



**SCHOOL OF HUMANITIES AND SOCIAL SCIENCES  
MASTER OF ARTS IN DIPLOMACY, INTELLIGENCE AND SECURITY  
END OF SEMESTER EXAMINATION  
MDIS8212 LEGAL ASPECTS OF NATIONAL SECURITY POLICY**

**DATE: 16<sup>th</sup> December 2024**

**TIME: 18:00 – 20:30**

---

**Instructions**

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions.

**QUESTION ONE (20 Marks) (COMPULSORY)**

Parliament is touted as the Supreme Organ of the Government in Kenya regarding matters of National Security. Nothing happens from the national security angle in Kenya without parliamentary involvement. This is seen under various Articles of the Constitution and the Kenya Defence Forces Act, The National Police Service Act, and the National Security Council Act, amongst others. Evaluate the arguments for or against this position or otherwise, citing the relevant legal examples of this unfettered power.

**QUESTION TWO (20 Marks)**

Article 132 (4) (e) of the Constitution of Kenya provides that *the President may, with the approval of Parliament, declare war.*

Article 95 (6) of the Constitution of Kenya provides for the Role of the National Assembly, i.e., *the National Assembly approves declarations of war and extensions of states of emergency.*

This raises questions about the duality of war powers, and in this case, the division of war powers between the Legislative and Executive Branches of government.

Discuss:

1. The concept of the duality of war powers in Kenya. **(10 marks)**
  
2. Situations when the President Is Permitted to Use the Armed Forces Without Prior Parliamentary Authorization. **(10 marks)**

### **QUESTION THREE (20 Marks)**

“Security, like peace, identity and other terminologies in that fold of international political theory, has attracted many definitions. Unfortunately, many contributors approach these concepts from their own ideologies. Hence, broad areas of description of the term “security” exist. If defining security is that elusive, there is little wonder why operating within its coverage is so fluid. In the name of security, people and governments have taken actions where intended and unintended outcomes have become difficult to handle. Because of its seeming lack of conceptual boundary, security, as a concept, is used to entice and whip up patronage for many political projects both at the state and international levels of politicking. Hence, Paul D. Williams argued that “security is therefore a powerful political tool in claiming attention for priority items in the competition for government attention”. **Segun Osisanya, ‘National Security versus Global Security.’**

- a) In light of the statement above, highlight the different areas of interest that States focus on as part of their Non- Military Ideas of National Security. **(10 marks)**
  
- b) Articulate reasons for more collaboration, cooperation, and synergy between national and global security focus areas and mechanisms. **(10 marks)**

### **QUESTION FOUR (20 Marks)**

Discuss the role of the Kenya Defence Forces as an organ of National Security in Kenya in actualising the Principles of National Security in Kenya as envisaged by Article 238 (2) of the Constitution of Kenya.

### **QUESTION FIVE (20 Marks)**

Executive Order No. 1 of 2023 on the Organization of the Government of Kenya designated the Office of the National Security Advisor, who, by a gazette notice, was nominated secretary to the National Security Council. The office has generated debate as follows:

- *“Some see the office's occupant as a gatekeeper between the President and the other heads of the national security organs.”*
- *“Some see the office occupier as just a personal aide to the president with no statutory defined roles, reporting structure and alignment to the bureaucracy.”*
- *“Some see the office occupier as necessary in coordinating the framework of National Security in the Country”.*

The National Security Council is established under Article 240 of the Constitution of Kenya.

Analyse the position of the ‘stranger’ to the National Security Council and its legality. **(20 marks)**