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**Where We Are Now  
Commentary, Perspectives and Issues on  
Kenya's Defence White Paper (2017)**

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## **Introduction**

Those who conceptualized Defence White Papers performed a useful task. They provided for a Paper that is made public, hence enhancing public participation, and sense of ownership. They also thereby provided for accountability of the content of such a Paper. The release of a Kenya Defence White Paper is therefore a welcome development. It is welcome because it spells out the defence policy of a country. It is part of the troika of policies that are core for the development of any grand strategy. It is the policy pillar of the third leg of the three-legged stool of national security.

The release of Kenya's *Defence White Paper* (2017) - aka Kenya's Defence Policy - is an equally welcome development. It is especially welcome in times like these when the formulation of the country's Grand Strategy is underway – or at least on the intellectual cards of the minds of national policy makers. It is also welcome because it opens room for debate about the country's defence policy. Such debates are part of the Constitution's permission – indeed demand – for public participation in government engagements in policy and strategy making.

Many states are increasingly publicizing various parts of their national security policies. They do in terms of the “white” version of these documents. These versions are intended for public consumption, and hence would not contain issues that are considered sensitive to the state and its national interests. Nevertheless the white versions offer a vision of the core of the policies and the thinking and thrust behind them.

This *Occasional Paper* is a commentary on Kenya's Defence White paper (2017). The commentary is based on both academic and practical grounds, and reflects the authors' preoccupations in these aspects. This *Occasional Paper* is a critique and not a criticism. Criticisms are often senseless, and are usually caught up and constrained by political, ideological and even religious conceptual prisons. It appreciates and

recognizes that the production of a *Defence White Paper* is a signal contribution to the articulation of Kenya's national security, and its philosophy, aims and themes.

The *Occasional Paper* is informed by a philosophy that was articulated in 1872 by USA Senator Carl Schurz, who accused of lack of patriotism because of comments he made in the course of senatorial debate answered: "My country, right or wrong; if right, to be kept right; if wrong, to be set right." Most people quote just the first part of the profound wisdom contained in the statement. But they miss out on its second and third aspects. In the course of a critical reading of Kenya's *Defence White Paper*, there are many right things, and these should be kept right. But there are also a number of things that are wrong, and omissions in its body. This *Occasional Paper* sets them right.

## **Part 1: The General Context**

### **Contextualizing the Defence White Paper, 2017**

To appreciate the thrust of the White Paper and its thrust, it is important to set it in its proper context. Its proper context is that it is a tool of national security. But it is not a general tool like some other policies are. It is a tool that is encrusted in the architecture of the Grand Strategy of Kenya. After the Constitution, the Grand Strategy is the most important document in the republic. It represents the vision of where the country is, where it intends to go, the challenges and opportunities that are faced and offered or that may arise within the country's operational environment, and precisely how the country intends to harness these.<sup>1</sup>

The Grand Strategy sits on a three legged national security stool. The three legs represent the three sources of national power of the country. These are Diplomacy, the Economy, and the Military. It is these three sources of national power that primarily respond to threats to the national interests of the country. They are also the ones that shape and influence the ways in which the country can seize

opportunities that arise in its operational environment. In normal practices, the response is usually fronted by Diplomacy followed by or together with the economy. Military responses are usually the last resort. The point of a defence policy however, is to emphasize the importance of the military leg in the whole perspective of grand strategy, and its essence as a main actor.

The three sources of national power that make up the frame of the Grand Strategy stool require tools with which they are enable to act and to carry out their national security functions. These tools are contained in three documents that are required of each leg of the stool. These are a Policy, a Strategy and a Doctrine. The policies are hence: the Foreign Policy, the Economic Policy, and the Defence Policy. The strategies are: the Diplomatic Strategy, the Economic Strategy, and the Military Strategy. The doctrines are: the Diplomatic Doctrine, the Economic Doctrine, and the Military Doctrine.

These sets of documents interact and are related in very close ways. Thus, the policies provide the theme and philosophy in which the specific leg operates; the strategies essentially are concerned with implementing the policies; and the doctrines operationalize the strategies. They contain operational concepts of how other states (and actors) will be influenced through the strategy. This all means that there cannot be a useful doctrine in the absence of a strategy; or a useful strategy in the absence of a policy. In other words, policies are the beginning point, followed by strategies, followed by doctrines. The three exist and operate in that order, and in that order only.

The basis of each of the policies is the Constitution, and the National Security Policy aspect of the grand strategy. Policies cannot be constructed outside these fundamental influences. Indeed they are more than merely influences: they are the lifeblood of the policies. Besides these fundamental influences the policy must take into account the positions and themes of the other sources of national power because they are required to operate together and not unilaterally. The

Grand Strategy is thus a three-legs power, and it sits most comfortably when the three policies operate together. Similarly, the strategies and doctrines must take into account the policies and the direction that each has chosen to follow. Hence at the end of the Grand Strategy day, there is a tessellation of policies, strategies and doctrines, all aimed at the survival and well-being of Kenya and its people.

The constitution is the mother of all Grand Strategy. It inspires it or should, and gives it life. For example the constitution establishes the core institutions of national security, in this case the National Security Council,<sup>2</sup> and specifies its membership. It also establishes the national security organs of Kenya.<sup>3</sup> The National Security Council is the Grand Strategy making and implementation institution. Although the constitution does not mention the term Grand Strategy, the functions it gives to the National Security Council are in its terms Grand Strategy formulation processes. These are to: “integrate the domestic, foreign and military policies relating to national security in order to enable the national security organs to co-operate and function effectively;”<sup>4</sup> and to “assess and appraise the objectives, commitments and risks to the Republic in respect of actual and potential national security capabilities.”<sup>5</sup> Besides these, the constitution also sets out the national values,<sup>6</sup> and the national security interests.<sup>7</sup> This constitutional basis means that policies must take cognizance of the will of the people; and they do this by developing policies that promote the peaceful co-existence envisaged by the national values.

All this has lessons for the formulators of the policies that inform the Grand Strategy. In essence it means that the relevant policies – foreign policy, defence policy and economic policy – are not the province of the specific ministries formulating them. They are the province of the Republic: hence indeed their nomenclature: Defence Policy of Kenya, Foreign Policy of Kenya, and economic Policy of Kenya. Similarly too for the strategies: Diplomatic Strategy of Kenya, Economic Strategy of Kenya, and Military Strategy of Kenya. And so too, following

the constitutional handiwork of the tessellation of policies, strategies and doctrines, there can only exist the Diplomatic Doctrine of Kenya, economic Doctrine of Kenya and the Military Doctrine of Kenya. In this framework the specific ministries involved are “mere sticks” kneeling before the constitution, and working it work. Thus for example, the national security poetry of the constitution: the Defence White paper is made under the authority of the Cabinet Secretary for Defence,<sup>8</sup> who represents and advises the president,<sup>9</sup> who is a creature of the constitution,<sup>10</sup> and is constitutionally the chair of the National Security Council,<sup>11</sup> a child of the constitution,<sup>12</sup> that promotes and protects the sovereignty of Kenya, established by the Constitution.<sup>13</sup>

### **Articulating Kenya’s Defense: Where We Are Now**

Ideally a policy- any policy – or any strategy should stand on the shoulders of previous policies in order to properly articulate its themes and policies it proposes. And in this way, future policies or strategies will stand on the shoulders of the current one in order to address the challenges of a changed environment. The idea that policies and strategies should stand on one another’s shoulders also reflects the realities of the dynamic operational environment. Since that environment is for ever changing, policies of previous years will not capture the challenges and demands of the present. This is indeed why there cannot be one policy or strategy that is intended to last for a life time. This trend applies to all the other related national security policies and strategies like foreign policy, economic policy etc.

Policies on individual themes – like defence policy, foreign policy or economic policy – stand on each other’s shoulders as they are being formulated. But related policies in their relationships *inter se*, must stand *bega kwa bega*. Hence for example a defence policy under formulation must take into account the foreign policy and the economic policy; the foreign policy under formulation must take into account the defence and economic policy; and the economic policy



being constructed must take into account the defence and foreign policies. The failure to do this will inevitably result in a policy that is half cooked, and in essence a false policy. This is the theme of the three-legged stool in the formation stages of its construction. The three policies must stand *bega kwa bega* because they form the pillars on which national security is founded, thrives and is protected and promoted.

The Defence White Paper unfortunately does not have the shoulders of previous defence policies to stand on. That is not its fault; and that fate is indeed the condition of any pioneer. It is a pioneer because it is the first defence policy [at least in writing] that can be discovered in Kenya. As a pioneer, it must hence clear the bushes and the brushes, and perceive a new world of Kenya's national security. This is true also of the Kenya Foreign Policy [2014]. It is new, and a pioneer, and has similarly cleared the bushes hiding the country's foreign policy. But if they have no shoulder to stand on, they must however stand *begakwabega*. This is the foundation of the articulation of a sound national defence policy.

This paucity of core documents is one of the stumbling blocks to constructing a grand strategy for the country. The lack of previous policies on defence, foreign policy and economic ones is an impediment that must be lived with. There of course there must have existed some forms of *ad hoc* policies. But then, *ad hoc* policies are not a good policy ground on which to stand on. They are certainly a bad shoulder to lean on because they have a tendency to collapse, and were constructed by persons that came and went, and carried with them their policy memories. The paucity of core documents creates an intellectual – and practical – gap in national security strategizing. But policy and strategy formulators must play with the cards they were dealt. This means that they must move on, and get into the tasks of policy and strategy pioneering.

The biggest problem after this is that because there were no policies articulated earlier, it follows that there also were no strategies formulated. And because there were no strategies formulated, it follows that there were no doctrines stipulated. What is surprising however is that while there is no known defence policy, there is claimed to be a military strategy; and there exists also a doctrine. But a doctrine that is not supported by a strategy that implements the policy is essentially a false doctrine to the extent that it has nothing in terms of policy and strategy to lean on.

Nevertheless this is where we are now. Things must be made anew. And they must be made in an order that is intellectually justifiable: from policy to strategy and then to doctrine. This will ease the burden of future formulators of policies and strategies and doctrines. That future generation will not have to build anew. Current formulators will thereby ensure that there will be shoulders for the next generation to stand on: and in this they can join Tennyson's toast: "Fill the cup, and fill the can/Have a rouse before the morn:/Every moment dies a man,/Every moment one is born."

### **Conceptual Basis of Defence Policy**

The Kenya Defence Policy [2017] – and any policy for that matter – must fulfill its main obligation to be a policy. The 2017 defence policy however often meanders into the operational levels. In trying to be operational, it loses the focus of its life and existence as a policy document. As a result of this it misses out on many of the things that a defence policy should do, and should contain. The operational document is the missing one: the military strategy, which by nature is an operational document. In essence the Defence Policy [2017] is not clear whether it is a defence policy for the Kenya Defence Forces or a Defence Policy for Kenya. The former cannot exist, conceptually or in practice. Organs cannot have a defence policy, but those that created them - the Republic - can and

should and must have a policy. The organ is responsible for creating a policy for its creator and its ultimate owner.

There is a conceptual difference between the two. The Kenya Defence Force Forces (KDF) are a military organ of Kenya. This is because any legitimate – i.e. constitutionally created – military is the military of Kenya. That reality cannot be contested in any way, and by any reasoning. The KDF serves Kenya’s security interests, not its own. This means that Kenya can have a defence policy, but the military cannot. The military can only have a military strategy. The military strategy implements the Defence Policy. The Kenya Defence Policy [2017], often confuses these two realities. The end result of this reality is that in the Defence Policy the KDF must be subsumed into Kenya and certainly not the other way round.

The context of these views is the principle and practice of civilian control over the military. This principle is well established now; but it must be paid heed to not just in the form of words but in practice, and certainly in the formulation of key documents like a defence policy. In practice, even where there exist military governments, nevertheless the constitution, laws, and institutions are and remain civilian devices; and militaries work under these institutions and the limitations and permissions that they allow. This explains why one of the first things that happens in *coup d’etats* is to suspend the constitution. The failure to appreciate these dynamics is what makes the defence policy of 2017 try to be both a defence policy and a military strategy. But in truth a document cannot be both. A schizophrenic rendition that tries to contain both ends up being a confusing document that does not ultimately serve its intended purposes.

The Kenya Defence Policy [2017] does not also states the role of the cabinet secretary for defence, or the role and standing of that office in the context of a national defence policy. In the context of the defence policy, the cabinet secretary is “the principal adviser to the president in matters relating to defence policy.”<sup>14</sup> The CS also ensures

“the development of the defence policy.”<sup>15</sup>In terms of civilian control over the military, the cabinet secretary shall perform functions “necessary for the control and administration of the Defence Forces” as may be delegated “by the President over the Defence Forces” or by “Parliament over the ministry.”<sup>16</sup>Therefore the eventual defence policy should be given under the hand of the cabinet secretary [on behalf of the National Security Council] - much as ratifications to treaties are given under the hand of the cabinet secretary for foreign affairs.

It would be useful for a defence policy to note – more than *en passant* – the constitutional infrastructure in which the ministry of defence and the defence policy itself operate. Essentially that infrastructure consists of two elements: the sovereignty of the people and the supremacy of the constitution; and the role of the National Security Council in relation to national security policies of which the defence policy is one. The sovereignty of the people is delegated *inter alia* to the national executive of which the Ministry of Defence is a part. The defence forces are constitutionally responsible for ‘the defence and protection of the sovereignty and territorial integrity of the Republic.’<sup>17</sup> The people are the centre-piece of these roles. The protection of sovereignty means protection of the people. This is because constitutionally, sovereignty belongs to the people of Kenya. Protection of the territorial integrity of the Republic means territorial integrity of the people since the republic is a sovereign republic. Being a sovereign republic, it means that the heart of the republic is the people whose sovereignty the Republic consists of. These are not nitpicking legalisms. There are often many policies that seem to have forgotten the philosophical and constitutional basis on which they are formulated. The supremacy of the constitution is an equally people-driven concept. The people approved the constitution through a referendum. Policies must never be based on laws that are contrary to the constitution or which offend its letter and spirit.

The National Security Council's functions are to "integrate the domestic, foreign and military policies relating to national security" and to "assess and appraise the objectives, commitments and risks to the Republic in respect of actual and potential national security capabilities."<sup>18</sup>The "military policy" stated in article 240(6)(a) means and must be the defence policy. It is the policy aspect of the functions of the NSC. Its strategic aspect [i.e. issues related to military strategy, diplomatic strategy etc.] are contained in the first part of article 240(6)(b) of the constitution. Its doctrinal responsibilities [i.e. issues related to military doctrine, diplomatic doctrine etc.] are contained in the last part of article 240(6)(b) which refers to "actual and potential national security capabilities."This means that the first port of call of defence policy, foreign policy etc. is the National Security Council: otherwise it will never be able to integrate the relevant policies. "Integration" in article 240(6)(a) can only mean integrating the policies before they come to life i.e. in their formulation phases, rather than integration of formalized documents that might easily contain content that cannot be integrated.

### **National Security and Foreign Policy**

This may be more a comment on linguistics, but it has serious conceptual underpinnings and hence needs to be discussed. One part of Part 1 of the DWP is headlined 'National Security and Foreign Policy'. This rendition is open to conflicting interpretations. It can mean – as it likely was –the interaction of the foreign policy with the national security interests of Kenya. It could also be interpreted to mean a policy that incorporates national security with foreign policy: normally called "Foreign and Security Policy'. It could also be interpreted to mean two separate polices: national security policy on the one hand, and foreign policy on the other. This lack of interpretative clarity is not good for the content of a policy as serious as the Defence Policy.

The third of these interpretations would be feasible had there existed a National Security Policy for Kenya. But none exists. There is a draft NSP (2017), but like with all documents, a draft policy is not actionable, and cannot be used as a basis to state – or re-state – foreign or any other policy. Indeed, the DWP does not mention a National Security Policy anywhere. The lack of an NSP makes the formulation of a defence policy difficult. It does this because in the context of a defence policy, there are three other documents that must inform its foundation and formulation. These are the Foreign Policy, the National Security Policy, and the Economic Policy. The Defence Policy completes this core quartet of documents.

The second interpretation – of a Foreign and Security Policy – would have been feasible had there existed such a document in the repertoire of national security documents of Kenya. But such a document does not exist. It only exists in usage especially in contexts of war – like the current war on terror that has required the sojourn of the Kenya Defence Forces [KDF] in Somalia. And such a document if it existed would essentially also be a merger of the foreign policy, the defence policy and the national security policy.

This leaves the first interpretation as the only one that could possibly have been in the mind of the formulators of the DWP. If so it would have benefitted from re-wording. A suitable wording would have been ‘National Security Interests [in] [and] Foreign Policy.’ This would have had the benefit of recognizing that article 238(1) of the constitution of Kenya identifies certain national security interests. It leaves other national interests to be formulated, for example during the formulation of a Grand Strategy.<sup>19</sup> Indeed the DWP itself could have taken such a formulation as its beginning point in order to reflect all the applicable national interests.

## National Interests in the DWP

The DWP mentions some national interests in para. 1.5. But para 1.5. (a)-(d) confuses the whole discourse on national interests. It particularly fails to mention all the national security interests stipulated in the Constitution. In particular, by mentioning national security as a national interest, it does not mention what the constitution defines national security to be. And yet the constitutional definition of national security is core because those included in it are immediately securitized national interests. National security as defined in the constitution means protection against internal and external threats to:

- Kenya's territorial integrity and sovereignty;
- its people;
- their rights, freedoms, property;
- peace, stability and prosperity
- other national interests.

In this reckoning, peace, stability and prosperity means that of the people of Kenya, but also national peace, stability and prosperity. Para 1.5 (a) captures the first aspect of the constitutional definition of national security. Para 1.5 (b) is meaningless in this context because national security is constitutionally defined and includes the five items listed above. Para 1.5(c) only captures *economic* prosperity, but not other forms of prosperity. It also refers only to the economic prosperity of Kenyans, but not of Kenya at large. Para 1.5(d) introduces a new national interest of national prestige. It has every right to do so especially under the rubric of "other national interests" permitted by article 238(1) of the constitution. These "other national interests" are to be found *inter alia* in various documents including the manifestos of ruling parties, speeches of the president etc. the challenge in formulating a DWP is how to securitize these in the context of the aims and themes of the DWP. However, DW Papers must be concerned with

those national interests that may require hard power to protect. Other policies like the Foreign Policy protect and promote the other, soft power required national interests. In essence, the DWP should not confuse itself for a Grand Strategy. In any event, without a succinct statement about the national interests it is concerned with, it runs the risk of becoming a *DWP manqué*.

While national interests are important, national values are core. They have however not been mentioned in the DWP, and this omission weakens the document. The relationship between national interests and national values is clear. National interests are derived from the national values. National values are the theme and philosophy that binds the country together. Without national values, national interests would not have a pillar to lean on, and would be accordingly weakened.

The inclusion of the National Security Policy in this matrix is because the DWP must have a strong and functional domestic security policy to support it. Indeed the functions of the KDF are to defend Kenya's territory and sovereignty, and "may be deployed to restore peace in any part of Kenya affected by unrest or instability... but only with the approval of the National Assembly." It is however appreciated that the formulation of the DWP happened in an environment where there are many missing policies and strategies. For this reason it must point this weakness out so that policy makers can take the cue and enable the formulation of the missing documents.

## **Relationship With Foreign Policy**

Kenya has had a written foreign policy since 2014.<sup>20</sup> The foreign policy of Kenya is a core document of National Defence Policy. It is core because the largest function of the KDF is as contemplated in article 238(1) of the constitution and more specifically in section 8(1)(a) of the Kenya Defence Forces Act : " the defence and protection of the sovereignty and territorial integrity of the Republic." This is the response to threat emanating from the external environment that made the military



be incorporated as one of the sources of national power. The other businesses of the KDF are stated in section 8(1)(b) and (c): to cooperate with other authorities in situations of emergency or disaster”, and “to restore peace in any part of Kenya affected by unrest or instability.” Section 8(1)(b) on emergencies and disasters are generally threats that emanate from the internal environment. Section 8(1)(c) on unrest or instability is about threats that can emerge from either the internal or external environment.

Both these kinds of threat are things that inform the domain of foreign policy. External threats because they emanate from the external environment which is the primary domain of foreign policy. And internal threats are part of the domain of foreign policy because they could affect the ability of the country to survive in its external environment. The concern of both MoD and MFA with these twin threats is what links the two together, not merely at the hips but wholesomely, like Siamese twins. Neither of them can depart from these linkages. And therefore each must take into account the policies of the other in formulating its own.

These Siamese-linkages between the two has serious consequences for the formulation of their policies. It is the essence of the description of the two as Foreign and Security Policy or *vice versa*. It means that each must take fully into account the policy of the other. It also means that neither can afford the mistake of paraphrasing or imagining the content of the other. And besides this it means that each must be involved in the formulation of the policy of the other. From this Siamese- joint-ness between the two, there is no escape and no way out.

In its guiding principles the DWP touches on the relationship between diplomacy and the military in national security. In language that does not belong to policies it states that “[w]hereas we endeavor to remain to the spirit of these principles, *it would be naïve* to believe that our security can depend on the goodwill of others.” It is true that there must be the ability to ‘enforce respect for our sovereignty and the

integrity of our territory” and “resolve to use force to ensure security should be visible and credible.” That is what militaries should be and do. However it is well to remember the linkage between the military and diplomacy, and to the principle of resolution of conflicts by peaceful means. The relationship between the two was stated clearly by Clausewitz and needs no repetition.<sup>21</sup> The first response to threats is diplomacy, as is the last response of ending war. Para 1.10 seems to forget article 238(1) of the constitution that defines national security as *protection against*. That provision entails that the country will only fight defensive wars. And that constitutional rendition of defensive wars is a core aspect of the defence policy, or should be.

Section 1.10 is conceptually empty and grammatically weak. It also assumes that foreign interference is only physical and by use of force. Section 1.10 is conceptually empty and grammatically weak. It also assumes that foreign interference is only physical and by use of force. It does not consider less robust interventions e.g. political, economic, etc. besides this, the guiding principles were not developed by Kenya: they are principles of international law and diplomacy. And indeed these are repeated in the Constitution. It does not consider less robust interventions e.g. political, economic, etc.

The DWP while finding foreign policy naïve, should however provide an analysis of the weaknesses of that policy. Any weaknesses in the foreign policy would clearly put the country at a disadvantage. By pointing out such weaknesses if any, the DWP would contribute much to amendments of that policy. This is the oft-forgotten role of policies generally: that they must explain where they find other relevant policies weak so that policy makers can make haste to amend them, and hence compel them to respond to the operational realities. And to minimize such weaknesses in operation there needs to be active consultation amongst concerned departments and agencies in formulating their respective policies.

## **Relationship With National Economic Policy**

The DWP does not make reference to National Economic Policy (NEP). The economy is one of the three sources of national power. Its policy must be harmonized with those of the other sources of national power. The economy is crucial because all else to do with national security depends on the availability of resources. These resources are not infinite. They are also competed for amongst other sectors of government. And the wish to maintain a credible and visible military depends ultimately on the resources available. For these reasons the failure to take the economic policy into account harms the DWP. In parts the DWP has proceeded as if for Kenya there is only one leg of the stool – the military!

It may be the case that there is no written and clearly articulated economic policy for the country. But even with that unimaginable eventuality, there must be an economic philosophy that the country follows. And at the very least the DWP should make a statement about the preservation and rational management of national resources as the basis for the success of any policy. It is however true that some of these statements are best fit for a military strategy. It is such a military strategy that implements the national defence policy.

## **Part 2: Operationalizing the DWP**

### **Objectives of National Defence Policy**

The objectives of the Defence Policy of Kenya are stated in para. 1.16. These are:

- quick response to threats without risking escalation of the conflict
- in peacetime, a balance of power that does not encourage an arms race and a defence capability that is convincing enough to deter coercion or aggression

- in times of crisis, a readiness for effective defence that is easily and immediately demonstrated to solve crisis without resorting to the use of lethal force.

These objectives are often contradictory. Given the functions of the KDF stated in the constitution and the Kenya Defence Forces Act, para. 1.16(a) should specify whether the threats it contemplates are internal or external. After all, the policy is a defence policy that should state the objectives of the military in either of the situations stipulated in its functions. It is good however that the DWP in this paragraph notes that the objectives are to respond to threats “without risking the escalation of the level of conflict.” It is the job of diplomacy and diplomatic initiatives to ensure that there is no escalation to ongoing conflict. This role of diplomacy is not, and cannot be naïve as contemplated in para. 1.10.

Balance of power in the first part of para.1.16 misunderstood. Balance of power means limiting unilateral arms races by creating a balance of power through engagement with allies, or the creation of alliances with other states. The purpose of allies “is to add powers of other states to one’s own.”<sup>22</sup> Alliances are created to offer obligations while it exists. Both the creation of allies and of alliances are the business of diplomacy. And in a volatile neighbourhood like Kenya’s it would be virtually impossible to curtail arms races in the face of competing allies and alliances. And if it was at all possible, it is in any case the task of diplomacy to engage in such negotiations or understandings.

The second part of Para.1.16 “...a defence capability that is convincing enough to deter coercion or aggression” means entry into arms race itself. The issue is that the other states are also watching the defence capability being created, and they respond to having more arms; this is the essence of the security dilemma. It will never be possible to create a convincing defence capability without creating a

security dilemma. What avoids such a dilemma is diplomacy that aims to create trust and the understanding of intentions. It would be much better to avoid explanations that are contradictory and which in the real life of the operating environment will not work. Besides this, the threshold of “convincing enough” is difficult if not impossible to describe or demonstrate. Whatever is subjectively construed as “convincing enough” leads to arms races or to other states creating new allies or alliances to respond to the “convincing enough.” And the response of other states to this and the counter-response required is again the business of diplomacy.

It is of the essence to identify the crises contemplated in Para. 1.16(c). It is necessary to specify the readiness intended by the different crises that may emerge. The possible crises that may emerge are either internal, external, or a mixture of both. In addition, “readiness for effective defence” does not contemplate especially contemporary crises like the war on terror. Effective defence means different things in cases of traditional or asymmetric warfare, as the war against *Al Shabaab* has clearly shown. Effective defence suggests only responses to traditional warfare. And in such cases issues of lethal force are not of the essence. It is also not easy to contemplate defence of territory and sovereignty in the absence of the use of lethal force.

Para. 1.16 uses the peace-war dichotomy that has for long been out of use. It does not recognize the existence of situations in between peace and war. This is a dangerous basis on which to construct the objectives of a defence policy. Part Four of the DWP in Para. 4.2.(a)-(c) rectifies this problem. It recognizes three possible situations: peace, crisis and war. However the war situations should also be further classified into external and internal war. And in internal war there is the constitutional and statutory requirement for cooperation and coordination with other agencies – like the police service and the national intelligence service. And in the whole context of Para. 1.16, regard should be had for declared and undeclared objectives. The policy

is and should only be concerned with the declared objective. This is the framework that should be inserted in Para. 1.16 which should read:

- Peace time : preparedness
- Crises : quick response
- Internal war : effective defence/quick response
- External war: effective defence

The dynamics – and complications – of these stances do not belong to the defence policy but to the Military Strategy.

### **The Operational Environment**

The good thing about Part 2 of the DWP – Threats and Opportunities – is that it effectively streamlines them to the policy contexts of the DWP. It does not re-invent the wheels of other analyses of the operational environment. However it should borrow from these other analyses in the context of a defence policy. It also makes sense not to do the whole SWOT analysis. It is sensible because some aspects of such an analysis – like strengths and weaknesses – belong properly to the Military Strategy or even the Military Doctrine.

However some of the strengths are included in Para. 1.16. These are general and can do no harm to the DWP since they are already stated. The thrust of the analysis of Kenya's operational environment must also concentrate much of its attention to the country's neighbourhoods. And in doing so it needs to collaborate closely with the foreign policy document that already exists. The analysis should also be a critical analysis. For example, Para. 2.18 on borders inherited at independence contains a flawed analysis. The delineation and demarcation of the borders is likely to lead to protracted conflicts. The AU Border programme to which Kenya subscribes declares that the borders must be delineated and demarcated in accordance with the Cairo Resolution of 1964: that borders inherited at independence must

be respected. But there is no consensus on what the borders inherited at independence were. This contains the shoots of severe inter-state conflicts over borders.<sup>23</sup> Hence the delineation and demarcation of borders may not be in Kenya's best national security interests.

### **Liaison: Agencies and Committees**

The provisions of Para.. 4.10 on the "Role of National Security Agencies" is badly done and wrongly conceptualized. It is also a provision of the DWP that best belongs to the Military Strategy and not the DWP. Its other big problem is that it confuses the whole picture of the architecture of the DWP, and who is who and who does what. The DWP is a National Defence Policy. It is done under the auspices of the Ministry of Defence. Indeed, the Kenya Defence Forces Act specifies in section 10 (a) and (b) that the Cabinet Secretary for Defence shall be the principal advisor to the president on matters relating to the defence policy; and shall also ensure the development of the defence policy. But the role of the cabinet secretary – and the Ministry of Defence is largely missing from the DWP.

On this basis the statement in the preamble to Para. 4.10 that "The Kenya Defence Forces maintains..." is misconceived. It is the Ministry of Defence that maintains relations with other security agencies, and not the KDF. The KDF is a member of the NSC, but so is the cabinet secretary. This serves to continually maintain the principle of civilian control of the military. The principle of civilian control of the defence forces must be operationalized through all documents emanating from the Ministry of Defence, of which the DWP is one. This is another example of the DWP being confused with a Military Strategy.

There are also some other worrying inclusions in Para. 4.10. The National Security Council mentioned in 4.10(a) is not a committee. Indeed, presidents do not chair committees. It is also chaired by the president of Kenya – by that designation, and not the commander-in-chief. Indeed the constitution provides in article 240(4) that "The

president shall preside at meetings of the Council.” The title of the president as commander-in-chief serves to emphasize the principle of civilian control of the military. By stating that the NSC is chaired by the commander-in-chief, the DWP is trying to overturn this fundamental principle of democratic countries. NSC is not only the coordinator of security

NSC is also the source of policy. It is also not a committee. Calling it a committee equates it with the other committees specified in this section. It enhances committees and dis-enhances the NSC as the pre-eminent policy source for national security.

The inclusion of the National Security Advisory Committee [NSAC] in the DWP opens up many legal cans of worms. The NSAC is an administrative creation, and not a legal one. By including it here, the DWP is attempting to give it some kind of legal form. It is in any case meant to operate under the National Security Council, and not “under the auspices of the Office of the President.” Indeed, if anything it is a committee of the National Security Council, and not its competitor.<sup>24</sup> In any case there is no need for Para. 4.10 given the provisions of Para 4.7 on multi-agency cooperation:

“To effectively meet our defence responsibilities, the Defence Forces of Kenya must be able to operate in a combined, joint and in a multi-agency role. Through the Ministry, KDF will cooperate and coordinate its activities with Ministries, Departments, and Agencies as part of the whole of government approach concept.”

This provision has the added benefit of at least recognizing that the KDF operates under the direction of the Ministry for Defence. It is also one of the very few times when the MoD is mentioned in the DWP.

This whole DWP or significant aspects of it should bear in mind that the policy is a ministry of Defence Policy and not a KDF one. The document where the KDF takes centre stage can only be the Military Strategy and the Military Doctrine. To overlook this is to challenge the



doctrine of civilian control of the military. Indeed in the context of civilian control of the military, the cabinet secretary advises the president and the national assembly [a core part of civilian control of the military] on matters relating to the Defence Forces, and “perform such functions, in particular those necessary for the control and administration of the Defence Forces, as may be delegated by the president over the Defence Forces, or parliament over the ministry.”<sup>25</sup> This is the legal and constitutional infrastructure of the Ministry of Defence and the cabinet Secretary for Defence.

### **Policy, Strategy and the Logic of Deterrence**

There are some epistemological issues that arise in Part 4 of the DWP. The major one is contained in Para. 4.1 that refers to a defensive posture, and Para. 4.2(a), that refers to a deterrence posture. Deterrence is a threat. It is a threat backed by threats of the use of force. It may or may not work depending on its credibility and what the other party makes of it. A defensive posture is different. It implies that the party exercising it has no offensive intentions. It means that the party will only resort to force for defensive purposes. A defensive posture is better referred to a Non-provocative Defence [NPD]. It is unlikely that a country can apply both postures at the same time.

The language of section 4.1. is terrible, inaccurate and epistemologically confused. It is true that the military is an instrument of power. but the military does not operate alone like a lone wolf. It operates under civilian control. This civilian control is represented by the president as commander-in-chief, the National Assembly, and institutionally by the Ministry of Defence under the headship of the cabinet secretary who is the principle advisor to the president and the national assembly *inter alia* in matters relating to the Defence Forces. The military instrument of national power is hence represented by the ministry of Defence. Again, in the DWP confusion arises because it often

takes on the language of the Military Strategy rather than the Defence Strategy.

Para.4.2.provides that “[I]n the conduct of operations the Kenya Defence Forces shall adhere to the International Law of Armed Conflict.’ This should better read that the KDF shall be bound by International Humanitarian Law. The language of International Law of Armed Conflict is old language, and has been overtaken by events. In its contemporary usage it is known as International Humanitarian Law. It includes other aspects not just armed conflict specifically. The paragraph should also add that the KDF shall also be bound by other relevant international laws and applicable domestic laws e.g. the Constitution. Indeed the preferred language should be that: “In the direction, control and application of the use of force, Kenya shall adhere to....” The rationale of this is that the DWP is a Kenya Defence Policy. The current language of 4.2.belongs to the Military Strategy; as does the language of 4.1.which belongs to the Military Strategy and not the Defence Policy.

The first sentence of Para.4.2is incomplete.What it contains is true and right. However it must also include a statement that that is the function of the Ministry of defence to do so.The second sentence and the rest of the paragraph contains language that belongs to the Military Strategy, not the Defence Policy.

## **The Constitution and War Powers**

Para. 4(2)(b) states that the Kenya “Defence Forces may be required to assist in the management of crisis.” This is not in itself a problem. But the legal infrastructure in which it is nested is problematical. In other words it is not a direct issue with the DWP but in those other legal infrastructures informing it.<sup>26</sup>Article 241(3)(c) provides that the Defence Forces “may be deployed to restore peace in any part of Kenya affected by unrest or instability *only with the approval of the National Assembly.*”

In such crisis the involvement of KDF is only with parliamentary approval. However the Kenya Defence Forces Act tries to escape this constitutional requirement for deployment. Section 31(b) reflects this constitutional requirement. However section 32(1) provides that “the Defence Council may deploy the Defence Forces in any part of Kenya affected by unrest or instability to restore peace.” Unlike section 32(1) that specifies that this can only be done with the approval of the National Assembly, section 32(1) fails to add the limitation directly. This means that deployment to restore peace has the same status as deployment in emergencies or disasters. In those cases the defence forces only have to report to the National Assembly whenever forces are deployed in such circumstances.

This issue of war powers extends to actions during war. Para. 4.2(c) states that “the KDF will restore and maintain peace and security on terms most favourable to Kenya’s interests.” The problem with this statement is that it flies in the face of Clausewitz’s teachings. Clausewitz argued that diplomacy must be kept alive even during war. There were good and sound reasons for this. Amongst them is that it is diplomacy that brings wars to an end. Hence it is diplomacy that determines “the terms most favourable to Kenya’s interests” and not the defence forces engaged. At the end of the day, ending wars – apart from cases of total surrender by the enemy [which also requires diplomatic engagements] -is a negotiated issue; and these negotiations are done by Diplomacy not defence forces. It is, in short the civilian authority that determines when and whether the military has met its mission.

## **Defence Diplomacy and Civilian Component**

In this document the civilian component seems to have come in as an afterthought. It is supported by the meaningless word phrase that civilian personnel in the ministry “plays a critical role.”[sic!] But the critical role does not emerge in the document. This fate is generally similar to the one accorded to the ministry and the cabinet secretary. It

is probably fair to state that there was an unintended consequence of this. The reason for this omission is that the DWP was conceived as a Military Strategy and not a Defence Policy i.e. the title of national defence policy was merely added on top but is not wholly conceptually reflected in the content.

It is clear however that the civilian component of the ministry has some critical roles to play. These include “administration, finance, human resource, policy and strategy and defence diplomacy.” These are all fine except defence diplomacy. It is clear that the concept of defence diplomacy was misunderstood. This sort of diplomacy goes by various names beginning in earlier days military diplomacy, and gunboat diplomacy. It “links the implementation of foreign policy objectives to those of the defence sector”;<sup>27</sup> and the “employment, without duress, in times of peace of the resources of Defence to achieve specific national goals, primarily through relationships with others.”<sup>28</sup> Defence diplomacy is however not an engagement for civilians, as its name suggests. While It has been argued that it involves “the entire defence establishment to include non-uniformed components like ministry, R&D establishments, national training institutions such as National Defence College and national defence universities”<sup>29</sup> it is an engagement normally undertaken by defence attaches in diplomatic missions; and also to Its role has changed from the old conception which was unduly aligned to uses of force and the imperatives of the cold war.

In the three elements of power, each leg has clear roles. Military for military things, diplomacy for MFA etc. they cannot take over each other’s role. The concept of defence diplomacy should never be viewed as a means for the military leg to take over the roles and responsibilities of the diplomacy leg. Indeed, defence diplomacy cannot be conducted by the Ministry of Defence to the exclusion of MFA which is the custodian of diplomacy of the republic.

## Conclusions

This DWP seems not to have examined the provisions of the Constitution closely. This document must be based on the constitutional provisions and the spirit of the Constitution i.e. the letter and spirit of the constitution. For example, some issues like civil control of the military are core to the Constitution and the system of governance in Kenya and must be the pillars of such a document.

Any Defence White Paper [DWP] is a high policy document. It is also known as the National Defence Policy. Its theme and role is to state clearly and as forcefully as possible what the defence policy of the country is, its principles and the philosophy behind it and its concepts. DWPs are in other words strategic documents that survey the scene they are concerned with from a strategic perspective. They provide a bird's eye view of defence policy of the country. In doing so they must take into account related policies especially the foreign policy and the economic policy of the country. Defence Policy and Foreign Policy cannot be separated except at a very conceptual level. And the role of such a conceptual separation is largely to help explain the demarcations between the agencies responsible for both.

Policies are not strategies, much less doctrines. While policies are the strategic documents, strategies are the operational documents, and doctrines the more tactical ones. Policies must therefore refrain from the temptation to reflect these, or try to do things that properly belong to those other domains. The Kenya Defence White Paper [2017] often sails close to these winds. The effect of this is to reduce its power as a DWP. In the proper scheme of things, the DWP should be followed by a Military Strategy, and after that a Military Doctrine. The Military Strategy explains how the DWP will be implemented; and indeed its major task is to contribute to such implementation. The Military Doctrine on the other hand is a statement about how the Military Strategy will be implemented, and how the tools required for it will be availed, and within what time frames. These documents can be done

within the same time frame; the only caveat is that the DWP must first exist. Since it is the one being implemented, it must have the first say about the policies that need to be implemented.

The defence policy – as the foreign policy and the economic policy – play a larger role outside their immediate professional domains. Together with the Constitution, they are core documents of the Grand Strategy. They represent the sources of national powers, and as such the core sources of the implementation of the Grand Strategy. Just as no Grand Strategy can be implemented without them, none can be formulated without their input.

The entry of a Kenya DWP is an important addition to the contemporary discourses about national security strategy in Kenya. The DWP, like all pioneering documents stumbles from time to time and sometimes tends to overreach itself. There are many strands of thought that can be called upon to respond to the DWP as it now stands. Purists may wish for perfection, and they have a good point. Pragmatists may argue that we should live and let live with whatever form of document arises. But waiting at the wings are often existential issues of national security and survival – and prosperity - that can only be best done when all the relevant policies, strategies and doctrines are available. The current existence of a foreign policy and a defence policy for Kenya are good beginning points. They are not perfect of course, and the DWP has many imperfections. But all is not lost because while all things seem imperfect there is always tomorrow. And tomorrow comes with heaven, and its appurtenance of perfection: which is ultimately what it was invented for.

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## Endnotes

<sup>1</sup> Issues and dimensions of the grand strategy in Kenya are discussed in Makumi Mwangi, *Dimensions of Grand Strategy: Essays on Theory, Practice, Institutions and Mechanisms in Kenya* (Nairobi: Thirty Three Consortium, 2016); and Humphrey Njoroge & Makumi Mwangi (eds.), *Grand Strategy in Kenya, Vol.1: Concepts, Context, Process and Ethics* (Nairobi: Three Legs Consortium, 2019).

<sup>2</sup>Established by article 240(1) of the Constitution of Kenya (2010).

<sup>3</sup>Article 239(1).

<sup>4</sup> Article 240(6)(a).

<sup>5</sup> Article 240(6)(b).

<sup>6</sup>Article 10.

<sup>7</sup>Article 238(1).

<sup>8</sup>Section 10(b) of the Kenya Defence Forces Act, No. 12 of 2012.

<sup>9</sup>Ibid.,Section 10(a)

<sup>10</sup>Articles 130 & 131 of the Constitution.

<sup>11</sup>Article 240(4) of the Constitution.

<sup>12</sup>Article 240(1) of the Constitution.

<sup>13</sup>Article 4(1) of the Constitution.

<sup>14</sup> Kenya Defence Forces Act (2012), section 10(a).

<sup>15</sup> Ibid, section 10(b).

<sup>16</sup> Ibid, section 10(d)(i) and (ii).

<sup>17</sup> Article 241(3)(a) of the Constitution of Kenya, 2010.

<sup>18</sup> Article 240(6)(a) and (b).

<sup>19</sup>Makumi Mwangi, *Framing War Powers in the Kenya Constitution 2010*, Three Legs Consortium *Occasional Paper on National Security*, No. 1 (May, 2019).

<sup>20</sup>*Kenya Foreign Policy* [2014].

<sup>21</sup> Carl von Clausewitz, *On War* (Hertfordshire: Wordsworth, 1997)

<sup>22</sup> Chas W. Freeman, 'Diplomacy as Strategy' (Watson Institute of International and Public Affairs, 19 March, 2018).

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<sup>23</sup>Makumi Mwangi, 'Miles to Go and Promises to Keep: Pan-Africanism in African Institutional and Diplomatic Infrastructure' in Rosemary Anyona & Makumi Mwangi (eds.), *Re-Emerging Pan-Africanism: Vol.1: Implications for Foreign and Security Policy in Africa* (Nairobi: Three Legs Consortium, 2019), pp.131-152.

<sup>24</sup>Makumi Mwangi, *Dimensions of Grand Strategy*, op. cit.

<sup>25</sup>*Kenya Defence Forces Act*, section 10(d)(i) and (ii).

<sup>26</sup>Makumi Mwangi, *Framing War Powers in the Kenya Constitution (2010)*, op. cit.

<sup>27</sup> Juan Emilio Cheyre, 'Defence Diplomacy' in Andrew F.Cooper, Jorge Heine & Ramesh Thakur (eds.), *The Oxford Handbook of Modern Diplomacy* (Oxford: Oxford University Press, 2013)

<sup>28</sup> F. Sanz Roldan, 'La diplomacia de defense: una approximation desde Espana' *Revista Arbor*, CLXV 651 (2000), pp. 519-27; Quoted in Cheyre, *Ibid*.

<sup>29</sup> K.A. Muthanna, 'Military Diplomacy' *Perspectives: Journal of Defence Studies*, Vol.5, No.1 January 2011, pp.1-15:2.



### **Occasional Papers**

*Framing War Powers in the Kenya Constitution, 2010  
Occasional Paper on National Security, No. 1 (May, 2019)*

*Where we are Now: Commentary, Perspectives and Issues on Kenya's Defence  
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*Occasional Paper on National Security, No.2 (June, 2019)*

### **Working Paper**

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Working Paper on Grand Strategy No. 1 (May, 2019)*

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Discussion Paper No. 2 (November, 2018)*

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