan, article, document or information of a kind or in the circumstances mentioned in paragraphs (a) to (d) inclusive of subsection (3) of this section, and who—

- (a) communicates the code word, plan, article, document or information to any person, other than a person to whom he is authorized to communicate it or to whom it is his duty to communicate it; or
- (b) retains the plan, article or document in his possession or under his control when he has no right so to retain it or when it is contrary to his duty so to retain it, or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or
- (c) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the code word, plan, article, document or information,

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

(7) Any person who—

- (a) allows any other person to have possession of any official document issued for his use alone, or communicates to any other person any code word so issued; or
- (b) without lawful authority or excuse, has in his possession any official document or code word issued for the use alone of some person other than himself; or
- (c) on obtaining possession of any official document by finding or otherwise neglects or fails to restore it to the person or authority by whom or for whose use it was issued or to a police officer, shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

(8) The provisions of this section shall apply subject to Article 35 of the Constitution and the law relating to access to information.

[Act No. 31 of 2016, Sch.]

4. Unauthorized use of uniforms, passes, etc.

Any person who, for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, or for any other purpose or in any manner prejudicial to the safety or interests of the Republic—

- (a) uses or wears, without lawful authority, any uniform of the armed forces, any police uniform or any other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or
- (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or
- (c) forges, alters or tampers with any passport or any naval, army, air force, police or official pass, permit, certificate, licence or other document of a similar character, or uses or has in his possession any such forged, altered or irregular official document; or
- (d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding office under the Government, or to be or not to be a person to whom an official document or code word has been duly issued or communicated, or with intent to obtain an official document or code word, whether for himself or any other person, knowingly makes any false statement; or
- (e) uses, or has in his possession or under his control, without the authority of the Government department or authority concerned, any die, seal or stamp of or belonging to or used, made or provided by any Government department, or by any diplomatic, military, air force or naval authority appointed by or acting under the authority of the Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp, or uses, or has in his possession or under his control, any such counterfeited die, seal or stamp, shall be guilty of an offence.

5. Interference with police officers or armed forces

Any person who in the vicinity of any prohibited place obstructs, knowingly misleads or otherwise interferes with or impedes any police officer, or any member of the armed forces who is engaged on guard, sentry patrol or other similar duty in relation to the prohibited place, shall be guilty of an offence.

6. Production of data

(1) Where it appears to the Cabinet Secretary that it is in national interest to do so, the Cabinet Secretary may apply to the High Court for an order requiring any person who owns or controls any telecommunications apparatus used for the sending or receipt of any data to or from any place outside Kenya, to produce to the Cabinet Secretary or any person named in the order, the original or transcripts of all such data and all other documents relating to such data.

(2) Any person who fails to comply with a request made under subsection (1) shall be guilty of an offence and liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both.

[Act No. 20 of 2020, Sch.]

7. Harboursing

Any person who—

- (a) knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act; or
- (b) knowingly permits to meet or assemble in any premises in his occupation or under his control any persons whom he knows, or has reasonable grounds for supposing, to be persons who are about to commit or who have committed an offence under this Act; or
- (c) having harboured any person as aforesaid or permitted any persons to meet or assemble as aforesaid, wilfully omits or refuses to disclose to a police officer of or above the rank of Inspector any information that it is in his power to give in relation to any such person, shall be guilty of an offence.

8. Attempts, incitements, etc.

Any person who attempts to commit an offence under this Act, or solicits or incites or endeavours to persuade another person to commit any such offence, or aids or abets or does any act preparatory to the commission of such an offence under this Act, shall be guilty of an offence, whether or not the solicitation, incitement or endeavour succeeds in its purpose, and is liable to the same punishment as if he had committed that offence.

9. Acts committed outside Kenya

An act, omission or thing that would, by reason of this Act, be punishable as an offence if committed in Kenya shall, if committed outside Kenya, be an offence under this Act, triable and punishable in Kenya, in the following cases, namely—

- (a) where the offender at the time of the commission was a citizen of Kenya;
- (b) where any code word, plan, article, document, information or other thing whatsoever in respect of which an offender is charged was

obtained by him, or depends upon information obtained by him, while owing allegiance to the Republic.

PART III – PROCEEDINGS FOR OFFENCES

10. Consent to prosecution

(1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(2) A person charged with an offence under this Act may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

[Act No. 20 of 2020, Sch.]

11. Place of offence

For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed either at the place in which it was actually committed or at any place in Kenya in which the offender may be found.

12. Exclusion of public from trial

In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from any proceedings, if in the course of proceedings before the court against any person for an offence under this Act or of the proceedings on appeal, application is made by the prosecution, on the grounds that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the interests of the Republic, that all or any portion of the public shall be excluded during the whole or any part of the hearing, the court may make an order to that effect, but the passing sentence shall in any case take place in public.

13. Presumption concerning communication with agent of foreign power

(1) On a prosecution for an offence under section 3 of this Act, the fact that the accused person has been in communication with, or has attempted to communicate with, an agent of a foreign power, whether within or outside Kenya, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the Republic, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power.

(2) For the purposes of subsection (1) of this section, but without prejudice to the generality of that subsection, a person shall, unless he proves the contrary, be deemed to have been in communication with an agent of a foreign power if—

- (a) he has, either within or outside Kenya, visited the address of an agent of a foreign power or consorted or associated with such an agent; or
- (b) either within or outside Kenya, the name or address of, or any other information regarding, such an agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person.

(3) Any address, whether within or outside Kenya, reasonably suspected of being an address used for the receipt of communications intended for an agent of a foreign power, or any address at which such an agent resides, or to which

he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of an agent of a foreign power, and communications addressed to that address to be communications with the agent.

14. Presumption as to purpose prejudicial to safety of Republic

Where, on a prosecution of a person for an offence under this Act, it is alleged that he did some act for a purpose prejudicial to the safety or interests of the Republic, it shall not be necessary to show that he committed the act for that purpose if, from the circumstances of the case, or from his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the Republic.

15. Presumption as to communication of information concerning prohibited place

Where any code word, plan, article, document or information relating to or used in any prohibited place, or anything in such a place, is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the Republic, unless the contrary is proved.

16. Proof of lawful authority or excuse

For the avoidance of doubt, it is hereby declared that the burden of proving lawful authority or excuse shall be upon the person alleging it, and accordingly in any proceedings for prosecution for an offence under this Act it shall not be incumbent on the prosecution to prove the lack of any such authority or excuse.

PART IV – SUPPLEMENTAL

17. Arrest without warrant

(1) Any person who is found committing an offence under this Act, or who is reasonably suspected of having committed, or of having attempted to commit, or of being about to commit, an offence under this Act, may be arrested by a police officer without a warrant.

(2) Any person arrested under subsection (1) of this section shall be brought before a court within twenty-four hours whether or not the police inquiries are completed.

18. Search warrant

(1) If a court is satisfied by information on oath that there is reasonable grounds for suspecting that an offence under this Act has been or is about to be committed, it may issue a search warrant authorizing any police officer named therein to enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize any plan, article, or document, or anything that is evidence of an offence under this Act having been or being about to be committed, that he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable grounds for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police officer of or above the rank of Assistant Superintendent that the case is one of great urgency and that in the interests of

the Republic immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by a warrant of a court under this section.

19. Duty to give information as to commission of certain offences

(1) Where the Director of Public Prosecutions is satisfied that there is reasonable ground for suspecting that an offence under this Act has been, or is about to be, committed and for believing that some person is able to furnish information with regard thereto, he may authorize a gazetted police officer to require that person to give any information in his power relating to the offence or suspected offence and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the gazetted police officer.

(2) Any person who, having been required in pursuance of an authorization given under subsection (1) of this section to give information or to attend at a specified time and place, fails to comply with the requirement, or knowingly gives false information, shall be guilty of an offence and be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings, or to both such imprisonment and such fine.

[Act No. 20 of 2020, Sch.]

20. General penalty

Any person who is guilty of an offence under this Act for which no penalty is specifically provided shall be liable to imprisonment for a term not exceeding fourteen years.

21.

[Spent]

