

44

DRAFT

SOCIAL PROTECTION COUNCIL BILL, 2014

PART I—PRELIMINARY

1—Short title.

2—Interpretation.

PART II—DEFINITION AND OBJECTIVES OF SOCIAL PROTECTION

3—Meaning of social protection.

4—Principles of social protection.

5—Objectives of this Act.

PART III— THE NATIONAL SOCIAL PROTECTION COUNCIL

6—Establishment of the Council.

7—Functions of the Council.

8—Power of the Council to co-opt.

9—Meetings and procedure of the Council.

10— Secretariat of the Council.

11—The Chief Executive Officer.

12—Responsibilities of the Chief Executive

13—Headquarters of the Council

PART IV —FINANCIAL PROVISIONS

14—Financial year of the Council.

15—Funds of the Council.

The National Social Protection Council Bill, 2014

16— Annual estimates.

17— Audit.

18—Council to keep records, etc.

PART IV—MISCELLANEOUS

19—The common seal

20—Council to submit report, etc.

21—Protection from liability.

22—Signification of documents.

23—Regulations

24—Public institutions to assist Council.

PART V—TRANSITIONAL PROVISIONS

25—Interim Social Protection Secretariat to act as Secretariat

26.—Staff of interim Social Protection Secretariat

THE NATIONAL SOCIAL PROTECTION COUNCIL BILL, 2014

A Bill for

An Act of Parliament to provide for the establishment of the National Social Protection Council; for a comprehensive framework of national social protection programmes; and for connected purposes.

ENACTED by the Parliament of Kenya as follows —

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the National Social Protection Council Act, 2014.

Interpretation.

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

“Council ” means the National Social Protection Council established by section 6;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to social protection.

PART II—MEANING AND OBJECTIVES OF SOCIAL PROTECTION

Meaning of social protection.

3. Social protection means policies and actions, including legislative measures—

(a) that enhance the capacities of and opportunities for the poor and vulnerable to improve and sustain their lives, livelihoods and

The National Social Protection Council Bill, 2014

welfare;

- (b) that enable income earners and their dependents to maintain a reasonable level of income through decent work; and
- (c) that ensure access to affordable healthcare, social security and social assistance.

Principles of
social protection

4. The principles of social protection are—

- (a) integrity;
- (b) good governance;
- (c) evidence-based programming;
- (d) protection of human rights;
- (e) gender mainstreaming;
- (f) equity and social justice;
- (g) standardisation of activities and programmes;
- (h) public participation;
- (i) sustainability; and
- (j) flexibility.

Objectives of this
Act.

5. The objectives of this Act are—

- (a) The establishment of the National Social Protection Council;

- (b) The establishment of a comprehensive framework for implementation of social protection programmes;
- (c) The effective co-ordination and implementation of social protection programmes and activities;
- (d) the assistance of individuals and households living in poverty;
- (e) support for individuals and households that have been socially excluded and strengthening their capacity for self-sufficiency and independence;
- (f) the cushioning of income-earners and their dependents against the impacts of income-threatening risks including poor health and workplace injuries; and
- (g) the promotion of co-operation among public social protection departments, agencies and institutions and other stakeholders in social protection activities and programmes.

PART III—THE NATIONAL SOCIAL PROTECTION COUNCIL

Establishment of the Council.

6. (1) There is established a council known as the National Social Protection Council.

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

- (a) suing and being sued; and
- (b) taking, purchasing or otherwise acquiring,

The National Social Protection Council Bill, 2014

holding, charging or disposing of movable and immovable property.

(3) The Council consists of—

- (a) a Chairperson appointed by the President;
- (b) the Principal Secretary in the State department responsible for social protection or the Principal Secretary's representative;
- (c) the Principal Secretary in the State department responsible for finance or the Principal Secretary's representative appointed on account of expertise in finance;
- (d) the Principal Secretary in the State department responsible for health or the Principal Secretary's representative;
- (e) the Principal Secretary in the State department responsible for Agriculture or the Principal Secretary's representative;
- (f) one person nominated by the law society of Kenya and appointed by the Cabinet Secretary on account of expertise in human rights;
- (g) a representative of a recognized private sector forum nominated by members of the forum and appointed by the Cabinet Secretary on account of expertise in management and resource mobilization;
- (h) a representative of a social protection civil society organizations' forum nominated by members of the forum and appointed by

the Cabinet secretary;

- (i) a representative nominated by an organisation most representative of Kenyan employers and appointed by the Cabinet Secretary;
- (j) a representative nominated by an organisation most representative of Kenyan workers and appointed by the Cabinet Secretary;
- (k) the Chief Executive Officer who is the secretary to the Council and has no right to vote.

(4) A person does not qualify for appointment as the Chairperson or a member of the Council unless that person —

- (a) possesses a degree from a recognised university or some similar qualification;
- (b) has knowledge of and experience in social assistance, social security or health insurance; or
- (c) is not serving in the public service.

Functions of the Council.

7. The Council shall—

- (a) develop and review the national strategy for co-ordinating social protection programmes;
- (b) develop and harmonise integrated social protection programmes and activities and the guidelines for the

The National Social Protection Council Bill, 2014

- implementation of those programmes and activities;
- (c) review the status and progress of social protection programmes and activities and make recommendations to the Cabinet Secretary on areas of priority;
 - (d) advise the Cabinet Secretary on social protection policies, programmes and activities;
 - (e) co-ordinate the social protection programmes activities of government departments, agencies and other persons or institutions at national and county level;
 - (f) develop and maintain an accessible knowledge, information and communications system and database on social protection policies, programmes and activities;
 - (g) undertake, facilitate and co-ordinate research in social protection;
 - (h) promote public-private partnerships for social protection;
 - (i) establish and maintain registers of social protection programmes and activities; and
 - (j) perform any other functions as the

Cabinet Secretary may assign.

Council may co-opt.

8. (1) The Council may co-opt any person it requires for the effective discharge of its functions.

(2) A person co-opted by the Council may not vote at any meeting of the Council.

Meetings and procedure of the Council.

9. (1) The Chairperson shall preside at every meeting of the Council but in his absence the Council may choose one of the members present to act as the Chairperson.

(2) The quorum for meetings of the Council is six.

(3) The decisions of the Council are by a simple majority of the members present and voting but if there is a tied vote, the Chairperson or the acting Chairperson shall cast the deciding vote.

(4) Subject to this Act, the Council shall regulate its own procedure.

Secretariat of the Council.

10. There shall be a secretariat of the Council, headed by a Chief Executive Officer and comprising such other officers and staff as may be determined by the Council.

The Chief Executive Officer.

11. (1) The Council shall recruit and appoint the Chief Executive Officer through a competitive process.

(2) The Chief Executive Officer shall be appointed on such terms and conditions as may be determined by the Council.

Responsibilities of the Chief

12. (1) The Chief Executive Officer shall perform his responsibilities in consultation with the Council.

The National Social Protection Council Bill, 2014

Executive
Officer.

(2) The Chief Executive Officer is responsible for—

- (a) the day to day functions of the Council;
- (b) managing the budget and accounting for the funds of the Council;
- (c) maintaining the effectiveness and discipline of the staff of the Council; and
- (d) performing such other duties as the Council assign.

Headquarters of
the Council.

13. (1) The headquarters of the Council is in Nairobi.

(2) The Council shall extend its services countrywide and may establish offices at the county level for that purpose.

PART IV — FINANCIAL PROVISIONS

Financial year of
the Council.

14. The financial year of the Council is the period of twelve months ending on the thirtieth June in each year.

Funds of the
Council.

15. The sources of the funds of the Council are —

- (a) moneys provided by Parliament;
- (b) gifts, grants, donations or endowments as may be given to the Council;
- (c) monies that may accrue to or vest ~~in the Council in the course of the~~ exercise of its functions under this

Act; and

- (d) monies from any other source provided for the Council as the Cabinet Secretary may approve.

Annual estimates.

16. (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 for that year.

(2) The annual estimates shall provide for the proposed expenditure of the Council in the financial year concerned, and particularly for—

- (a) the recurrent expenditure of the Council;
- (b) the payment of pensions, gratuities and other retirement benefits charges of the staff of the Council;
- (c) the maintenance of the buildings and grounds of the Council;
- (d) the maintenance, repair and replacement of the equipment and other movable property of the Council; and
- (e) the creation of such funds as may be required to meet the future or contingent liabilities of the Council.

(3) The annual estimates shall be submitted to the Council for approval before the commencement of the financial year to which they relate.

(4) Expenditure shall be incurred for the purposes of the Council only and in accordance with the annual estimates approved under sub-section (3).

The National Social Protection Council Bill, 2014

(5) Despite subsection (4), the Council may approve expenditure that is not in accordance with the approved annual estimates only in extraordinary circumstances.

Audit.

17. The accounts of the Council shall be audited by the Auditor-General.

Council to keep records, etc.

18. (1) The Council shall cause to be kept the books and records of accounts of the income, expenditure, assets and liabilities of the Council.

(2) Within a period of three months after the end of each financial year, the Council shall submit to the Auditor-General the accounts of the Council together with—

(a) a statement of income and expenditure during that year; and

(b) a statement of the assets and liabilities of the Council on the last day of the financial year.

(3) Nothing in this Act shall be construed to prohibit the Auditor-General from inspecting the Council's accounts or records whenever it is necessary to do so.

PART V—MISCELLANEOUS PROVISIONS

The seal

Common

19. (1) The common seal of the Council shall be kept in the custody of the Chief Executive Officer or of such other person as the Council may direct, and shall not be used except upon the order of the Council.

(2) The common seal of the Authority shall be authenticated by the signature of the chairperson and the Chief Executive Officer.

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

Significance of documents

20. All documents except those required to be under seal made on behalf of the Council shall be signified by the hand of the chairperson of the Council, the Chief Executive Officer, or any other member of the Council specifically authorized by the Council in that behalf.

Council to submit report, etc.

21. (1) The Council shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Council for the immediate preceding year.

(2) The Cabinet Secretary shall submit to Parliament the annual report as soon as reasonably practicable after receiving the report submitted under subsection (1).

Protection from liability

22. (1) A member of the Council or any officer, employee or agent of the Council shall not be held liable to any action, claim or demand for doing any matter or thing if the matter or thing is done without malice for executing the functions, powers or duties of the Council under this Act, render the officer, employee or agent or any person acting under their direction liable.

(2) Despite subsection (1), the Council is liable to pay compensation or damages to any person for any injury to that person, or that person's property

The National Social Protection Council Bill, 2014

or interests caused by the exercise of the powers conferred on the Council by this Act or by any written law or by the failure, whether wholly or partially, of any works of the Council.

Regulations

23. The Cabinet Secretary may in consultation with the Council, make regulations generally for the better carrying out of the objectives of this Act.

Public institutions to assist the Council.

24. The Council may require that a public entity concerned with any aspect of social protection, or with any matter that relates to any function of the Council, shall cooperate with the Council and shall, when the Council so requires, submit such reports and such other information for the effective discharge of the Council's functions.

PART VI—TRANSITIONAL PROVISIONS

Interim Social Protection Secretariat to act as Secretariat.

25. The interim Social Protection Secretariat in the Ministry of Labour, Social Security and Services, shall on the date of the commencement of this Act, act as the secretariat of the Council.

Staff of the interim Social Protection Secretariat

26. (1) Any person who, at the commencement of this Act, is a member of staff of the interim Social Protection Secretariat referred to in section 25 shall, on the coming into force of this Act, become a member of staff of the Council for the remainder of his or her term of appointment, if any, and on the same or improved terms and conditions as may be determined by the Council upon the advice of the Salaries and Remuneration Commission.

(2) Despite subsection (1), the Council may, within a period of two years after the commencement of

this Act, recruit and appoint persons to serve in its secretariat.

(3) Any such person referred to in subsection (1) who does not wish to serve in the National Social Protection Council may be re-deployed in the Public Service.

(4) The assets and liabilities of the interim Social Protection Secretariat shall become assets and liabilities of the Council on the commencement of this Act.

Memorandum of objects and reasons

This Bill seeks to provide the legal and institutional framework for the provision of Social Protection to all persons in Kenya.

Article 43 of the Constitution guarantees all Kenyans economic, social, and cultural (ESC) rights, including rights to health, education, food, and decent livelihoods. It asserts the right "of every person...to social security" and binds the State to "provide appropriate social security to persons who are unable to support themselves and their dependants." This is social protection in its totality—that is, social assistance; social security; and health insurance.

The right to social protection is closely connected with other social protection rights including the right to the highest attainable standard of health. It also includes the rights to equality and freedom from discrimination, human dignity, freedom of movement and residence, reasonable working conditions, fair administrative actions, access to justice, and the resolution of disputes in a fair manner and through public hearing before a court or independent and impartial tribunal or body.

Article 21 of the Constitution commits the State to working towards the gradual realization of the social and economic rights and binds the State "to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights." To achieve this, the State shall take legislative, policy, and other measures as necessary, including the setting of standards.

This Bill establishes the National Social Protection Council, defines Social Protection, sets out the principles and objects of Social Protection, and lays the institutional framework for the attainment of the rights enshrined in Article 43.

The National Social Protection Council Bill, 2014

Part I provides for preliminary matters including definitions of certain terms used in the Bill.

Part II sets out the definition of Social Protection and provides for the principles of social protection and the objectives of the Act.

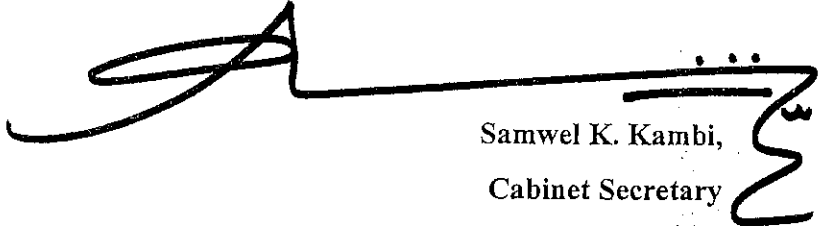
Part III makes provision for the establishment of the National Social Protection Council, its composition, functions and powers as well as how it will be managed and how it will carry out its functions.

Part IV provides for the financial provisions, establishing the sources of funds of the Council and generally how those funds are to be managed and accounted for.

Part V provides for miscellaneous matters including the common seal of the Council, how and when the Council will make regular reports and to whom, the signification of documents of the Council and an imposition of a requirement on all public institutions concerned with any aspect of social protection to co-operate with the Council and supply such information as the Council may require in the discharge of its functions.

Part VI provides for transitional matters regarding the staff, assets and liabilities of the interim Social Protection Secretariat.

Dated 28th Feb, 2014.



Samwel K. Kambi,
Cabinet Secretary

Ministry of Labour, Social Security and Services,