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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT | FOURTH SESSION (2025)

REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION ON ITS CONSIDERATION OF:

1. THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2024, (LN. NO. 187 OF 2024), AND,
2. THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON PREVENTION, SUPPRESSION AND DISRUPTION OF PROLIFERATION FINANCING (AMENDMENT) REGULATIONS, 2024 (L.N NO 188 OF 2024)

APRIL 2025

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 17 APR 2025	
DAY: Thursday	
TABLED BY:	Hon. Robert Mbari, <i>emp</i> Member
CLERK AT THE TABLE:	A. Shibusko

The Directorate of Audit, Appropriations & General-Purpose Committees

The National Assembly

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NAIROBI

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TABLE OF CONTENTS

ABBREVIATIONS AND ACCRONYMS	4
CHAIRPERSON'S FORWARD	4
1.0 PREFACE.....	7
1.1 Establishment and Mandate of the Committee.....	7
1.2 Committee Membership.....	8
1.3 Committee Secretariat.....	10
2.0 CONSIDERATION OF THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2024 (L.N. NO. 187 OF 2024).....	11
2.1 Introduction.....	11
2.2 Object and Purpose of the Regulations.....	11
2.3 Legislative Context.....	11
2.4 Policy Context and Rationale for the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (L.N. No. 187 of 2024).....	12
2.4 Summary of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (L.N. No. 187 of 2024).....	14
3.0 COMMITTEE OBSERVATIONS.....	16
3.1 Statutory Timelines.....	17
3.2 Consultations/Public Participation.....	18
3.3 Regulatory Impact Statement.....	18
4.0 COMMITTEE RECOMMENDATIONS.....	18
2.0 CONSIDERATION OF THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON PREVENTION, SUPPRESSION AND DISRUPTION OF PROLIFERATION FINANCING (AMENDMENT) REGULATIONS, 2024 (LEGAL NOTICE NO. 188 OF 2024)	19
Introduction.....	19

2.2 Object and Purpose of the Regulations	19
2.3 Legislative Context	19
2.4 Policy Context and Rationale for the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 (L.N. No. 188 of 2024)	20
2.4 Summary of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (L.N. No. 187 of 2024)	21
3.0 COMMITTEE OBSERVATIONS	22
3.1 Statutory Timelines	22
3.2 Consultations/Public Participation	23
3.3 Regulatory Impact Statement	23
4.0 COMMITTEE RECOMMENDATIONS	24

ABBREVIATIONS AND ACCRONYMS

TF	Terrorism Financing
POTA	Prevention of Terrorism Act
AML	Anti-Money Laundering
CFT	Combating the Financial Terrorism
CPF	Combating proliferation Financing
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
ICRG	International Cooperation Review Group
FATF	Financial Action Task Force
FRC	Financial Reporting Centre
NTF	National Task Force
TFS	Targeted Financial Sanctions
UNSCR	United Nations Security Council Resolution

CHAIRPERSON'S FORWARD

The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 (L.N 187 of 2024 and L.N 188 of 2024) were made pursuant to powers conferred on the Cabinet Secretary, Ministry of Interior and National Administration by Section 50 of the Prevention of Terrorism Act, 2012 hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (No 23 of 2013).

The Regulations were published in the Gazette as L.N No. 187 of 2024 and L.N No 188 of 2024 on 20th November 2024, forwarded to the Clerk of the National Assembly and laid on the table of the House on 16th January, 2025. They were subsequently referred to the Committee on Delegated Legislation for consideration.

The Primary purpose of the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2024 (POTA Regulations, 2024) and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 is to give effect to and ensure the full implementation of the substantive provisions of the Parent Act particularly as relates to implementation of measures on targeted financial sanctions in relation to terrorism financing.

Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the regulation-making authorities before making its decision, the Committee held a meeting with the Ministry of Interior and National Administration on 17th April, 2025 to deliberate on the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (LN No. 187 Of 2024) and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 (L.N No. 188 of 2024).

Having examined the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 Legal Notice No. 187 of 2024 and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 Legal Notice No. 188 of 2024 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*Cap 2A*) and the Prevention of Terrorism Act, 2012, (*Cap 59B*), the Committee recommends that the House **APPROVES the Prevention of Terrorism (Implementation of the United Nations Security Council**

Resolutions on Suppression of Terrorism) Regulations, 2024 for operations by the Ministry of Interior and National Administration and other relevant Ministries.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate. I also wish to thank the Committee Membership for their diligence during the consideration of these Regulations.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the **Committee's Report on the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (L.N. No. 187 of 2024 and the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024) (L.N. No. 188 of 2024)**

HON. CHEPKONG'A KIPRONO SAMUEL, CBS, MP.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established under *Standing Order No. 210* of the National Assembly Standing Orders and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the Courts;
 - f) gives retrospective effect to any of the provisions in respect to which the Constitution or the Act does not expressly give any such power;
 - g) involves expenditure from the Consolidated Fund or other public revenues;
 - h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

Chairperson

Hon. Chepkong’ a Kiprono Samuel, CBS, M.P.

Ainabkoi Constituency

UDA

Vice-Chairperson

Hon. Githinji Robert Gichimu, M.P.

Gichugu Constituency

UDA

Committee Members

Hon. Mbui Robert, CBS, M.P

Kathiani Constituency

WDM-Kenya

**Hon. (Maj) (Rtd) Dekow Barrow Mohamed,
M.P**

Garrisa Township Constituency

UDA

**Hon. Julius Lekakeny Ole Sunkuli, EGH,
EBS, M.P.**

Kilgoris Constituency

KANU

Hon. Kamene Joyce, M.P

Machakos County

WDM-Kenya

Hon. Onchoke, Mamwacha Charles, M.P.

Bonchari Constituency

UPA

Hon Kimaiyo, Gideon Kipkoech, M.P.

Keiyo South Constituency

UDA

Hon. Waithaka, John Machua, M.P.

Kiambu Constituency

UDA

Hon. Chebor, Paul Kibet, M.P

Rongai Constituency

UDA

Hon. Yakub Adow Kuno, M.P

Bura Constituency

UPIA

**Hon. (Maj) (Rtd) Abdullahi, Bashir Sheikh,
M.P.**

Mandera North Constituency

UDM

Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

UDA

Hon. Oduyo, Jared Okello, M.P.

Nyando Constituency

ODM

Hon. Chepkorir Linet, M.P.
Bomet County
UDA

Hon. Munyoro Joseph Kamau, M.P
Kigumo Constituency
UDA

Hon. Oluoch, Anthony Tom, M.P.
Mathare Constituency
ODM

Hon. Lenguris Pauline, M.P.
Samburu County
UDA

Hon. Mwale, Nicholas S. Tindi M.P.
Butere Constituency
ODM

Hon Mnyazi Amina Laura, MP.
Malindi Constituency
ODM

Hon. Mugabe Innocent Maino, M.P.
Lukuyani Constituency
ODM

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Wilson Duma Dima
Deputy Director-DLS

Mr. Brian Langwech
Clerk Assistant III

Ms. Isabella Mwembi
Clerk Assistant III

Mr. Silvanus Makau
Clerk Assistant III

Ms. Angela Musau
Legal Counsel II

Mr. Peter Barasa
Legal Counsel II

Mr. Daniel Ominde
Research Officer III

Mr. Noah Chemweno
Serjeant at Arms

Mr. Valerian Pascal
Hansard Reporter III

Ms. Rahab Chepkilim
Audio Officer

2.0 CONSIDERATION OF THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2024 (L.N. NO. 187 OF 2024)

2.1 Introduction

5. The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations (*LN No. 187 Of 2024*) were made pursuant to powers conferred on the Cabinet Secretary, Ministry of Interior and National Administration by Section 50(1) of the Prevention of Terrorism Act, 2012 hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*).
6. The Regulations were published in the Gazette as LN No 187 of 2024 on 20th November 2024, forwarded to the Clerk of the National Assembly on 6th December, 2024 and laid on the table of the House on 16th January, 2025. They were subsequently referred to the Committee on Delegated Legislation for consideration.
7. Pursuant to section 16 of the Statutory Instruments Act, 2013, which requires the Committee to confer with the regulation-making authorities before making its decision, the Committee held a meeting with the Ministry of Interior and National Administration on Thursday, 17th April, 2025, to deliberate on the Regulations.

2.2 Object and Purpose of the Regulations

8. The Primary purpose of the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2024 (POTA Regulations, 2024) is to give effect to and ensure the full implementation of the substantive provisions of the Parent Act particularly as relates to implementation of measures on targeted financial sanctions in relation to terrorism financing.

2.3 Legislative Context

9. Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.
10. Kenya is a party to various United Nations conventions aimed at addressing terrorism and proliferation, including those related to financial aspects. The country has ratified UN conventions and incorporated them into its national laws occasioning the regulations herein.
11. Section 50(1) of the Prevention of Terrorism Act, 2012 (POTA) empowers the Cabinet Secretary to make Regulations in respect of which regulations are required or authorized by this Act or in circumstances where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon member States to apply those measures, the regulations are necessary to enable the application of these measures.

2.4 Policy Context and Rationale for the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (L.N. No. 187 of 2024)

12. The country's regime to combat, Terrorism Financing (TF) is largely contained in the Prevention of Terrorism Act, 2012 (POTA) and the attendant Regulations thereunder namely, Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations),2024.
13. Kenya's Anti-Money Laundering/Combating the Financial Terrorism and Combating proliferation Financing (AML/CFT/CPF) regime is under review by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the International Cooperation Review Group (ICRG) of the Financial Action Task Force (FATF) with Kenya currently being amongst the jurisdictions under increased monitoring (FATF Grey List).
14. Consequently, the Country is required to address the strategic deficiencies identified in Kenya's Action Plan with FATF within set timelines. Key among the deficiencies is to review Kenya's legal framework to implement Targeted Financial Sanctions (TFS) related to financing terrorism, anchored under the Prevention of Terrorism Act 2012 (POTA).
15. The Legal Sub Group of the National Task Force on Anti-Money Laundering and Counter-Terrorism Financing (NTF) has undertaken a comprehensive review of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2023 ("TF Regulations"). The NTF proposed that the Regulations be aligned with the requirements of the FATF Standards to address the outstanding deficiencies identified by the ESAAMLG and the FATF in relation to Kenya's implementation of Targeted Financial Sanctions (TFS) relating to Terrorism Financing (TF).
16. The new TF Regulations address freezing of TFS for TF without delay. The Reviewers were of the view that the process was long and convoluted and took more than twenty-four hours (the recommended timeline) to implement. To address this, the new Regulations provide the responsibility of receiving and circulating the United Nations Security Council Resolution UNSCR 1267 (UNSCR 1267) sanctions list to the Secretary of the Counter Financing Inter Ministerial Committee (CFTIMC) to action on behalf of the CFTIMC.
17. The Reviewers also found that there was no clarity with how Kenya implements United Nations Security Council Resolution 1373 (UNSCR 1373) with regard to designations, delisting and allowing access to frozen funds. To address this, the new Regulations has separated the mechanisms for implementation of UNSCR 1267 and UNSCR 1373 in terms of the procedures for designation and delisting of designated persons and entities.
18. The new Regulations also enhances the protection of third parties for implementing the obligations of Recommendation 6, which the Reviewers indicated to be missing.

19. As per the Mutual Evaluation Procedures, both the ESAAMLG and the FATF only consider legal instruments that are in force and effect. This means that the TF Regulations needed to be operationalized i.e. enacted or promulgated and in be in operation for the ESAAMLG and FATF to consider them. To enable Kenya meet the set deadlines, the Regulations needed to be in force by or before **20th November 2024**, as Kenya was required to submit its progress report to the ICRG by **22nd November 2024**, which it has done.

2.4 Summary of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (L.N. No. 187 of 2024)

- (i) Regulation 1** provides for the citation of the Regulations.
- (ii) Regulation 2** provides for interpretation of the various terms used in the regulations.
- (iii) Regulation 3** provides for application of the regulations.
- (iv) Regulation 4** provides for obligation to implement the regulations where the regulations provide that the Counter Financing of Terrorism Inter-ministerial Committee shall be responsible for the implementation of targeted financial sanctions relating to suppression of terrorism financing.
- (v) Regulation 5** provides for the Circulation of the United Nations Sanctions List.
- (vi) Regulation 6** provides for the Authority to freeze funds, property, assets of a designated person or entity where a designation or circulation of a sanctions list has been issued, subject to regulation 5.
- (vii) Regulation 7** provides for Action to be taken upon designation under Resolution 1267 or 1988.
- (viii) Regulation 8** provides for the Implementation timeline for regulation 5 and 7 which shall be undertaken cumulatively and without delay.
- (ix) Regulation 9** provides for Reporting. That within twenty-four hours of taking actions or freezing assets under regulation 7, the person who effected the freezing shall, through the secretary of the committee and in a specified manner file a report with the committee specifying the assets frozen or action taken including attempted transactions.
- (x) Regulation 10** provides for a proposal for listing under Resolution 1267 or 1988 where there is a reasonable ground to believe that a person or entity meets relevant listing criteria.
- (xi) Regulation 11** provides for access to frozen funds or other assets by a person whose funds have been affected by the freezing order issued in accordance with Resolution 1267/1989 and Resolution 1988.
- (xii) Regulation 12** provides for third-party claims by a person who claims to have a bono-fide right to funds or assets frozen in terms of regulations 7 and 15.
- (xiii) Regulation 13** provides for application for the de-listing 1267 or 1988 by a designated person or entity.
- (xiv) Regulation 14** Provides for Designation under Resolution 1373 on the motion of the committee or upon request by a competent person.

- (xv) **Regulation 15** provides for Actions to be taken upon designation under Resolution 1373.
- (xvi) **Regulation 16** provides for notification of designation under Resolution 1373
- (xvii) **Regulation 17** provides for the request to another Country. That where committee may, through the Cabinet Secretary, request any other country to give effect to the actions and freezing mechanisms against any person or entity designated under the regulation.
- (xviii) **Regulation 18** provides for third-party requests for designation to Kenya.
- (xix) **Regulation 19** provides for the Authority to solicit and collect information for designation by the committee.
- (xx) **Regulation 20** provides for a Domestic list. That the committee shall compile and maintain a domestic list.
- (xxi) **Regulation 21** provides for Application for review of designation under Resolution 1373. That within fourteen days of receiving information on designation, a designated person may apply to the high court for review of that decision.
- (xxii) **Regulation 22** provides for de-listing from the Domestic list. That the Committee may de-list a designated person or entity from the domestic list where it is established that the designated person no longer meets the designation criteria under regulation 14.
- (xxiii) **Regulation 23** provides for Authorization to access funds frozen pursuant to listing on the Domestic list. A person listed in the domestic list and any interested party may make an application to the committee through secretary of the Committee in a specified manner for authorization to access frozen funds or part of the funds.
- (xxiv) **Regulation 24** Provides for False Positives. Any person or entity inadvertently affected by freezing or other measures due to having the same or similar name with a designated person or entity on a domestic list, may make an application to the committee that the person or entity involved is not the designated person.
- (xxv) **Regulation 25** Provides for Notices by the Committee to the competent parties or entity of any amendment to the name of the person on the sanctions list and the domestic list and information required for inclusion in the list
- (xxvi) **Regulation 26** provides for Duty to report violations of Regulations. A person who obtains information on the breach of any provision of these regulations shall, within forty-eight hours after obtaining such information, inform the committee or report the breach to the nearest police station.
- (xxvii) **Regulation 27** provides for the Entry of designated persons into Kenya.
- (xxviii) **Regulation 28** provides for circumstances where a person may be allowed under the travel restrictions.

- (xxix) **Regulation 29** provides for Transactions with designated persons in relation to prohibited arms. A person in Kenya or citizen of Kenya in any place outside Kenya shall not directly or indirectly enter into or deal in supply, sale, transfer, carriage delivery, training in or provision of technical assistance or any deal with any weapons or related materials of any type, knowing that the weapon or materials are intended to be imported by a designated person.
 - (xxx) **Regulation 30** provides for Carriage of arms to designated persons prohibition. A person shall not use a ship or aircraft or use a Kenyan ship or or aircraft in any place outside Kenya for carriage of weapons or related materials from or to a designated person
 - (xxxi) **Regulation 31 and 32** provide for Availing resources to prohibited persons and protection from liability, respectively
 - (xxxii) **Regulations 33,34, and 35** provide for Penalties, Internal rules, and Returns, respectively.
 - (xxxiii) **Regulation 36 and 37** provide for On-going monitoring of transactions and Powers to issue directives and guidelines, respectively.
 - (xxxiv) **Regulation 38** Provides for the Revocation of L.N. No. 152 of 2023.
20. The Committee examined the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (*L.N. No. 187 of 2024*) against the Constitution, the Interpretation and General Provisions Act (Cap 2), the Prevention of Terrorism Act, 2012 and the Statutory Instruments Act (No 23 of 2013).
21. The scrutiny was undertaken following the tabling of the Regulations before the House on 16th January, 2025 and their subsequent referral to the Committee on Delegated Legislation. The Committee held a meeting with the Ministry of Interior and National Administration on Thursday, 17th April, 2025, at Committee Room 21, 5th Floor, Bunge Tower, Parliament Buildings, to deliberate on the Regulations.

3.0 COMMITTEE OBSERVATIONS

22. Having examined the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (*L.N. No. 187 of 2024*) against the Constitution, the Interpretation and General Provisions Act (Cap 2), the Prevention of Terrorism Act, 2012 and the Statutory Instruments Act (No 23 of 2013), the Committee observed **THAT**: -
- (a) Legal Notice No. 187 of 2025 is a statutory instrument and has the force of law within the meaning of section 2 of the Statutory Instruments Act, Cap 2A to the extent it is Regulation made pursuant to the powers conferred under section 50 of the of the Prevention of Terrorism Act, Cap 59B.

- (b) Statutory Timelines-The Regulations were published in the Gazette as Legal Notice No. 187 of 2024 on 20th November, 2024, received on the 5th December, 2024 and tabled on the 16th January, 2025 this being the 8th sitting day. Section 11 (1) of the Statutory Instruments Act, Cap 2A requires that every Cabinet Secretary responsible for a regulatory making authority shall within seven days of publication of a statutory instrument, ensure that the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament. Therefore, the Regulations were submitted to Parliament out of time.
- (c) Regulation 33(1) provides that a person or entity that contravenes the provisions of these regulations commits an offense and shall be liable on conviction to a fine not exceeding three million shillings or to an imprisonment for a term not exceeding seven years. This provision is contrary to the provisions of section 24(5) of the Statutory Instruments Act, which provides that there be annexed to the breach of a statutory instrument a penalty not exceeding Kenya Shillings one million or such term of imprisonment not exceeding six months, or both.
- (d) Regulations 20(2) (1), 16(2) (d) and 37 of the regulations inappropriately delegates legislative power contrary to section 13(m) of the Statutory Instruments Act, Cap.2A.
- (e) Regulations 17 (1) of the regulation is defective in its drafting form as the regulation is not clear on what freezing mechanism should the country request another country to initiate against a person.
- (f) Although the explanatory memorandum attached to the regulations indicates that there was consultation with the relevant stakeholders, the regulatory-making body has failed to demonstrate proof of the same. This is contrary to section 5(1) (a) of the Statutory Instruments Act, which requires that every statutory instrument shall be accompanied by an explanatory memorandum which shall contain a statement on the proof and demonstration that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution.

3.1 Statutory Timelines

- 23. The Regulations were published in the Gazette as Legal Notice No. 187 of 2024 on 20th November, 2024, received on the 5th December, 2024 and tabled on the 16th January, 2025 this

being the 8th sitting day. Section 11 (1) of the Statutory Instruments Act, Cap 2A requires that every Cabinet Secretary responsible for a regulatory making authority shall within seven days of publication of a statutory instrument, ensure that the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament. Therefore, the Regulations were submitted to Parliament out of time.

3.2 Consultations/Public Participation

24. Articles 10 and 118 of the Constitution and section 5 of the Statutory Instruments Act require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.
25. The Regulation-making authority did not provide any evidence of public participation in relation to the Regulations.

3.3 Regulatory Impact Statement

26. The Committee was satisfied with the explanation and the demonstration that an impact assessment need not to have been prepared for the statutory instrument as it falls within the exceptions provided under Section 9 of the Statutory Instruments Act, Cap 2A.

4.0 COMMITTEE RECOMMENDATIONS

27. Having examined the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 Legal Notice No. 187 of 2024 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act *Cap 2A* and the Prevention of Terrorism Act, 2012, the Committee recommends that the House **ANNULS** the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 for failure to comply with the requirement under the Constitution, 2010 and the Statutory Instruments Act, *Cap 2A*

5.0 CONSIDERATION OF THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON PREVENTION, SUPPRESSION AND DISRUPTION OF PROLIFERATION FINANCING (AMENDMENT) REGULATIONS, 2024 (LEGAL NOTICE NO. 188 OF 2024)

Introduction

28. The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 were made pursuant to powers conferred on the Cabinet Secretary, Ministry of Interior and National Administration by Section 50 of the Prevention of Terrorism Act, 2012 hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*Cap 2A*).
29. The Regulations were published in the Gazette as LN No. 188 of 2024 on 20th November 2024, forwarded to the Clerk of the National Assembly on 6th December, 2024 and tabled on 16th January, 2025. They were subsequently referred to the Committee on Delegated Legislation for consideration.
30. Pursuant to section 16 of the Statutory Instruments Act, 2013, which requires the Committee to confer with the regulation-making authorities before making its decision, the Committee held a meeting with the Ministry of Interior and National Administration on Thursday, 17th April, 2025, to deliberate on the Regulations.

5.1 Object and Purpose of the Regulations

31. The Primary purpose of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024, is to give effect to and ensure the full implementation of the substantive provisions of the Parent Act particularly as relates to implementation of measures on targeted financial sanctions in relation to terrorism financing.

5.2 Legislative Context

32. Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.
33. Kenya is a party to various United Nations conventions aimed at addressing terrorism and proliferation, including those related to financial aspects. The country has ratified UN conventions and incorporated them into its national laws occasioning the regulations herein.
34. Section 50(1) of the Prevention of Terrorism Act, 2012 (POTA) empowers the Cabinet Secretary to make Regulations in respect of which regulations are required or authorized by this Act or in circumstances where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed

to give effect to any of its decisions and calls upon member States to apply those measures, the regulations are necessary to enable the application of these measures.

5.3 Policy Context and Rationale for the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 (L.N. No. 188 of 2024)

35. The country's regime to combat, Terrorism Financing (TF) is largely contained in the Prevention of Terrorism Act, 2012 (POTA) and the attendant Regulations thereunder namely, Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations),2024.
36. Kenya's Anti-Money Laundering/Combating the Financial Terrorism and Combating proliferation Financing (AML/CFT/CPF) regime is under review by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the International Cooperation Review Group (ICRG) of the Financial Action Task Force (FATF) with Kenya currently being amongst the jurisdictions under increased monitoring (FATF Grey List).
37. Consequently, the Country is required to address the strategic deficiencies identified in Kenya's Action Plan with FATF within set timelines. Key among the deficiencies is to review Kenya's legal framework to implement Targeted Financial Sanctions (TFS) related to financing terrorism, anchored under the Prevention of Terrorism Act 2012 (POTA).
38. The Legal Sub Group of the National Task Force on Anti-Money Laundering and Counter-Terrorism Financing (NTF) has undertaken a comprehensive review of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) Regulations, 2023. The NTF proposed that the Regulations be aligned with the requirements of the FATF Standards to address the outstanding deficiencies identified by the ESAAMLG and the FATF in relation to Kenya's implementation of Targeted Financial Sanctions (TFS) relating to Terrorism Financing (TF).
39. The Regulations address freezing of TFS for TF without delay. The Reviewers were of the view that the process was long and convoluted and took more than twenty-four hours (the recommended timeline) to implement. To address this, the new Regulations provide the responsibility of receiving and circulating the United Nations Security Council Resolution UNSCR 1267 (UNSCR 1267) sanctions list to the Secretary of the Counter Financing Inter Ministerial Committee (CFTIMC) to action on behalf of the CFTIMC.
40. The Regulations also enhance the protection of third parties for implementing the obligations of Recommendation 6, which the Reviewers indicated to be missing.
41. As per the Mutual Evaluation Procedures, both the ESAAMLG and the FATF only consider legal instruments that are in force and effect. This means that the TF Regulations needed to be operationalized i.e. enacted or promulgated and in be in operation for the ESAAMLG and FATF to consider them. To enable Kenya meet the set deadlines, the Regulations needed to be in force by or before **20th November 2024**, as Kenya was required to submit its progress report to the ICRG by **22nd November 2024**, which it has done.

5.4 Summary of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (L.N. No. 187 of 2024)

- (i) **Regulation 1** of the Regulations provides for the citation of the Regulations.
 - (ii) **Regulation 2** seeks to amend regulation 2 by inserting the definition of the words “delisting” and “UNSCR”. This will clarify the meaning of the words as used in the Regulations.
 - (iii) **Regulation 3** seeks to amend regulation 5 by inserting a paragraph that will allow the Secretariat to circulate the Sanction list to any other person. Further the Regulation seeks to amend the sub-regulation (4) to substitute the word “freezing” with the words “on obligation to freeze”. This will enhance clarity on the provision.
 - (iv) **Regulation 4** seeks to amend regulation 7 by inserting the word cumulatively immediately after the word undertaken.
 - (v) **Regulation 5** seeks to amend regulation 11 by substituting the word freezing order with freezing action. This seeks to clarify the provision to the extent that the person will be applying for an exclusion from the freezing action once a person has a *bonafide* right to fund or other assets.
 - (vi) **Regulation 6** seeks to amend regulation 13 by substituting sub regulation 6 with a new provision that provides that the petition filed under regulation 13 shall be determined in accordance with the procedures of the relevant Sanction Committee.
 - (vii) **Regulation 7** seeks to amend regulation 14 by substituting the words “upon confirmation” with the words “upon delisting” and introducing a new sub-regulation that will require persons or entities to unfreeze funds or other assets upon receipt of the notice of delisting.
 - (viii) **Regulation 8** seeks to amend regulation 15 by deleting the words “reporting institution” and substituting with the word “entity”.
 - (ix) **Regulation 9** seeks to amend regulation 25 to introduce further penalties to the existing penalties.
42. The Committee examined the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 (L.N. No. 188 of 2024) against the Constitution, the Interpretation and General Provisions Act (Cap 2), the Prevention of Terrorism Act, 2012 and the Statutory Instruments Act (Cap 2A).
43. The scrutiny was undertaken following the tabling of the Regulations before the House on 16th January, 2025 and their subsequent referral to the Committee on Delegated Legislation. The Committee held a meeting with the Ministry of Interior and National Administration on

Thursday, 17th April, 2025, at Committee Room 21, 5th Floor, Bunge Tower, Parliament Buildings, to deliberate on the Regulations.

6.0 COMMITTEE OBSERVATIONS

44. Having examined the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 (*L.N. No. 187 of 2024*) against the Constitution, the Interpretation and General Provisions Act (Cap 2), the Prevention of Terrorism Act, 2012 and the Statutory Instruments Act (No 23 of 2013), the Committee observed **THAT**: -

(a) Legal Notice No. 188 of 2025 is a statutory instrument and has the force of law within the meaning of section 2 of the Statutory Instruments Act, Cap 2A to the extent it is Regulation made pursuant to the powers conferred under section 50 of the of the Prevention of Terrorism Act, Cap 59B.

(b) There was no evidence of an Explanatory Memorandum accompanying the Regulations as required under section 7 of the Statutory Instruments Act, Cap 2A .

(d) Regulatory Impact Statement- Subject to Section 9(e) of the Statutory Instruments Act, the Regulations may be exempted from the requirements of a Regulatory Impact Statements as these regulations are an amendment that does not fundamentally affect the legislation's application or operation.

(f) Regulation 14(b) seeks to amend the regulations to substitute "upon confirmation" with "upon delisting" We note that this substitution is likely to make the provision ambiguous since it will interfere with the flow of the sentence.

(g) Regulation 8 that seeks to amend regulation 15 should include an amendment to the marginal note so that the marginal note and the provision will be aligned.

(h) Regulation 9 seeks to provide additional penalties. We note that the proposal under section 25(2) may result in double punishment and further delegates delegated power contrary to section 13 (m) of the Statutory instruments Act, Cap 2A. Further the clause provides for a penalty of not more than three million shillings for each violation. This is contrary to the provisions of section 24(5) of the Statutory Instruments Act, which provides that a breach of a statutory instrument attracts a penalty not exceeding one million Shillings or such term of imprisonment not exceeding six months, or both. In case the regulatory making authority intended to set a higher penalty, it should have directly cross referenced the penalty in the Act under section 30 which is higher than the penalty under the Statutory Instruments Act.

6.1 Statutory Timelines

45. The Regulations were published in the Gazette as Legal Notice No. 187 of 2024 on 20th November, 2024, received on the 5th December, 2024 and tabled on the 16th January, 2025 this being the 8th sitting day. Section 11 (1) of the Statutory Instruments Act, Cap 2A requires that

every Cabinet Secretary responsible for a regulatory making authority shall within seven days of publication of a statutory instrument, ensure that the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament. Therefore, the Regulations were submitted to Parliament out of time.

6.2 Consultations/Public Participation

46. Articles 10 and 118 of the Constitution and section 5 of the Statutory Instruments Act require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.
47. The Regulation-making authority did not provide any evidence of public participation in relation to the Regulations.

6.3 Regulatory Impact Statement

48. The Committee was satisfied with the explanation and the demonstration that an impact assessment need not to have been prepared for the statutory instrument as it falls within the exceptions provided under Section 9 of the Statutory Instruments Act, No. 23 of 2013.


7.0 COMMITTEE RECOMMENDATIONS

49. Having examined the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 Legal Notice No. 188 of 2024 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*Cap 2A*) and the Prevention of Terrorism Act, 2012, the Committee recommends that the House **ANNULS** the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 for failure to comply with the requirement under the Constitution, 2010 and the Statutory Instruments Act, *Cap 2A*.

Signed 

Date 

THE HON. CHEPKONG'A SAMUEL KIPRONO, CBS, MP
(CHAIRPERSON)
COMMITTEE ON DELEGATED LEGISLATION

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 17 APR 2025	
DAY: Thursday	
TABLED BY:	Hon - Robert Mwangi Member
CLERK-AT THE-TABLE:	A. Shituko

MINUTES OF THE 11TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 17TH APRIL, 2025, IN COMMITTEE ROOM 21, 5TH FLOOR, BUNGE TOWER, AT 10.00 A.M

PRESENT

1. The Hon Samuel Kiprono Chepkong'a, CBS, M.P. - Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. - Vice-Chairperson
3. The Hon. Robert Mbui, CBS, M.P
4. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
5. The Hon. (Dr.) Charles Mamwacha Onchoke. M.P
6. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
7. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
8. The Hon. Pauline Lenguris, M.P.
9. The Hon. Linet Chepkorir M.P.
10. The Hon. Jared Okello Odoyo, M.P.
11. The Hon. Joyce Kamene, M.P
12. The Hon. Anthony Oluoch, M.P.
13. The Hon. (Dr.) Gideon Kipkoech Kimaiyo, M.P.
14. The Hon. Yakub Adow Kuno, M.P.

APOLOGIES

1. The Hon. Nicholas S. Tindi Mwale, M.P.
2. The Hon. John Paul Mwirigi, M.P.
3. The Hon. Laura Amina Mnyazi, M.P.
4. The Hon. Waithaka, John Machua, M.P.
5. The Hon. Paul Chebor, M.P.
6. The Hon. Joseph Kamau Munyoro, M.P
7. The Hon. Innocent Mugabe, M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Wilson Dima Dima | - | Deputy Director - DLS |
| 2. Mr. Brian Langwech | - | Clerk Assistant III |
| 3. Mr. Silvanus Makau | - | Clerk Assistant III |
| 4. Ms. Isabella Mwembi | - | Clerk Assistant III |
| 5. Mr. Peter Barasa | - | Legal Counsel II |
| 6. Ms. Angela Musau | - | Legal Counsel II |
| 7. Ms. Fiona Wanjiru | - | Legal Counsel II |
| 8. Ms. Elsy Jerop | - | Legal Counsel II |
| 9. Ms. Rahab Chepkilim | - | Audio Officer |
| 10. Mr. Noah Chemweno | - | Sargent at arm |

MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION

- | | | |
|-----------------------|---|----------------|
| 1. Mr. Kepha Onyiso | - | DCSC, Interior |
| 2. Mr. Benson Njagi | - | P.S.C |
| 3. Mr. Kenneth Kiathe | - | SAS, Interior |
| 4. Mr. Richard Chesos | - | MCC, Interior |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Meeting with the Principal Secretary, State Department for Internal Security and National Administration regarding the following Regulations-**
 - i. **The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024; and**
 - ii. **The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulation, 2024.**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&GPC/CDL/052/2025

PRELIMINARIES

The Chairperson called the Meeting to order at 10.25 a.m. and said a word of prayer. He then welcomed everyone to the meeting, followed by a round of introduction.

MIN. DAA&GPC/CDL/053/2025

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P and seconded by the Hon. (Dr.) Gideon Kipkoech Kimaiyo, M.P.

MIN. DAA&GPC/CDL/054/2025

CONFIRMATION OF MINUTES

1. The Minutes of the 2nd Sitting held on Tuesday, 10th April 2025, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Robert Gichimu Githinji, M.P. - Vice-Chairperson and seconded by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
2. The Minutes of the 2nd Sitting held on Tuesday, 11th April 2025, were confirmed as an accurate record of the proceedings having been proposed by the Hon. (Dr.) Gideon Kipkoech Kimaiyo, M.P. and seconded by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P

3. The Minutes of the 2nd Sitting held on Tuesday, 11th April 2025, were confirmed as an accurate record of the proceedings having been proposed by the Hon. (Dr.) Charles Mamwacha Onchoke. M.P and seconded by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
4. The Minutes of the 2nd Sitting held on Tuesday, 12th April 2025, were confirmed as an accurate record of the proceedings having been proposed by the Hon. (Dr.) Gideon Kipkoech Kimaiyo, M.P. and seconded by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P

MIN. DAA&GPC/CDL/055/2025

**THE PREVENTION OF TERRORISM
(IMPLEMENTATION OF THE
UNITED NATIONS SECURITY
COUNCIL RESOLUTIONS ON
PREVENTION, SUPPRESSION AND
DISRUPTION OF PROLIFERATION
FINANCING) (AMENDMENT)
REGULATIONS, 2024**

The Principal Secretary, State Department for Internal Security and National Administration was scheduled appear and brief the committee on the Regulations under Ministry of Interior and National administration. However, due to exigency duty the Principal Secretary nominated Mr. Kepha Onyiso, Senior State Counsel to represent him in the said meeting. He presented as follows;

The Prevention of Terrorism (Implementation of The United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 were made by the Cabinet Secretary for Interior and National Administration in exercise of powers conferred to him under the provisions of Section 50 (1) of Prevention of Terrorism Act, Cap. 59B.

Summary of the contents of the Legal Notice No. 187 of 2024 are as follows;

1. **Regulation 1** provides for the citation of the Regulations.
2. **Regulation 2** provides for interpretation of the various terms used in the regulations.
3. **Regulation 3** provides for application of the regulations.
4. **Regulation 4** provides for obligation to implement the regulations where the regulations provide that the Counter Financing of Terrorism Inter-ministerial Committee shall be responsible for the implementation of targeted financial sanctions relating to suppression of of terrorism financing.
5. **Regulation 5** provides for the Circulation of the United Nations Sanctions List.
6. **Regulation 6** provides for the Authority to freeze where a designation or circulation of a sanctions list has been issued, subject to regulation 5.

7. **Regulation 7** provides for Action to be taken upon designation under Resolution 1267 or 1988.
8. **Regulation 8** provides for the Implementation timeline for regulation 5 and 7 which shall be undertaken cumulatively and without delay.
9. **Regulation 9** provides for Reporting. That within twenty-four hours of taking actions or freezing assets under regulation 7, the person who effected the freezing shall, through the secretary of the committee and in a specified manner file a report with the committee specifying the assets frozen or action taken including attempted transactions.
10. **Regulation 10** provides for a proposal for listing under Resolution 1267 or 1988 where there is a reasonable ground to believe that a person or entity meets relevant listing criteria.
11. **Regulation 11** provides for access to frozen funds or other assets by a person whose funds have been affected by the freezing order issued in accordance with Resolution 1267/1989 and Resolution 1988.
12. **Regulation 12** provides for third-party claims by a person who claims to have a bono-fide right to funds or assets frozen in terms of regulations 7 and 15.
13. **Regulation 13** provides for application for the de-listing 1267 or 1988 by a designated person or entity.
14. **Regulation 14** Provides for Designation under Resolution 1373 on the motion of the committee or upon request by a competent person.
15. **Regulation 15** provides for Actions to be taken upon designation under Resolution 1373.
16. **Regulation 16** provides for notification of designation under Resolution 1373.
17. **Regulation 17** provides for the request to another Country. That where committee may, through the Cabinet Secretary, request any other country to give effect to the actions and freezing mechanisms against any person or entity designated under the regulation.
18. **Regulation 18** provides for third-party requests for designation to Kenya.
19. **Regulation 19** provides for the Authority to solicit and collect information for designation by the committee.
20. **Regulation 20** provides for a Domestic list. That the committee shall compile and maintain a domestic list.
21. **Regulation 21** provides for Application for review of designation under Resolution 1373. That within fourteen days of receiving information on designation, a designated person may apply to the high court for review of that decision.

22. **Regulation 22** provides for de-listing from the Domestic list. That the Committee may de-list a designated person or entity from the domestic list where it is established that the designated person no longer meets the designation criteria under regulation 14.
23. **Regulation 23** provides for Authorization to access funds frozen pursuant to listing on the Domestic list. A person listed in the domestic list and any interested party may make an application to the committee through secretary of the Committee in a specified manner for authorization to access frozen funds or part of the funds.
24. **Regulation 24** Provides for False Positives. Any person or entity inadvertently affected by freezing or other measures due to having the same or similar name with a designated person or entity on a domestic list, may make an application to the committee that the person or entity involved is not the designated person.
25. **Regulation 25** Provides for Notices by the Committee to the competent parties or entity of any amendment to the name of the person on the sanctions list and the domestic list and information required for inclusion in the list .
26. **Regulation 26** provides for Duty to report violations of Regulations. A person who obtains information on the breach of any provision of these regulations shall, within forty-eight hours after obtaining such information, inform the committee or report the breach to the nearest police station.
27. **Regulation 27** provides for the Entry of designated persons into Kenya.
28. **Regulation 28** provides for circumstances where a person may be allowed under the travel restrictions.
29. **Regulation 29** provides for Transactions with designated persons in relation to prohibited arms. A person in Kenya or citizen of Kenya in any place outside Kenya shall not directly or indirectly enter into or deal in supply, sale, transfer, carriage delivery, training in or provision of technical assistance or any deal with any weapons or related materials of any type, knowing that the weapon or materials are intended to be imported by a designated person.
30. **Regulation 30** provides for Carriage of arms to designated persons prohibition. A person shall not use a ship or aircraft or use a Kenyan ship or or aircraft in any place outside Kenya for carriage of weapons or related materials from or to a designated person
31. **Regulation 31 and 32** provide for Availing resources to prohibited persons and protection from liability, respectively
32. **Regulations 33,34, and 35** provide for Penalties, Internal rules, and Returns, respectively.
33. **Regulation 36 and 37** provide for On-going monitoring of transactions and Powers to issue directives and guidelines respectively.

34. **Regulation 38** Provides for the Revocation of L.N. No. 152 of 2023.

35. Upon deliberation, the Committee observed and recommended as follows;

- (i) Regulation 33(1) provides that a person or entity that contravenes the provision of these regulations commits an offense and shall be liable on conviction to a fine not exceeding three million shillings or to an imprisonment for a term not exceeding seven years. This provision is contrary to the provisions of section 24(5) of the Statutory Instruments Act, which provides that there be annexed to the breach of a statutory instrument a penalty not exceeding Kenya Shillings one million or such term of imprisonment not exceeding six months, or both.
- (ii) Regulations 20(2) (1) and 16(2) (d) of the regulations inappropriately delegate legislative power contrary to section 13(m) of the Statutory Instruments Act, Cap.2A.
- (iii) Regulations 17 (1) of the regulation is defective in its drafting form as the regulation is not clear on under what freezing mechanism should the country request another country to initiate against a person.
- (iv) Regulations 37 inappropriately delegates legislative powers to the Cabinet Secretary to issue such directions, guidelines or rules as he or she may consider necessary for the better carrying out of the provisions of this regulations.
- (v) Although the explanatory memorandum attached to the regulations indicates that there was consultation with the relevant stakeholders, the regulatory-making body has failed to demonstrate proof of the same. This is contrary to section 5(1) (a) of the Statutory Instruments Act, which requires that every statutory instrument shall be accompanied by an explanatory memorandum which shall contain a statement on the proof and demonstration that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution.

15. In view of the findings above, the Committee resolved to recommend to the House to **Annul**, the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulation, 2024 having been proposed by Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P and seconded by the Hon. J(Dr.) Gideon Kipkoech Kimaiyo, M.P.

MIN. DAA&GPC/CDL/055/2025

**THE PREVENTION OF TERRORISM
(IMPLEMENTATION OF THE
UNITED NATIONS SECURITY
COUNCIL RESOLUTIONS ON
SUPPRESSION OF TERRORISM)
REGULATION, 2024**

The committee was briefed as follows;

1. **CLAUSE 1** of the Regulations provides for the citation of the Regulations.

2. **CLAUSE 2** seeks to amend regulation 2 by inserting the definition of the words “delisting” and “UNSCR”. This will clarify the meaning of the words as used in the Regulations.
3. **CLAUSE 3** seeks to amend regulation 5 by inserting a paragraph that will allow the Secretariat to circulate the Sanction list to any other person. Further the Clause seeks to amend the sub-regulation (4) to substitute the word “freezing” with the words “on obligation to freeze”. This will enhance clarity on the provision.
4. **CLAUSE 4** seeks to amend regulation 7 by inserting the word cumulatively immediately after the word undertaken.
5. **CLAUSE 5** seeks to amend regulation 11 by substituting the word freezing order with freezing action. This seeks to clarify the provision to the extent that the person will be applying for an exclusion from the freezing action once a person has a *bonafide* right to fund or other assets.
6. **CLAUSE 6** seeks to amend regulation 13 by substituting sub regulation 6 with a new provision that provides that the petition filed under regulation 13 shall be determined in accordance with the procedures of the relevant Sanction Committee.
7. **CLAUSE 7** seeks to amend regulation 14 by substituting the words “upon confirmation” with the words “upon delisting” and introducing a new sub-regulation that will require persons or entities to unfreeze funds or other assets upon receipt of the notice of delisting.
8. **CLAUSE 8** seeks to amend regulation 15 by deleting the words “reporting institution” and substituting with the word “entity”.
9. **CLAUSE 9** seeks to amend regulation 25 to introduce further penalties to the existing penalties.
10. Upon deliberation, the Committee Made the following observation and recommendation; that,
 - i. Legal Notice No. 188 of 2025 is a statutory instrument and has the force of law within the meaning of section 2 of the Statutory Instruments Act, Cap 2A to the extent it is Regulation made pursuant to the powers conferred under section 50 of the of the Prevention of Terrorism Act, Cap 59B.
 - ii. Statutory Timelines-The Regulations were published in the Gazette as Legal Notice No. 188 of 2024 on 20th November, 2024 were laid on table on the 16th January, 2025 being the 7th sitting day, hence within the Statutory timelines contemplated under section 11 (1) of the Statutory Instruments Act, Cap 2A.
 - iii. The legal Notice No.188 of 2024 is accompanied by a detailed Explanatory Memorandum which provides for the purpose of the Legal Notice, legislative context, policy background, public consultation outcome, performance monitoring and evaluation and the contact person at the Ministry.
 - iv. Public Participation- Although the explanatory memorandum attached to the regulations indicates that there was consultation with the relevant stakeholders, there is no evidence to justify that public participation was undertaken. Article 10 and 118 of the Constitution and section 5 of the Statutory Instruments Act require that the regulation making authority should conduct public participation and sufficient consultation with stakeholders and person likely to be affected by the regulations.
 - v. Regulatory Impact Statement- Subject to Section 9(e) of the Statutory Instruments Act, the Regulations may be exempted from the requirements of a Regulatory

Impact Statements as these regulations are an amendment that does not fundamentally affect the legislation's application or operation.

- vi. Clause 14(b) seeks to amend the regulations to substitute "upon confirmation" with "upon delisting" We note that this substitution is likely to make the provision ambiguous since it will interfere with the flow of the sentence.
 - vii. Clause 8 that seeks to amend regulation 15 should include an amendment to the marginal note so that the marginal note and the provision will be synchronized.
 - viii. Clause 9 seeks to provide additional penalties. We note that the proposal under section 25(2) may result in double punishment to the offender. Further the clause provides for a penalty of not more than three million shillings for each violation. This is contrary to the provisions of section 24(5) of the Statutory Instruments Act, which provides that a breach of a statutory instrument attracts a penalty not exceeding one million Shillings or such term of imprisonment not exceeding six months, or both. In case the regulatory making authority intended to set a higher penalty, it should have directly cross referenced the penalty in the Act under section 30 which is higher than the penalty under the Statutory Instruments Act.
11. In view of the findings above, the Committee resolved to recommend to the House to **Annul**, the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024 having been proposed by Hon. Robert Mbui, CBS, M.P and seconded by the Hon. J(Dr.) Gideon Kipkoech Kimaiyo, M.P.

MIN. DAA&GPC/CDL/056/2025

ADJOURNMENT

There being no other business, the meeting was adjourned at Ten minutes to Twelve O'clock. The next meeting will be on notice.

SIGNED: 

THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 



Minutes for Adoption
of the Report.

Phroni
17 April
2025





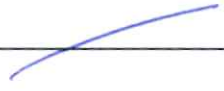

COMMITTEE ON DELEGATED LEGISLATION
MEMBERS ATTENDANCE SCHEDULE

Date 17/04/2025 Venue Room 21, 5th Floor, Bunge Tower.

Start Time 10:15 a.m Time Ended _____

Agenda Meeting with the Principal Secretary, State Department
for Internal Security and National Administration Regarding
Prevention of Terrorism Regulations.

No.	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	Phroni
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	Phroni
3.	The Hon. Mbui, Robert, CBS, M.P.	Phroni
4.	The Hon. Sunkuli Julius Lekakeny, EGH,EBS,MP	Phroni
5.	The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.	Phroni
6.	The Hon. Mwirigi, John Paul, M.P.	Phroni
7.	The Hon. Kamene, Joyce, M.P.	Phroni
8.	The Hon. Mwale, Nicholas S. Tindi, M.P.	Phroni
9.	The Hon. Odoyo, Jared Okello, M.P.	Phroni
10.	Hon. Anthony Oluoch, M.P.	Phroni
11.	Hon. Waithaka, John Machua, M.P.	Phroni
12.	The Hon. Maj. (Rtd.) Dekow Barrow Mohamed, M.P.	Phroni
13.	The Hon. Munyoro, Joseph Kamau, M.P.	Phroni
14.	The Hon, (Dr.) Kimaiyo, Gideon Kipkoech, M.P.	Phroni
15.	The Hon. Chepkorir, Linet, M.P.	Phroni

No.	NAME	SIGNATURE
16.	The Hon. Chebor, Paul, M.P.	
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon. (Dr.) Mamwacha Onchoke Charles, M.P.	
19.	The Hon. Yakub, Adow Kuno, M.P.	
20.	The Hon. Mnyazi, Amina Laura, M.P.	
21.	The Hon. Mugabe, Innocent Maino, M.P.	

COMMITTEE CLERK: Isabella Mueambi SIGNATURE 

DIRECTOR, DAA&OSC: SIGNATURE.....

SPECIAL ISSUE

Kenya Gazette Supplement No. 234 (National Assembly Bills No. 74)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 30th November, 2023

CONTENT

	PAGE
Bill for Introduction into the National Assembly	
The National Cohesion and Integration Bill, 2023	2065

**THE NATIONAL COHESION AND INTEGRATION
BILL, 2023**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objects of the Act.

**PART II — ESTABLISHMENT OF THE NATIONAL
COHESION AND INTEGRATION COMMISSION**

- 4—Establishment of the Commission.
- 5—Functions of the Commission.
- 6—Powers of the Commission.
- 7—Power to summon.
- 8—Summons for attendance of witnesses.
- 9—Expenses of witnesses.
- 10—Headquarters and regional offices.
- 11—Membership of the Commission.
- 12—Qualification and disqualification for appointment as chairperson and member.
- 13—Oath of office.
- 14—Powers of the chairperson.
- 15—Term of office.
- 16—Vacancy.
- 17—Removal from office
- 18 —Filling of a vacancy.
- 19—Committees of the Commission.
- 20—Experts.
- 21—Procedure of the business and affairs of the Commission.

- 22—Delegation by the Commission.
- 23—Terms and conditions of service.
- 24—Secretary to the Commission.
- 25—Removal of the secretary.
- 26—Staff of the Commission.
- 27—Common seal of the Commission.
- 28—Protection from personal liability.
- 29—Liability for damages.
- 30—Conflict of interest.

PART III — FINANCIAL PROVISIONS

- 31—Funds of the Commission.
- 32—Annual estimates.
- 33—Financial year.
- 34—Accounts and audit.
- 35—Annual report.

- 36—Quarterly reports.
- 37—Special report.

PART IV — DISCRIMINATION, HATE SPEECH AND NEGATIVE ETHNICITY

- 38—Ethnic discrimination.
- 39—Discrimination through victimisation.
- 40—Harrasment on the basis of ethnicity.
- 41—Discrimination in employment.
- 42—Exceptions to discrimination in employment.
- 43—Discrimination in membership organisation.
- 44—Discrimination by other agencies.
- 45—Discrimination in access to and distribution of public resources.
- 46—Discrimination in property ownership, management and disposal.
- 47—Ethnic or racial contempt.

48—Exceptions to discrimination.

PART V—COMPLAINTS, INVESTIGATIONS AND ENFORCEMENT

49—Matters that may be investigated.

50—Complaints.

51—Lodging a complaint.

52—Complaints not entertained by the Commission.

53—Application to strike out complaint.

54—Dismissal of stale complaint.

55—Referral by the Cabinet Secretary.

56—Alternative Dispute Resolution mechanisms.

57—Commission to refer complaints for conciliation.

58—Conciliation by the Commission.

59—Conciliation agreements.

60—Where conciliation fails.

61—Special references.

62—Compliance notices.

63—Enforcement of compliance notices.

64—Prohibition notice.

65—Investigations by the Commission.

66—Notice if investigation on complaint is discontinued.

67—Notice of investigation to organization.

68—Persons likely to be prejudiced or affected to be heard.

69—Action after inquiry.

70—Report to organization.

71—Hearings of the Commission.

PART VI—MISCELLANEOUS PROVISIONS

72—Offences.

73—Offences by body of persons.

74—Code of conduct.

- 75—Act binds Government.
 76—Legal proceedings against the Commission.
 77—Confidentiality of information.
 78—Protection of witnesses and informants.
 79—Statements made by persons to the Commission.
 80—Offences by member of staff.
 81—Reporting improper orders.
 82—General penalty.
 83—Review.

**PART VII — PROVISIONS ON DELEGATED
POWERS**

- 84—Regulations.

PART VIII — TRANSITIONAL PROVISIONS

- 85—Repeal of Act No. 12 of 2008.
 86—Interpretation of Part.
 87—Rights and obligations.
 88—Members of the former Commission.
 89—Secretary to the former Commission.
 90—Transfer of staff.

SCHEDULE

- | | | |
|------------------------|---|--|
| FIRST SCHEDULE | — | PROCEDURE FOR
APPOINTMENT OF
COMMISSIONERS |
| SECOND SCHEDULE | — | OATH/AFFIRMATION
OF OFFICE OF
CHAIRPERSON/MEMB
ER /SECRETARY |
| THIRD SCHEDULE | — | PROCEDURE AS TO
THE CONDUCT OF
BUSINESS AND
AFFAIRS OF THE
COMMISSION |

**THE NATIONAL COHESION AND INTEGRATION
BILL, 2023**

A Bill for

AN ACT of Parliament to outlaw discrimination on ethnic grounds; provide for the establishment of an institutional framework for national cohesion and peace building; to establish the National Cohesion and Integration Commission; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the National Cohesion and Integration Act, 2023.

Short title.

2. In this Act—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to cohesion, integration, peace-building and conflict management;

“Commission” means the National Cohesion and Integration Commission established under section 4;

“Commissioner” means a member of the Commission appointed under section 11;

“development issues” includes issues relating to development in socio cultural, political and economic sectors;

“ethnic grounds” means any of the following grounds, namely colour, race, religion, nationality or ethnic or national origins;

“ethnic group” means a group of persons defined by reference to colour, race, religion, clan, nationality, ethnic origins, national origins, ancestry, social or cultural experience, language or dialect;

“ethnic relations” include racial, religious, social, tribal, clan and cultural interactions between various communities, and the words “ethnic” and “ethnicity” shall be construed accordingly;

“peace building” means interventions designed to prevent conflicts or their escalation; measures to consolidate peaceful relations through transformative short

term and long term processes including conflict prevention, response, traditional dispute resolution, post conflict recovery, mediation and reconciliation;

“public officer” has the meaning assigned to it under Article 260 of the Constitution; and

“Secretary” means the Secretary to the Commission appointed under section 24.

3. The object of this Act is to—

Object of the Act.

- (a) give effect to Articles 10 and 27 of the Constitution on the promotion of national unity and non-discrimination;
- (b) provide a framework for the promotion of national cohesion, unity and peace-building;
- (c) provide mechanisms for co-ordination and implementation of interventions aimed at promoting national cohesion and peace-building;
- (d) promote the values and principles of public service set out under Article 232 of the Constitution; and
- (e) advise the government on the matters pertaining to paragraphs (a) to (d).

PART II— ESTABLISHMENT, FUNCTIONS AND POWERS OF THE NATIONAL COHESION AND INTEGRATION COMMISSION

4. (1) There is established the National Cohesion and Integration Commission.

Establishment of the Commission.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and
- (e) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may

be lawfully done or performed by a body corporate.

5. The functions of the Commission are to—

Functions of the Commission.

- (a) formulate and implement strategies, plans, educational and training programmes to create public awareness and support on the importance of national unity;
- (b) collaborate with institutions and stakeholders to give effect to the policies relating to cohesion, integration and peace-building;
- (c) make recommendations to the national government and any other relevant entities on—
 - (i) the review and reform of practices, policies and legislation relating to cohesion, integration and peace-building; and
 - (ii) the criteria for deciding whether any public office or officer has committed acts of discrimination on the grounds of ethnicity;
- (d) identify factors inhibiting the attainment of harmonious relations among different ethnic communities and put in place measures to address the problem;
- (e) promote—
 - (i) pursuant to Article 27 of the Constitution, equality and the elimination of all forms of discrimination;
 - (ii) peaceful co-existence, tolerance, respect, understanding and acceptance of diversity in all aspects of life and encourage appreciation by all ethnic communities of the social, economic, cultural and political life of other communities; and
 - (iii) equal access and enjoyment by persons of different ethnic, racial or social origins to services and facilities provided by government and private entities;
- (f) develop policies for the promotion of national values and principles of governance;

- (g) undertake research on national cohesion, national values, peace building and conflict management and make recommendations to the relevant government agencies;
- (h) foster partnerships with relevant state actors, non-state actors, bilateral and multilateral agencies on peace building and conflict management;
- (i) establish early warning and early response system on conflict and put in place an emergency preparedness and response system to curb imminent conflict; and
- (j) perform such other functions as may be necessary for the effective discharge of its mandate and exercise of its powers.

6. (1) The Commission shall have all the powers necessary or expedient for the proper performance of its functions under this Act.

Powers of the Commission.

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

- (a) enter into association with other bodies or organisations, within or outside Kenya, as it may consider desirable or appropriate and in furtherance of the objective for which the Commission is established;
- (b) control, supervise and administer the assets of the Commission in a manner and for purposes that best promote the purpose for which the Commission is established;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom; and
- (d) open bank accounts for the funds of the Commission.

7. (1) The Commission shall have power to summon witnesses for the purpose of giving evidence or for the production of books, plans and other documents.

Power to summon.

(2) Where the Commission requires that the information under subsection (1) be verified, the Commission may cause such witness to be examined under oath.

8. Summons for the attendance of witnesses or other persons or for the production of books, plans and other documents shall be in such form as may be specified by the Commission and shall be signed by the Secretary.

Summons for attendance of witnesses.

9. Every person summoned to attend and give evidence or produce books, plans or other documents at any sitting of the Commission shall be bound to obey the summons served upon him or her as if such summons were issued by the High Court, and shall be entitled to like expenses as a witness summoned to attend the High Court on a civil trial.

Expenses of witnesses.

10. (1) The headquarters of the Commission shall be in Nairobi.

Headquarters and regional offices.

(2) The Commission shall establish nine regional offices in the country to be administered by a commissioner.

(3) The Commission shall ensure that its services are accessible to all parts of the country and shall establish branches in each county in Kenya.

11. (1) The Commission shall consist of a chairperson and eight other members nominated by the President and approved by the National Assembly in accordance with the First Schedule.

Membership of the Commission.

(2) The commissioners shall, at their first meeting, elect a vice-chairperson who shall not be of the same gender as the chairperson.

(3) In appointing members to the Commission, the principles of gender equity, ethnic and regional representation shall apply.

12. (1) A person is qualified for appointment as the chairperson or member of the Commission if that person —

Qualification and disqualification for appointment as chairperson and member.

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has knowledge and at least ten years experience in the case of the chairperson, and at least two years experience in the case of a member, in matters relating to race, ethnic and human relations, public affairs and human rights, peace and security; and

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

(2) A person is not qualified for appointment under subsection (1) if the person—

- (a) is a State Officer;
- (b) is a member of the governing body or is actively involved in the affairs of a political party;
- (c) has promoted sectoral, ethnic, racial or religious animosity or openly advocated for partisan ethnic positions or interests;
- (d) is an undischarged bankrupt;
- (e) has served as a Member of the Commission;
- (f) has been removed from office for contravening the provisions of the Constitution or any other law; or
- (g) has not met his or her legal obligations relating to tax and other statutory obligations.

~~13. The Chairperson, members and secretary shall each make and subscribe before the Chief Justice, the oath or affirmation set out in the Second Schedule.~~

Oath of office.

14. (1) The Chairperson shall—

- (a) preside over all the meetings of the Commission; and
- (b) be the spokesperson of the Commission.

Powers of the chairperson.

(2) If the office of the Chairperson becomes vacant or if the Chairperson is unable to exercise the powers or perform the functions of his or her office owing to absence, illness or any other cause, the vice-chairperson shall exercise those powers or perform those functions.

(3) If the offices of the Chairperson and Vice – chairperson become vacant or if the Chairperson and Vice – chairperson are unable to exercise the powers or perform the functions of their office owing to absence, illness or any other cause, the members shall elect one of their number who shall exercise those powers or perform those functions.

15. The Chairperson and members of the Commission shall be appointed for a term of three years and are eligible for re-appointment for one further term only.

Term of office.

16. The office of the Chairperson or a member of the Commission shall become vacant if the holder—

Vacancy.

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President;
- (c) is in serious violation of the Constitution or any other law;
- (d) is in gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (e) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (f) is absent from three consecutive meetings of the Commission without good cause;
- (g) is declared bankrupt;
- (h) is unable to perform the functions of the office arising out of physical or mental infirmity;
- (i) violates the Code of Conduct prescribed by the Commission; or
- (j) is incompetent or neglects duty.

17. (1) A person desiring the removal from office of a Commissioner may present a petition to the President through the Cabinet Secretary.

Removal from office.

(2) The Cabinet Secretary, shall within seven days of receipt of the petition, forward the petition to the relevant Committee of the National Assembly.

(3) The Committee shall inquire into the matter and report on the facts to the President through the Cabinet Secretary, giving its recommendations as to whether or not the Commissioner ought to be removed from office.

(4) Where the question of removing a Commissioner has been referred to the relevant Committee of the National

Assembly under subsection (2), the President may suspend the Commissioner concerned.

(5) The President may lift the suspension at any time and the suspension shall cease to have effect if the Committee recommends that the Commissioner should be removed.

(6) A commissioner shall be removed from office if two thirds of the members of the National Assembly vote to remove the member, on the recommendation of the Committee.

18. (1) Where a vacancy occurs in the membership of the Commission under section 16 or 17, the appointment procedure set out under the First Schedule shall apply.

Filling of a vacancy.

(2) A person appointed under subsection (1) shall serve for a term of three years and is eligible for re-appointment for one further term.

19. The Commission may establish committees for the better carrying out of its functions.

Committees of the Commission.

20. The Commission may engage the services of such experts in respect of any of its functions in which the experts have special competence.

Experts.

21. (1) The business and affairs of the Commission shall be conducted in accordance with the Third Schedule.

Procedure of the business and affairs of the Commission.

(2) Except as provided in the Third Schedule, the Commission may regulate its own procedure.

22. The Commission may, by resolution either generally or in any particular case, delegate to any committee of the Commission or to any member, officer, employee or agent of the Commission, the exercise of any of the powers or the performance of any of the functions or duties of the Commission under this Act.

Delegation by the Commission.

23. The Chairperson and members of the Commission shall be paid such remuneration and allowances as the Cabinet Secretary may, in consultation with the Salaries and remuneration Commission, determine.

Terms and conditions of service.

24. (1) There shall be a secretary to the Commission who shall be appointed by the Commission through a competitive recruitment process upon such terms and

Secretary to the Commission.

conditions as the Commission may, in consultation with the Salaries and Remuneration Commission, determine.

(2) The Secretary shall hold office for a term of five years and is eligible for re-appointment for a further term of five years upon satisfactory performance as evaluated by the Commission.

(3) A person is qualified for appointment as the Secretary to the Commission if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognised in Kenya;
- (c) has at least five years' experience at management level; and
- (d) meets the requirements of Chapter Six of the Constitution.

(4) The Secretary shall be the chief executive officer of the Commission and head of the secretariat and shall be responsible to the Commission.

25. (1) The Secretary may be removed from office by the Commission in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution or any other written law;
- (e) violation of the Code of Conduct prescribed by the Commission; or
- (f) any other grounds specified in the terms and conditions of service.

Removal of the Secretary.

(2) Before the Secretary is removed under subsection (1) the Secretary shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to be heard on the allegations.

26. (1) The Commission may appoint such staff as are necessary for the proper discharge of its functions under this Act, and upon such terms and conditions of service as the Commission may determine.

Staff of the
Commission.

(2) The Commission shall in the appointment of employees —

- (a) ensure that a person is employed on merit; and
- (b) afford equal opportunity to men and women, youth, persons with disabilities and minorities and marginalised groups.

(3) The Government may upon request by the Commission, second to the Commission such number of public officers as may be necessary for the purposes of the Commission.

(4) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject to the direction and control of the Commission.

27. (1) The common seal of the Commission shall be kept in the custody of the Secretary and shall not be used except on the order of the Commission.

Common seal of
the Commission.

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

28. (1) No matter or thing done by a member of the Commission or any officer of the Commission shall, if the matter is done in good faith while executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable for any action, claim or demand whatsoever.

Protection from
personal liability.

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

29. The provisions of section 28 shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Liability for damages.

30. (1) If any person has a personal or fiduciary interest in any matter before the Commission, and is present at a meeting of the Commission or any committee at which that matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching on such matter.

Conflict of interest.

(2) In the event the person having an interest under subsection (1) is the Chairperson, he or she shall in addition to declaring the interest, recuse themselves from such meeting.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) No member or staff of the Commission shall transact any business or trade with the Commission directly or indirectly.

(5) A person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years or to both.

PART III—FINANCIAL PROVISIONS

31. The funds of the Commission shall consist of—

Funds of the Commission

(a) monies allocated by the National Assembly for purposes of the Commission;

- (b) such monies or assets as may accrue to the Commission in the course of exercise of its powers or in the performance of its functions under this Act; and
- (c) monies from any other source provided, donated or lent to the Commission.

32. (1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year in accordance with the provisions of the Public Finance Management Act.

Annual estimates.

No. 18 of 2012.

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

- (a) payment of remuneration in respect of the members and staff of the Commission;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (c) maintenance of the buildings and grounds of the Commission;
- (d) funding of training, research and development activities of the Commission; and
- (e) any other expenditure necessary for purposes of this Act.

(3) The Cabinet Secretary shall present the estimates approved by the Commission under subsection (2) to the relevant committee of the National Assembly.

33. The financial year of the Commission shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year.

34. (1) The Commission shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

Accounts and audit.

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

- (a) a statement of the income and expenditure of the Commission during that year; and
- (b) a statement of the assets and liabilities of the Commission.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act.

No. 34 of 2015.

35. (1) The Commission shall cause an annual report to be prepared for each financial year which shall be submitted to the National Assembly within three months after the end of the year to which it relates.

Annual report.

(2) The annual report shall contain —

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) other statistical information as the Commission may consider appropriate relating to the functions of the Commission;
- (d) any recommendations made by the Commission to State departments or any person and the action taken;
- (e) the impact of the exercise of any of its functions;
- (f) any impediments to the achievements of the objects and functions under the Constitution, this Act or any other written law; and
- (g) any other information relating to its functions that the Commission considers necessary.

(3) The Commission shall publish and publicise the report.

36. The Commission shall, after every three months, prepare a report which shall be submitted to the National Assembly containing the following information—

Quarterly reports

- (a) a description of the activities of the Commission;
- (b) other statistical information as the Commission may consider appropriate relating to the functions of the Commission;
- (c) any recommendations made by the Commission to State departments or any person and the action taken;
- (d) the impact of the exercise of any of its functions;
- (e) any impediments to the achievements of the objects and functions under the Constitution, this Act or any other written law; and
- (f) any other information relating to its functions that the Commission considers necessary.

37. (1) The Commission may at any time, submit a special report to the National Assembly with respect to any aspect of the functions of the Commission which the Commission considers should, in the national interest, be brought to the attention of the National Assembly because it affects a wide cross section of the populace and there could be disastrous consequences if a report thereon is not brought to the attention of the National Assembly.

Special Report.

(2) The President or the National Assembly may at any time require the Commission to submit a report on a matter within the mandate of the Commission.

PART IV — DISCRIMINATION AND NEGATIVE ETHNICITY

38. (1) A person discriminates against another person directly or indirectly if—

Ethnic
discrimination.

- (a) on ethnic grounds the person treats that other person less favourably than he or she would treat other persons; or
- (b) he or she applies to that other person a requirement or condition which would apply to persons of another ethnic group but—

- (i) which is such that the proportion of persons of the same ethnic group as that other person who can comply with the condition or requirement is considerably smaller than the proportion of persons not of that ethnic group who can comply with it;
- (ii) the person cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and
- (iii) is to the detriment of that other person because that person cannot comply with it.

(2) For the purposes of this Act, treating a person less favourably than another person includes the segregation of a person from other persons on ethnic grounds.

(3) Subsection (1) does not apply to treatment of a person who has made an allegation if it is proved in a court of law that the allegation was false and not made in good faith.

39. A person discriminates against another person by way of victimisation if the person carries out an act that is injurious to the well-being and esteem of that person by treating that person less favourably than other persons on grounds that the person discriminated against intends to or has—

Discrimination through victimisation.

- (a) brought proceedings under this Act;
- (b) given evidence or information in connection with proceedings under this Act;
- (c) alleged that a person has committed an act which would amount to a contravention of this Act; or
- (d) done anything under this Act in relation to any person.

40. A person subjects another to harassment on the basis of ethnicity if he or she engages in unwanted conduct which has the purpose or effect of—

Harassment on the basis of ethnicity.

- (a) violating that other person's dignity; or
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for that other person.

41. (1) A public entity shall ensure representation of the diversity of the people of Kenya in the employment of staff and shall afford adequate and equal opportunities for appointment, training and promotion at all levels of public service to members of all ethnic groups.

Discrimination in employment.

(2) A public entity shall not recruit or have in its employment more than one fifth of its staff from the same ethnic community.

(3) An employer or potential employer or his or her representatives or assigns, in relation to employment at an establishment, shall not discriminate against another person—

- (a) in the arrangements made for the purpose of determining who should be offered that employment;
- (b) in the terms he or she offers the employment;
- (c) by deliberately omitting to offer that other person employment;
- (d) in the way he or she affords the employee access to opportunities for promotion, transfer or training or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford the employee access to them; or
- (e) by subjecting the employee to any other detriment.

(4) An employer, his or her representatives or assigns shall not subject to harassment a person whom he or she employs or who has applied to him or her for employment.

(5) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

42. (1) It shall not be deemed discriminatory under this Part where, having regard to the nature of the employment or the context in which it is carried out—

Exceptions to discrimination in employment.

- (a) being of a particular race or particular ethnic or national origin is a genuine and determining occupational requirement; and

(b) it is appropriate to apply that requirement in the particular case and the person to whom that requirement is applied does not meet it.

(2) Being of a particular ethnic group, is an occupational qualification and not a ground for discrimination for a job only where—

(a) the job involves cultural entertainment in a capacity for which a person of that ethnic group is required for reasons of authenticity;

(b) the job involves a work of art, visual image or sequence of visual images for which a person of that ethnic group is required for reasons of authenticity; or

(c) the holder of the job provides persons of that ethnic group with personal services promoting their welfare, and those services can most effectively be provided by a person of that ethnic group.

(3) The provisions of subsection (2) do not apply in relation to the filling of a vacancy at a time when the employer already has employees of the ethnic group in question—

(a) who are capable of carrying out the duties falling specifically within that paragraph;

(b) whom it would be reasonable to employ on those duties; and

(c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties without undue inconvenience.

43. (1) An official, member, employee, assign or representative of a registered organization shall not discriminate against a person who is not a member —

Discrimination in membership organisation.

(a) in the terms in which it is prepared to admit the person to membership; or

(b) by refusing or deliberately omitting to accept the person's application for membership.

(2) A membership organization shall not discriminate against a person who is a member of the organisation on grounds of—

- (a) ethnicity;
- (b) in the way it affords the member access to any benefits, facilities or services, or by refusing or deliberately omitting to afford the member access to them;
- (c) by depriving the member of membership, or varying the terms on which he or she is a member; or
- (d) by subjecting the member to any other detriment.

(3) It is unlawful for a membership organisation to subject to harassment a person who is a member of the organisation or a person applying to be a member of the organisation on the ground of ethnicity.

(4) Subsection (1) shall not apply to cases where membership is limited to a given religious persuasion or profession.

(5) Any person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding one year, or to both.

44. (1) A public or private body shall not discriminate against any person in the provision of services.

Discrimination by
other agencies

(2) Subsection (1) shall not apply—

- (a) where it is proven that the alleged discriminatory act is a necessary requirement in the nature of business transaction and there is no alternative way of realising the desired goal; or
- (b) in the case of public authorities—
 - (i) in relation to any judicial act whether done by a court of law, tribunal or other person or any act done on the instructions, or on behalf, of a person acting in a judicial capacity; or
 - (ii) for any action undertaken by the Cabinet Secretary responsible for matters relating to

citizenship and the management of foreign nationals under the Kenya Citizenship and Immigration Act.

No. 12 of 2011.

45. (1) Public resources shall, as far as is practicable, be distributed equitably and geographically taking into account Kenya's diversity, population and poverty index.

Discrimination in access to and distribution of public resources.

(2) A public officer who is in charge of public resources shall distribute the resources in an ethnically equitable manner.

(3) Public resources shall be deemed to have been distributed in an ethnically equitable manner where—

- (a) an officer uses the criteria established under this Act or any other law in allocating resources by regions;
- (b) a specific region consistently receives more resources than another region and there is a clear justification for it; or
- (c) more resources are allocated to a region that requires start up resources than to an area that requires remedial resources.

(4) A public officer who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

46. (1) A manager under this section shall mean a person who has the power to control, lease, let or dispose of public property or property that is wholly meant for use by the public.

Discrimination in property ownership, management and disposal.

(2) It is unlawful for a manager to discriminate against another person—

- (a) in the terms such manager offers, lets, manages or disposes the property to another person;
- (b) by unjustifiably refusing his or her proposal for sale or engagement in the property, where the same conditions do not apply to others who are not of the same ethnic group as the manager; or
- (c) in his or her treatment of a person with regard to any list of persons in need of property of that description.

(3) It is unlawful for a manager to discriminate against a person occupying premises—

- (a) in the way such manager affords a person access to any benefits or facilities, or by refusing or deliberately omitting to afford a person such access; or
- (b) by harassing or subjecting that person to any other detriment.

47. (1) A person who—

- (a) uses threatening, abusive or insulting words or behaviour, or displays any written material;
- (b) publishes, posts or distributes material in print, electronic or social media;
- (c) presents or directs the performance of a play to the public;
- (d) distributes, shows or plays, a recording of visual images; or

Ethnic or racial contempt.

- (e) provides, produces or directs a programme, which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence if such person intends to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.

(2) A person who commits an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

(3) In this section, “ethnic hatred” means hatred against a group of persons defined by reference to colour, race, clan, sub tribe, nationality, ethnic or national origins.

48. (1) Nothing contained in this Part shall render unlawful any act done—

Exceptions to discrimination.

- (a) to afford a person of a particular ethnic group access to facilities or services to meet the special needs of such a person in regard to their education, training or welfare, or other ancillary benefits; or

- (b) on grounds other than race, ethnic or national origin for the benefit of a person who is not a Kenyan citizen to afford the person access to facilities for education or training or other ancillary benefits, where it appears that the person in question does not intend to remain in Kenya after the period of education or training.

(2) Nothing in this Part shall render unlawful any act done in relation to particular work by a person in or in connection with —

- (a) affording a person of a particular racial group access to facilities for training which would help to equip them for that work; or
- (b) encouraging a person of a particular ethnic group to take advantage of opportunities for doing that particular work, where it reasonably appears that that person, that any time within the twelve months immediately preceding the doing of that act —
 - (i) there was no person of that group among those doing that work in Kenya; or
 - (ii) the proportion of persons of that group among those doing that work in Kenya is small in comparison with the proportion of persons of that group among the population of Kenya.

(3) Where in relation to particular work it reasonably appears to any person that although the condition for the operation of subsection (2) is not met for the whole of Kenya it is met for an area within Kenya, nothing in this Part shall render unlawful any act done by that person in or in connection with—

- (a) affording persons who are of the ethnic group in question, and who appear likely to take up that work in that area, access to training in preparation for that work; or
- (b) encouraging persons of that group to take advantage of opportunities in the area for doing that work.

**PART V -- COMPLAINTS, INVESTIGATIONS
AND ENFORCEMENT**

49. A matter may be investigated if --

Matters that may
be investigated.

- (a) it is of such serious nature that it warrants an investigation; or
- (b) it concerns a possible contravention in relation to a class or group of persons.

50. (1) A complaint to the Commission may be made by—

Complaints.

- (a) a person acting in their own interest;
- (b) a person acting on behalf of another person who cannot act in their own name;
- (c) a person acting as a member of a group or class of persons;
- (d) a person acting in the public interest; or
- (e) an association acting in the interest of one or more of its members.

(2) A complaint may be made by or against an individual, a body of persons whether corporate or unincorporated, a public or private organisation, the Government or a specific body or officer of the government.

51. (1) A person may lodge a complaint with the Commission either orally or in writing.

Lodging a
complaint.

(2) Where a complaint under subsection (1) is made orally, the Commission shall cause the complaint to be recorded in writing.

(3) A complaint under subsection (1) shall be in such form and contain such particulars as the Commission may prescribe.

(4) The Commission shall require a complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration.

(5) Upon receipt of a complaint under subsection (1), the Commission shall within twenty-one days, notify the respondent in writing on the nature of the complaint and the

date on which the matter shall be considered by the Commission.

52.(1) If the Commission considers that a complaint—

Complaints not entertained by the Commission.

- (a) is frivolous, vexatious, misconceived or lacking in substance;
- (b) involves a subject matter that would be more appropriately dealt with by a court; or
- (c) involves a subject matter that has been adequately dealt with by a court,

the Commission may decline to entertain the complaint by notifying the complainant and the respondent in writing within thirty days after the day the complaint was lodged.

(2) Before declining to entertain a complaint, the Commission may, by written notice, invite any person to—

- (a) attend before the Commission, or a member or member of staff of the Commission, for the purpose of discussing the subject matter of the complaint; or
- (b) produce any documents specified in the notice.

53.(1) A respondent may apply in writing to the Commission to have a complaint or any part of it struck out on the grounds that it is frivolous, vexatious, misconceived or lacking in substance.

Application to strike out complaint.

(2) An application under subsection (1) may be made at any time—

(a) before the respondent has been given a notice to attend under section 51(5) or has otherwise been notified by the Commission or the Secretary of a date for conciliation; or

(b) after the conciliation has been completed but before the complaint is set down for hearing.

(3) The Commission shall hear and determine the application within sixty days of filing the application or after conciliation has been completed under subsection (2) (b).

54. (1) The Commission may dismiss a complaint, and shall notify the complainant accordingly, if the Commission has had no substantive response from the complainant in the period of twelve months following a request by the Commission for a response in relation to the complaint.

Dismissal of stale complaint.

(2) A complainant may take no further action under this Act in relation to the subject matter of a complaint dismissed under this section.

55. (1) If the Cabinet Secretary considers that any matter raises an issue of important public policy, the Cabinet Secretary may refer the matter to the Commission, whether or not a complaint has been lodged or the Commission has considered the complaint or the complaint is in the process of being conciliated.

Referral by the Cabinet Secretary.

(2) The Cabinet Secretary shall not be a party to a proceeding in a matter referred to the Commission under subsection (1) unless invited by the Commission.

56. The Commission may, in managing conflicts and resolving disputes, and where it deems appropriate—

Alternative Dispute Resolution mechanisms.

- (a) establish *ad hoc* or standing peace committees comprising representatives of affected ethnic groups and experts where necessary;
- (b) establish mediation committees; and
- (c) involve traditional justice mechanisms relevant to a particular community, local administration and relevant national and county government agencies.

57. (1) Where the Commission considers it reasonably possible that a complaint may be conciliated successfully, the Commission may appoint a conciliator to facilitate an early voluntary settlement of the complaint between the parties.

Commission to refer complaints for conciliation.

(2) The conciliation process shall be voluntary and shall be conducted in accordance with the rules made by the Commission under this Act.

(3) The conciliation proceedings shall be private and confidential, and shall be conducted on a without prejudice basis.

(4) No person may refer to anything said at the proceedings during any subsequent proceedings, unless the parties involved in the dispute agree in writing.

(5) Any person who acted as conciliator may not be called as a witness during subsequent proceedings before the Commission or in any court to give evidence relating to the conciliation proceedings.

(6) The Commission shall make rules and guidelines for the better carrying into effect the provisions of this section.

58. The Commission shall make all reasonable endeavours to conciliate a complaint referred to it under section 57 and may, by written notice, require any person to—

Conciliation by
the Commission.

(a) attend before the Commission for the purpose of discussing the subject matter of the complaint; or

(b) produce any documents specified in the notice.

59. Upon satisfactory determination of conciliation, the conciliator shall cause to be signed, by both parties, a settlement agreement which shall be final and binding on the parties and enforceable as if it were a decision of the Commission.

Conciliation
agreements.

60. (1) Where conciliation fails or the parties or either of them objects to any conciliation efforts, the Commission shall set down the complaint for determination and issue a date on which the matter shall be heard.

Where
conciliation fails.

(2) The Commission shall, having heard the matter that is the subject of the complaint, make a report, issue any decision as it deems appropriate and give directions in connection with the complaint within sixty days.

(3) The Commission shall communicate its decision to the parties concerned within seven days from the date the decision is made.

61. (1) The Commission shall, in exercising its powers, pay particular attention to and expedite the disposal of special references.

Special
references.

(2) A special reference is

- (a) a matter that has been referred to the Commission by the Cabinet Secretary under section 55;
- (b) a complaint the resolution of which may have significant social, economic or financial effects on the community or a section of the community; or
- (c) a complaint the subject matter of which involves issues of a particular complexity and the resolution of which may establish important precedents in the interpretation or application of this Act.

(3) The question of whether or not a matter is a special reference shall be determined by the Commission.

62. (1) A compliance notice issued under section 69 (e) shall require the person concerned to—

Compliance notices.

- (a) comply with a duty specified in the notice; and
- (b) inform the Commission, within thirty days of the date on which the notice is served, of the steps that the person has taken, or is taking, to comply with the duty specified in the notice.

(2) A compliance notice may also require the person concerned to furnish the Commission with such other written information as may be reasonably required by the notice in order to verify that the notice has been complied with.

(3) The notice may specify—

- (a) the time, no later than three months from the date on which the notice is served, at which any information is to be furnished to the Commission; and
- (b) the manner and form in which any such information is to be so furnished.

(4) A compliance notice shall not require a person to furnish information which the person could not be compelled to furnish in evidence in civil proceedings before the High Court.

63. (1) The Commission may apply to the High Court for an order requiring a person to furnish any information required by a compliance notice if—

Enforcement of compliance notices.

- (a) the person fails to furnish the information to the Commission in accordance with the notice; or
- (b) the Commission has reasonable cause to believe that the person does not intend to furnish the information.

(2) If the Commission considers that a person has not, within three months of the date on which a compliance notice was served on that person, complied with any requirement of the notice for that person to comply with a duty imposed by an order under section 62, the Commission may apply to the High Court for an order requiring the person to comply with the requirement of the notice.

(3) If the court is satisfied that the application is well-founded, it may grant the order in the terms applied for or in other terms that the Court may deem appropriate.

(4) A person who contravenes the provisions of this section shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding six months, or both.

64. The Commission shall have the power to issue a prohibition notice directing a person or entity involved in an action or conduct contrary to national cohesion, integration and peace building to cease such action or conduct within seven days.

Prohibition notice.

65. (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, employ the services of a public officer or investigation agency of the Government at the expense of the Commission.

Investigations by the Commission.

(2) For the purpose of investigating any matter pertaining to an inquiry, a public officer or agency whose services are employed under subsection (1) may, subject to the direction and control of the Commission—

- (a) summon and enforce the attendance of any person for examination;
- (b) require the discovery and production of any document; and

(c) requisition any public records and copies thereof from any public officer, subject to the Constitution and any written law.

(3) A public officer or any agency whose services are employed under subsection (1) shall investigate any matter pertaining to the inquiry and submit a report thereon to the Commission within six months.

(4) The Commission shall satisfy itself on the correctness of the facts stated and the conclusion, if any arrived at in the report submitted to it under subsection (3) and for that purpose, the Commission may make such inquiry, including the examination of any person or person's conduct to assist in the investigation as it considers necessary.

66. If the Commission decides to discontinue the investigation of a complaint, the Commission shall inform the complainant in writing of that decision and the reasons for that decision within thirty days of making the decision.

Notice if investigation on complaint is discontinued.

67. Before commencing an investigation under this Act, the Commission shall give notice of the intended investigation to the administrative head of a state organ, public office or organisation.

Notice of investigation to organization.

68. (1) Subject to subsection (2), if at any stage of an inquiry the Commission—

Persons likely to be prejudiced or affected to be heard.

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudiced by the inquiry, it shall give that person an opportunity to appear before the Commission by himself or herself or through an advocate to give evidence in his or her own defence.

(2) This section shall not apply where the credibility of a witness is being impeached.

69. The Commission may, upon inquiry into a complaint under this Act take any of the following steps—

Action after inquiry.

(a) where the inquiry discloses a criminal offence, refer the matter to the Office of the Director of Public Prosecution or any other relevant authority;

- (b) recommend to the complainant a course of other judicial redress;
- (c) recommend to the complainant and to the relevant government agency or other body concerned in the alleged violation, other appropriate methods of settling the complaint or obtaining relief;
- (d) provide a copy of the inquiry report to all interested parties;
- (e) issue a compliance notice or summons as it may deem necessary; or
- (f) find the complaint or any part of it not proven and make an order that the complaint or part of it be dismissed.

70. (1) After concluding an investigation or an inquiry under this Act, the Commission shall make a report to the State organ, public office or organisation to which the investigation relates.

Report to organisation.

(2) The report shall include—

- (a) the findings of the investigation and any recommendations made by the Commission;
- (b) the action the Commission considers should be taken and the reasons for the action; and
- (c) any recommendation the Commission considers appropriate.

(3) The Commission may require the State organ, public office or organisation that was the subject of the investigation to submit a report to the Commission within a period of sixty days on the steps, if any, taken to implement the recommendations of the Commission.

(4) If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take appropriate action.

71. The hearings of the Commission during an inquiry shall be open to the public except where the Commission for justifiable reasons decides otherwise.

Hearings of the Commission.

PART VI—MISCELLANEOUS PROVISIONS

Offences.

72. A person who—

- (a) subjects or threatens to subject another person to any detriment because the other person, or a person associated with the other person—
 - (i) has made a complaint against any person;
 - (ii) has brought any other proceedings under this Act against any person;
 - (iii) has given evidence or information, or produced a document, in connection with any proceedings under this Act;
 - (iv) has otherwise done anything in accordance with this Act in relation to any person;
 - (v) has contravened a provision of Part IV, unless the allegation is false and was not made in good faith;
 - (vi) has refused to do anything that would contravene a provision of Part IV;
- (b) fails to comply with a notice by the Commission under section 69 (e);
- (c) hinders or obstructs a Commissioner, member of staff of the Commission or the Secretary in the exercise of powers or the performance of functions under this Act;
- (d) uses insulting language towards a Commissioner, member of staff of the Commission or the Secretary when the Commissioner, member of staff or Secretary is exercising powers or performing functions under this Act; or
- (e) gives any information or makes any statement to the Commission, the Secretary or a person acting on behalf of the Commission or the Secretary in the exercise of powers or the performance of functions under this Act which the person knows is false or misleading in any material particular,

commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or

to imprisonment for a term not exceeding twelve months, or to both.

73. In the case of an offence committed by a body of persons under this Act—

Offences by body of persons.

- (a) where the body of persons is a body corporate, every director of that body corporate shall also be deemed to be guilty of that offence; and
- (b) where the body of persons is a firm, every partner of that firm shall also be deemed to be guilty of that offence:

Provided that no such person shall be deemed to be guilty of an offence under this Act, if the person proves that the offence was committed without his or her knowledge or that the person exercised all due diligence to prevent the commission of the offence.

74. The members and staff of the Commission shall keep and maintain professional and ethical standards and shall adhere to and comply with the Commission's Code of Conduct.

Code of conduct.

75. This Act binds the Government.

Act binds Government.

76. (1) Proceedings against the Commission shall be deemed to be proceedings against the Government and shall be subject to the Government Proceedings Act.

Legal Proceedings against the Commission.

(2) Any notice or other process in respect of legal proceedings under subsection (1) shall be served upon the Secretary to the Commission.

Cap 40.

77. (1) A person shall not, either directly or indirectly disclose, communicate, or make a record of any information obtained during the performance of their functions or duties under this Act, unless it is necessary to do so for the purpose of or in connection with, the performance of a function or duty or the exercise of power under this Act or any other written law.

Confidentiality of information.

(2) Subsection (1) applies to every person who—

- (a) is or has been—
 - (i) a member of the Commission;
 - (ii) the Secretary to the Commission;
 - (iii) a member of staff of the Commission; or

(iv) any other person acting under the authority of the Commission; or

(b) has obtained information as a result of another person performing functions or duties or exercising powers under this Act.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment to a term not exceeding one year or to both.

78. If a complaint has been lodged or a document or any information or evidence has been produced or given to the Commission, a person is not personally liable for any loss, damage, or injury suffered by another person by reason only of the lodging of the complaint or the production or giving of the document, information or evidence.

Protection of witnesses and informants.

79. A statement made by a person in the course of giving evidence before the Commission shall not subject such person to any civil or criminal liability except where such statement is false.

Statements made by persons to the Commission.

80. (1) A member of staff commits an offence if he or she—

Offences by member of staff.

(a) causes anything to be done through another person that would constitute a contravention of the Act if done by him or her; or

(b) allows or directs a person under their supervision or control to do anything that is in contravention of the Act.

(2) Subsection (1) (b) shall not apply where the thing is done without the member of staff's knowledge or consent or if the member of staff has taken reasonable steps to prevent it.

81. (1) If a public officer considers that anything required of them is in contravention of this Act or any other Act or is otherwise improper or unethical, the member or officer may report the matter to the Commission.

Reporting improper orders.

(2) The Commission shall investigate the report and take appropriate action within ninety days of receiving the report.

82. Any person who commits an offence under this Act for which no penalty is provided is liable, on conviction, to a fine not exceeding one million shillings or to a term of imprisonment not exceeding one year, or to both.

General penalty.

83. (1) A person who is aggrieved by a decision of the Commission under this Act may, within fourteen days apply to the Commission for a review of that decision.

Review.

(2) The Commission shall, within thirty days, determine and communicate its decision to the appellant.

PART VII – PROVISIONS ON DELEGATED POWERS

84. (1) The Cabinet Secretary may, in consultation with the Commission make Regulations for the effective implementation of this Act.

Regulations.

(2) Despite the generality of subsection (1), the Cabinet Secretary shall make Regulations—

(a) promoting the use of alternative and traditional dispute resolution mechanisms subject to Article 159 of the Constitution;

(b) prescribing procedures of complaints, conciliation committee and other bodies established under this Act; and

(c) prescribing forms for the purposes of this Act.

(3) For the purpose of Article 94(6) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make rules to provide for the better carrying into effect the provisions of this Act;

(b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfillment of the objectives specified under this section;

(c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act.

Cap. 2.

No. 23 of 2013.

PART VIII—TRANSITIONAL PROVISIONS

85. The National Cohesion and Integration Act is repealed.

Repeal of Act No. 12 of 2008.

86. In this Part —

Interpretation of Part.

“former Commission” means the National Cohesion and Integration Commission established under the National Cohesion and Integration Act, 2008.

Act No.12 of 2008.

87. All rights, obligations and contracts which, immediately before coming into operation of this Act, were vested in or imposed on the former Commission shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Commission.

Rights and obligations.

88. Upon the commencement of this Act, any member of the former Commission shall be deemed to be a member of the reconstituted Commission for the unexpired period of his or her term of service.

Members of the former Commission.

89. A person who immediately before the commencement of this Act, is the Secretary to the Commission, shall remain in office for the remaining period of his or her term, in accordance with the terms and conditions of their appointment.

Secretary to the former Commission.

90. Every person who, immediately before the commencement of this Act, was a member of staff of the former Commission, not being then under notice of dismissal or resignation shall be a member of staff of the Commission.

Transfer of Staff.

FIRST SCHEDULE**(s. 11)****PROCEDURE FOR APPOINTMENT OF COMMISSIONERS**

1. Whenever there is a vacancy in the Commission, the Cabinet Secretary shall within fourteen days of the occurrence of the vacancy, by notice in the *Gazette* declare the vacancy in the Commission.

Vacancy in the Commission.

2. For the purpose of the appointment of the Commissioners, the Cabinet Secretary shall within fourteen days of the declaration of the vacancy constitute a selection panel consisting of —

Selection panel.

- (a) one person nominated by the Office of the President;
- (b) one person nominated by the Public Service Commission;
- (c) one person nominated by the Attorney-General;
- (d) one person nominated by the Ethics and Anti-Corruption Commission;
- (e) one person nominated by the Parliamentary Service Commission;
- (f) one person nominated by the National Gender and Equality Commission; and
- (g) one person nominated by the Judicial Service Commission.

3. The Public Service Commission shall —

- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among themselves; and
- (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

Role of the Public Service Commission.

4. The selection panel shall, within seven days of convening, by advertisement in the media, invite applications from persons who qualify for nomination and appointment as Commissioners.

Advertisement for applications.

5. An application under paragraph 4 shall be forwarded to the Public Service Commission within fourteen days of the notice.

Period to submit application.

6. The names of all applicants under paragraph 5 shall be published in the *Gazette* and two daily newspapers of national circulation.

Publication of the names of all applicants.

7. The selection panel shall within fourteen days of receipt of applications under paragraph 5 consider the applications, interview and shortlist at least fifteen persons qualified for appointment as members of the Commission and shall forward the names of selected candidates to the President for nomination.

Shortlist to be forwarded to the President.

8. The President shall, within twenty one days of receipt of the names forwarded under paragraph 7, nominate one person for appointment as chairperson and eight persons for appointment as members of the Commission, and shall forward the names of the persons to the National Assembly for approval.

Nomination of Chairperson and members of the Commission.

9. The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under paragraph 8, consider all the nominations received and may approve or reject any nomination.

Approval or rejection by the National Assembly.

10. Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved persons to the President for appointment.

Procedure if the National Assembly approves a nominee.

11. The President shall, within twenty one days of the receipt of the approved nominees from the National Assembly, by notice in the *Gazette*, appoint the chairperson and members.

Gazettement by the President of the Chairperson and members.

12. Where the National Assembly rejects any nomination, the Speaker shall, within three days, communicate the decision of the National Assembly to the President to submit a fresh nomination.

Communication of rejection of nominee by the Speaker.

13. Where a nominee is rejected by the National Assembly under paragraph 12, the President shall, within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under paragraph 7.

Procedure if the National Assembly rejects a nominee.

14. The selection panel may, subject to this section, determine its own procedure for the conduct of business and affairs.

Procedure for the selection panel.

15. The appointments to the Commission-

Principles to be observed while making appointments to the Commission.

- (a) shall be done in a fair, transparent and competitive manner based on merit, suitability and competence;
- (b) shall take into account the values and principles under Articles 10, 27 and 232 of the Constitution;
- (c) shall ensure that not more than two-thirds of the members are of the same gender; and
- (d) shall observe the principle of regional and ethnic balance and shall have regard to the principle of fair representation for persons with disabilities.

16. Despite the foregoing provisions of this Schedule, the Cabinet Secretary may by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

Extension of period by the Cabinet Secretary.

SECOND SCHEDULE

(s. 13)

OATH/AFFIRMATION OF OFFICE OF
CHAIRPERSON/MEMBER/SECRETARY

I.....having been appointed (a Chairperson of / a Member of /a Secretary to) the National Cohesion and Integration Commission under the National Cohesion and Integration Act, do solemnly (swear/declare and affirm) that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. SO HELP ME GOD.

Sworn/Declared by the
said.....

Before me this..... day of

.....

.....

Chief Justice

THIRD SCHEDULE

(s. 21)

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

1. (1) The Commission shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings generally.
- (2) Meetings of the Commission shall be held on such date and at such time as the Commission shall decide or, in the absence of such decision on a date and at a time determined by the Chairperson in consultation with the Secretary.
2. The Chairperson shall, on the application of at least three of the members, convene a special meeting of the Commission.

Special meetings.
3. The quorum for the conduct of business at a meeting of the Commission shall be five members.

Quorum.
4. The Chairperson shall preside over every meeting of the Commission and in the absence of the Chairperson, the members present shall elect one of their number who shall with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

Presiding of meetings.
5. Unless an unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

Decisions.
6. Subject to paragraph 3, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.

Invalidity of proceedings.
7. (1) The common seal of the Commission shall be authenticated by the signature of the Chairperson and the Secretary and any document required by law to be made under seal, and all decisions of the Commission may be authenticated by the Chairperson and the Secretary.

Common seal.

(2) In the absence of either the Chairperson or the Secretary in any particular case or for any particular matter, the Commission shall nominate one member to authenticate

the seal of the Commission on behalf of either the Chairperson or the Secretary.

(3) All instruments made by and decisions of the Commission not required to be under seal may be authenticated by the Chairperson and the Secretary.

8. The Commission shall cause minutes of all proceedings of its meetings to be entered in books kept for that purpose.

Minutes.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to provide for a co-ordinated structure for cohesion and peace building and in Kenya. Further, the Bill seeks to align the Act with the present constitutional dispensation and structure of government by repealing the National Cohesion and Integration Act (No.12 of 2008) whose enactment was before that of the Constitution.

Part I (clauses 1-3) provides for the preliminary provisions.

Part II (clauses 4-30) provides for the establishment, functions and powers of the Commission.

Part III (clauses 31-37) provides for funds of the Commission.

Part IV (clauses 38-48) provides for discrimination and negative ethnicity.

Part V (clauses 49-71) provides for complaints, investigations and enforcement.

Part VI (clauses 72-83) provides for miscellaneous provisions.

Part VII (clause 84) provides for delegated legislation.

Part VIII (clauses 85-90) provides for transitional provisions.

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

The Bill delegates legislative powers to the Cabinet Secretary and the Commission. It does not limit any fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill concerns county governments in terms of Article 110 of the Constitution.

Statement that the Bill is a money Bill, within the meaning of Article 114 of the Constitution

This Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th November, 2023.

ADAN HAJI YUSSUF,
*Chairperson, Committee on National
Cohesion and Equal Opportunity.*

(Legislative Supplement No. 90)

LEGAL NOTICE NO. 187

THE PREVENTION OF TERRORISM ACT

(No. 30 of 2012)

THE PREVENTION OF TERRORISM (IMPLEMENTATION OF
THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS
ON SUPPRESSION OF TERRORISM) REGULATIONS, 2024

THE NATI
P.

DATE: 16 JAN 2025

DAY:
THURSDAY

Arrangement of Regulations

PART I — PRELIMINARY

- 1—Citation.
- 2—Interpretation.
- 3—Application.
- 4—Obligation to implement.

PART II — IMPLEMENTATION OF RESOLUTION, 1267/1989
AND RESOLUTION, 1988

- 5—Circulation of United Nations sanctions list.
- 6—Authority to freeze.
- 7—Actions to be taken upon designation under Resolution 1267 or 1988.
- 8—Implementation time frame.
- 9—Reporting.
- 10—Proposal for listing under Resolution, 1267/1989 or 1988.
- 11—Access to frozen funds or other assets.
- 12—Third party claims.
- 13—Application for the de-listing 1267/1989 or 1988.

PART III — IMPLEMENTATION OF RESOLUTION 1373

- 14—Designation under Resolution, 1373.
- 15—Actions to be taken upon designation under Resolution, 1373.
- 16—Notification of designation under Resolution, 1373.
- 17—Request to another country.
- 18—Third party requests.
- 19—Authority to solicit and collect information for designation.

TABLED
BY:

CLERK-AT
THE-TABLE:

Hon. Naomi Wago, MP
Deputy Majority Party Whip
A. Shibuto

- 20—Domestic List.
- 21—Application for review of designation under Resolution, 1373.
- 22—De-listing from the Domestic List.
- 23—Authorization to access funds frozen pursuant to listing on Domestic List.
- 24—False positives.
- 25—Notices.
- 26—Duty to report violation of Regulations.

PART IV — RESTRICTIONS ON TRAVEL, DEALINGS IN ARMS
AND OTHER PROHIBITIONS

- 27—Entry of designated persons into Kenya.
- 28—Exemptions allowed under the travel restrictions.
- 29—Transactions with designated person in relation to arms prohibited.
- 30—Carriage of arms to designated person prohibited.
- 31—Availing resources to prohibited persons.
- 32—Protection from liability.
- 33—Penalties.
- 34—Internal rules.
- 35—Return.
- 36—On-going monitoring of transactions.
- 37—Powers to issue directives and guidelines.
- 38—Revocation of L.N. No. 152 of 2023.

SCHEDULE

THE PREVENTION OF TERRORISM ACT

(Cap. 59B)

IN EXERCISE of the powers conferred by section 50(1) of the Prevention of Terrorism Act, the Cabinet Secretary for Interior and National Administration makes the following Regulations—

THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON THE SUPPRESSION OF TERRORISM) REGULATIONS, 2024

PART I— PRELIMINARY

1. These Regulations may be cited as the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on the Suppression of Terrorism) Regulations, 2024.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Prevention of Terrorism Act;

Cap. 59B.

“Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;

“Committee” has the meaning assigned to it under section 2 of the Act;

“competent party” means the relevant regulatory agency, security agency, intelligence agency, law enforcement agency, supervisory body, or administrative agency;

“dealing” in relation to property or funds means receiving, acquiring, transacting, representing, concealing, disposing, converting, transferring or moving, using as security or providing financial services;

“designated person or entity” means a person or entity designated pursuant to these regulations or the applicable United Nations Security Council Resolutions adopted under Chapter VII of the United Nations Charter;

“designation” or “listing” means the identification of a person, organization, association or group of persons that is subject to targeted sanctions pursuant to the applicable United Nations Security Council Resolutions;

“delist” means the removal of the name and other identification information of a designated person or entity from the domestic list or the sanction list;

“designated non-financial businesses or profession” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act;

Cap. 59A.

“Domestic List” means the list compiled and maintained by the Committee under regulation 20;

“economic resources” includes assets of every kind, whether movable or immovable, tangible or intangible, actual or potential,

which are not funds and which may be used to obtain funds, goods or services;

“extraordinary expenses” includes fees to pay professional fees or costs relating to legal services rendered or other extraordinary expenses within reasonable limits or fees for services relating to safekeeping or management of frozen funds;

“Financial Institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act;

“Financial Reporting Centre” means the Financial Reporting Centre established under section 21 of the Proceeds of Crime and Anti-Money Laundering Act;

“freeze” means to prevent or restrain specific property or funds from being used, transferred, transacted, converted, altered, concealed, moved or disposed of without affecting the ownership thereof;

“person” means a natural person or legal person;

“reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act;

“Resolution” means a resolution of the United Nations Security Council and includes its successor resolution;

“Resolution, 1267” means Resolution 1267 (1999) of the Security Council and includes its successor resolutions;

“Resolution, 1267/1989” means Resolutions 1267 (1999) and 1989 (2011) and 2253 (2015) of the Security Council and includes its successor resolutions;

“Resolution, 1373” means Resolution 1373 of the Security Council and includes its successor resolutions;

“Resolution, 1988” means Resolution 1988 (2011) of the Security Council and includes its successor resolutions;

“Sanctions Committee” means a Committee of the Security Council of the United Nations established under a Resolution of the Security Council;

“Sanctions List” means the 1267/1989 sanctions list and the 1988 sanctions list or other similar list issued by the Security Council;

“Secretary to the Committee” means the Director General of the Financial Reporting Centre as provided under section 40D(2) (j) of the Act;

“Security Council” means the Security Council of the United Nations established under Article 7 of Chapter III of the United Nations Charter;

“self-regulatory body” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti-Money Laundering Act;

“terrorism financing” includes the offence specified under section 5 and 5A of the Act;

“without delay” means within twenty-four hours of a designation by the United Nations Security Council or its relevant Sanctions Committee or within twenty four hours of designation by the Committee.

3. These Regulations shall apply to –

Application.

- (a) an entity designated under Resolutions 1267/1989 (Al-Qaida);
- (b) an entity designated under Resolution 1373; and
- (c) an entity designated under Resolution 1988 and successor resolutions.

4. The Counter Financing of Terrorism Inter-Ministerial Committee shall be responsible for the implementation of targeted financial sanctions relating to the suppression of terrorism financing.

Obligation to implement.

PART II — IMPLEMENTATION OF RESOLUTION 1267/1989 AND RESOLUTION, 1988

5. (1) For the purpose of timely implementation of Resolution 1267/1989 and Resolution 1988, the Committee shall, through the Secretary to the Committee,—

Circulation of United Nations sanctions list.

- (a) continuously monitor the sanction list; and
- (b) receive and circulate all designations made by the Security Council and any sanctions list or other similar lists issued in connection therewith.

(2) Upon designation by the Security Council, the Committee through the Secretary to the Committee shall circulate the sanctions list, including through electronic means, to—

- (a) reporting institutions under the Proceeds of Crime and Anti-Money Laundering Act;
- (b) supervisory bodies and self-regulatory body specified under the Proceeds of Crime and Anti-Money Laundering Act;
- (c) the national security organs specified under Article 239 of the Constitution;
- (d) such law enforcement agencies as it may consider necessary;
- (e) any other person so authorised to—
 - (i) detect, freeze or seize the funds or the property of a designated person or entity; or
 - (ii) take such action as may be necessary to give effect to Resolution, 1267 or Resolution, 1988;
- (f) any other person;

(3) In circulating the Sanctions List under this regulation, the Committee shall, through the Secretary to the Committee, provide clear guidance on freezing to all persons and competent parties that may be holding targeted funds or other assets.

6. (1) A designation or circulation of a sanctions list pursuant to regulation 5 shall be deemed to authorise a reporting institution and any other person or entity holding the funds, property or other assets of a designated person or entity to freeze, until further notice, such assets, property or funds.

Authority to freeze.

(2) Upon designation or circulation of a sanctions list under regulation 5, all natural and legal persons within the country shall without prior notice freeze the funds or other assets of designated persons and entities.

7. (1) Upon receipt of the Sanctions List under regulation 5, any person holding funds, property or other assets of a designated person or entity shall—

Actions to be taken upon designation under Resolution 1267 or 1988.

(a) freeze without prior notice—

- (i) all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat;
- (ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated person or entity;
- (iii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated person or entity;
- (iv) funds or other assets of person or entity acting on behalf of, or at the direction of, designated person or entity;

(b) not make available any funds or other assets, economic resources or financial or other related services as specified under section 30G of the Act; and

(c) take such other action as may be necessary to give effect to Resolution 1267/1989 and Resolution 1988.

8. The implementation of the provisions of regulations 5 and 7 shall be undertaken cumulatively without delay.

Implementation time frame.

9. Within twenty-four hours of taking action or freezing funds or other assets under regulation 7, the person who effected the freezing shall, through the Secretary to the Committee and in the specified manner, file a report with the Committee specifying the assets frozen or actions taken including attempted transactions.

Reporting.

10. (1) Where there are reasonable grounds to believe that a person or entity meets the relevant listing criteria, the Committee shall propose to the relevant Sanctions Committee, the name of a person or entity.

Proposal for listing under Resolution 1267/1989 or 1988.

(2) The proposal for listing under sub-regulation (1) shall be transmitted by the Cabinet Secretary responsible for matters relating to foreign affairs to the relevant Sanctions Committee.

(3) A proposal for listing under this regulation shall not be conditional upon the existence of criminal proceedings and shall operate without prior notice to the proposed listed person or entity.

(4) In proposing a person or entity under sub-regulation (1), the Committee shall—

- (a) follow the procedures, including using standard forms for listing, contained in or as may be adopted pursuant to any relevant United Nations Security Council Resolution;
- (b) provide as much relevant information on the proposed person or entity, including—
 - (i) sufficient identifying information to allow for the accurate and positive identification of the person or entity, and to the extent possible, the information required by the International Criminal Police Organisation (Interpol) to issue a Special Notice;
 - (ii) a statement of case which contains as much detail as possible on the basis of the listing, including specific information supporting a determination that the person or entity meets the relevant listing criteria, the nature of the information, supporting information or documents that can be provided, and details of any connection between the proposed person or entity and any currently listed person or entity;
 - (iii) the nature of supporting evidence;
 - (iv) supporting evidence or documents;
 - (v) such other relevant information as may be required under any United Nations Security Council Resolution;
- (c) specify whether the relevant Sanctions Committee may make known the status of Kenya as the designating State.

(5) Any information given under this regulation shall be given subject to conditions restricting the use and disclosure of the information communicated to the relevant Sanctions Committee:

Provided that the statement of case referred to in sub-regulation (4)(b)(ii) shall, upon request, be disclosed by the relevant Sanctions Committee, except for the parts the Committee identifies as being confidential.

(6) For purposes of sub-regulation (1), the Committee may consult or seek assistance from any competent authority, law enforcement agency, or other jurisdictions or United Nations entities as may be necessary to determine whether, on reasonable grounds, there is sufficient evidence to support the listing of a person or entity on a United Nations Sanctions List.

11. (1) A person whose funds has been affected by the freezing order issued in accordance with Resolution 1267/1989 and Resolution 1988 may submit a request, in the manner specified by the Committee, to have such funds or part thereof released to cover—

Access to frozen funds or other assets.

- (a) necessary and basic expenses, including payments for rent or mortgage, foodstuffs, monthly family expenses, medicines and medical treatment, taxes, insurance premiums and public utility charges;
- (b) expenses exclusively for payment of reasonable professional fees, or reimbursement of incurred expenses associated with the provision of legal services;
- (c) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources;
- (d) necessary for extraordinary expenses provided that such request is assessed by the Committee and if favourably considered, forwarded to the relevant Sanctions Committee for its approval.

(2) The request to have funds released for expenses outlined in sub-regulation (1) shall be assessed by the Committee within the thirty working days, and if favourably considered, the request shall be directed to the relevant Sanctions Committee established pursuant to Security Council Resolutions 1267 for its decision.

(3) The Committee may, within forty-eight hours from date of submission of the request to the relevant Sanctions Committee under sub-regulation (2) and in the absence of any negative decision received from the Sanctions Committee, authorise the release of funds as applied for.

(4) The Committee shall direct persons or entities holding funds or other assets, subject to access granted, to respect the authorisation issued under this Regulation.

(5) Notwithstanding the provisions of sub-regulation (1) a designated person or entity may submit a request for access to frozen funds or other assets under this regulation to the focal point in the manner specified by the relevant Sanctions Committee.

(6) A person or entity seeking to make a request under sub-regulation (5) may request the Committee, through the Secretary to the Committee, for guidance on the procedure for submitting such requests.

12. (1) A person who claims to have a *bona fide* right to funds or assets frozen in terms of Regulations 7 and 15 may apply to the Committee, through the Secretary to the Committee, for the exclusion of his or her interest from the freezing order.

Third party claims.

(2) An application referred to in sub-regulation (1) shall be accompanied by a sworn statement setting out—

- (a) the nature and extent of the right, title or interest of the applicant in the funds or assets concerned;

- (b) the time and circumstances of the acquisition by the applicant of the right, title or interest in the funds or assets; and
- (c) any additional facts supporting the application, which assist the Committee to make an assessment on the *bona fide* ownership or interest in the frozen funds.

(3) The Committee shall determine an application under this regulation within sixty working days and notify the applicant of its decision.

(4) Where the application under this regulation is approved, the Committee, through the Secretary to the Committee, shall notify all persons or entities holding frozen funds and other assets of its decision and direct the unfreezing of the funds and other assets with regards to the third-party claim.

13. (1) A designated person or entity may make a de-listing request to the Focal point in the case of Resolution 1988 and to the United Nations Office of the Ombudsperson in the case of Resolution 1267 or Resolution 1989 through the address specified in the Schedule hereto or to the relevant Sanctions Committee

Application for
the de-listing
1267/1989 or
1988.

(2) An application made under sub-regulation (1) may be made based on the following grounds—

- (a) mistaken identity;
- (b) not to be the person or entity on the designation list;
- (c) relevant and significant change of facts or circumstances including the inclusion of the applicant in a witness protection program;
- (d) the death dissolution or liquidation of a designated person or entity; or
- (e) any other circumstance which would show that the basis for designation no longer exists.

(3) Where the Sanctions Committee deletes the name of a person or entity appearing on a sanctions list, the Committee shall, within twenty-four hours of receipt of the notification of de-listing—

- (a) notify the persons or entities holding targeted funds or other assets of such deletion;
- (b) notify the designated person or entity of the delisting indicating the consequences thereof;
- (c) provide clear guidance to financial institutions and other persons or entities, including designated non-financial businesses and professions, that may be holding targeted funds or other assets, on their obligations to respect the delisting or unfreezing action.

(4) The persons or entities holding targeted funds or other assets shall, without delay, unfreeze the funds or other assets.

PART III — IMPLEMENTATION OF RESOLUTION, 1373

14. (1) The Committee may on its own motion or upon request by a competent party or any other person, identify and designate a person for purposes of Resolution 1373.

Designation under
Resolution 1373.

(2) The persons who may be designated under sub-regulation (1) include—

- (a) a person who commits, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts;
- (b) entities owned or controlled, directly or indirectly, by persons under paragraph (a);
- (c) persons and entities acting on behalf of, or at the direction of, persons and entities in paragraph (a); and
- (d) a person who has committed the offence of terrorism financing.

(3) Where there are reasonable grounds that a person meets the designation criteria specified under sub-regulation (2), the Committee shall designate the person or entity for purposes of Resolution 1373 and cause the name of that person and such other relevant identification information to be entered into the domestic list.

(4) The Committee shall use all available information sources, including information from domestic and foreign competent parties, to identify persons who meet the designation criteria and shall coordinate with any person it deems suitable to obtain information regarding the designation of persons:

Provided that the Committee shall take measures to ensure that the information received under this regulation contains all relevant information necessary to reach a decision on whether a person or entity meets the designation criteria under this regulation, including through seeking additional information.

(5) Any person with information on the targets for designation shall present such information to the Committee, through the Secretary to the Committee, who upon receipt shall notify the Committee of such information for its consideration in line with its internal procedures

(6) Upon designation of a person or entity under this regulation, the Committee shall circulate the designation and any other relevant information, including through electronic means, without prior notice and in the manner specified under regulation 5(2) and 5(3).

(7) Despite sub-regulation (6), the Committee may circulate the designation to any other State as specified in the relevant Resolution.

(8) Upon receipt of the designation under sub-regulation (6), any person or entity holding funds, property or other assets of a designated person or entity shall freeze funds and other assets in the manner specified under regulation 15.

(9) The circulation and freezing of funds and other assets under this regulation shall be undertaken cumulatively without delay.

(10) A proposal for designation under this regulation shall not be conditional upon the existence of a criminal proceeding and shall operate without prior notice to the proposed listed person or entity.

15. (1) Upon receipt of the notification of designation under regulation 14, any person holding funds, property or other assets of a designated person or entity shall —

Actions to be taken upon designation under Resolution 1373.

- (a) freeze without prior notice—
 - (i) all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat;
 - (ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated person or entity;
 - (iii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated person or entity;
 - (iv) funds or other assets of person or entity acting on behalf of, or at the direction of, designated person or entity;
- (b) not make available any funds or other assets, economic resources or financial or other related services as specified under section 30G of the Act; and
- (c) take such other action as may be necessary to give effect to Resolution 1373.

(2) Within twenty-four hours of detecting and freezing the funds or other assets, financial institutions and designated non-financial businesses and professions shall file a report with the Committee, through the Secretary, in a manner specified by the Committee, of any assets frozen or actions taken in compliance with the prohibition requirement of the Committee, including attempted transactions.

(3) The Committee shall disseminate the reports to the relevant competent parties.

16. (1) Where the Committee designates a person or entity under this Part, the Committee shall inform the designated person or entity of the designation seven days following the date of making such decision.

Notification of designation under Resolution 1373.

(2) The notification under this sub-regulation (1) shall contain the following information—

- (a) a summary of the grounds for designation and consequences thereof;
- (b) details of the freezing order and the prohibitions applicable;
- (c) the right to make an application for judicial review; and
- (d) any other relevant information that the Committee shall determine:

Provided that the Committee shall not disclose any such information that may prejudice national security.

(3) A notification under this regulation shall be served at the designated person or entity's last known residence address or business address or through electronic means or in any other manner the committee may specify.

17. (1) The Committee may, through the Cabinet Secretary, request any other country to give effect to the actions and freezing mechanisms initiated under the against any person or entity designated under this Part.

Request to another country.

(2) A request under sub-regulation (1) shall be effected by circulating the domestic list accompanied by as much identifying information, and specific information supporting the designation, which the Committee considers relevant to that other country to take the actions as specified in the request and Resolutions 1373 (2001).

18. (1) A request for designation made by a country pursuant to Resolution 1373 shall be transmitted to the Kenyan Mission in that country.

Third party requests.

(2) Where a Kenyan Mission does not exist in the country making the request, the country shall transmit the request to the Ministry responsible for matters relating to foreign affairs in Kenya.

(3) A request under sub-regulations (1) or (2) shall contain the following—

- (a) such relevant information as possible on the person or entity proposed to be designated, including sufficient identifying information to allow for the accurate and positive identification of the party; and
- (b) a statement containing as much detail as possible on the basis for the proposed designation, including specific information to support a determination that the party meets the relevant designation criteria under this regulation.

(4) Upon receipt of a request under sub-regulation (1) or (2), the Kenyan Mission or the Ministry shall submit the request to the Committee for consideration.

(5) Upon receipt of a request under this regulation, the Committee shall, within thirty days of receipt, consider the request and make a determination.

(6) Where the Committee determines that there are reasonable grounds to designate that person or entity, the Committee shall, without prior notice—

- (a) designate the person or entity;
- (b) circulate the designation in the manner specified under regulation 5(2) and 5(3);
- (c) direct and require any person or entity holding funds, property or other assets of a person or entity designated

under this regulation to freeze funds and other assets in the manner specified under regulation 15.

(7) The circulation and freezing of funds and other assets under this regulation shall be undertaken cumulatively without delay.

(8) A person or entity designated under this regulation shall be notified in the manner specified under regulation 16.

19. (1) For the purposes of making a determination on a person or entity meeting the criteria for designation under Resolution 1373, the Committee may—

Authority to solicit and collect information for designation.

(a) consult or seek assistance from relevant regulatory agency, security agency, intelligence agency, law enforcement agency, supervisory body or administrative agency, including countries or United Nations entities, as may be necessary to determine whether, on reasonable grounds, there is sufficient evidence to support the listing of a person or entity on a United Nations Sanctions List; and

(b) collect or solicit information to identify a person and entity that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation.

(2) The Committee shall operate *ex-parte* against a person or entity who has been identified and whose proposal for designation is being considered.

20. (1) The Committee shall compile and maintain a Domestic List.

Domestic List.

(2) The Domestic List prepared under sub-regulation (1) shall include, where available, the following information in relation to a designated person or entity—

- (a) the name including any alias or title of the person or entity;
- (b) the place and date of birth, establishment or incorporation;
- (c) the original or acquired nationality;
- (d) passport numbers, identity card numbers or registration number;
- (e) gender;
- (f) physical and postal addresses;
- (g) occupation;
- (h) telephone number; and
- (i) any other information which the Committee may consider relevant.

(3) The Committee shall periodically review the Domestic List where new information is available on designated persons or entities, which may alter the status of the designated persons or entities concerning meeting the designation criteria under these Regulations.

21. (1) Within fourteen days of receiving information on designation under this Part, a designated person or entity may apply to the High Court for review of that decision.

Application for review of designation under Resolution 1373.

(2) In considering the application under this regulation, the Court

- (a) shall hear the matter in camera;
- (b) may examine any security or intelligence reports or other information or evidence considered by the Committee.

22. (1) The Committee may de-list a designated person or entity from the domestic list where it is established that the designated person no-longer meets the designation criteria under Regulation 14—

De-listing from the Domestic List

- (a) on its own motion; or
- (b) following the consideration of an application received in accordance with this Regulation.

(2) An application to delist under sub-regulation (1) shall be submitted to the Committee, through the Secretary to the Committee, in the manner specified by the Committee and shall be accompanied with such relevant information that may be necessary to assist the Committee in making a determination.

(3) The Committee may request further information from the designated person or entity or any other person when considering a request under this Regulation in order to reach a decision.

(4) Upon receipt of the application under this regulation, the Committee shall consider the application in accordance with its internal procedures.

(5) Within thirty days of receiving the request under sub-regulation (1), the Committee shall consider the request and where reasonable grounds exist—

- (a) shall delete the name and other details pertaining to the designated person from the Domestic List;
- (b) circulate notification of the deletion to persons or entities holding targeted funds or other assets of such delisting;
- (c) notify the delisted person or entity of the delisting and the consequences thereof; and
- (d) provide clear guidance to financial institutions and other persons or entities, including designated non-financial businesses and professions, that may be holding targeted funds or other assets, on their obligations to respect the delisting and unfreezing action.

(6) Upon receipt of communication of the delisting of a person or entity from the domestic list, any person, including financial institutions and designated non-financial businesses or professions, that may be holding targeted funds or other assets, must take action, without delay, to un-freeze the funds or other assets.

(7) Where the Committee decides that no reasonable grounds exist to revoke the designation, the Committee shall, within thirty days of receiving the application, instruct the Secretary to the Committee to inform the applicant of its decision.

(8) Within sixty days of receiving information of the decision under in sub-regulation (7), the applicant may apply to the High Court for review of that decision.

23. (1) A person listed on the Domestic List, and any interested party may make an application to the Committee, through the Secretary to the Committee and in the specified manner, for authorization to access the frozen funds or part thereof to cover—

Authorization to access funds frozen pursuant to listing on Domestic List.

- (a) necessary and basic expenses, including payments for rent or mortgage, foodstuffs, monthly family expenses, medicines and medical treatment, taxes, insurance premiums and public utility charges;
- (b) expenses exclusively for payment of reasonable professional fees, or reimbursement of incurred expenses associated with the provision of legal services;
- (c) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources;

(3) Where the Committee authorises the access to frozen funds or other assets under this regulation, the authorisation shall,—

- (a) specify the extent of such access and shall be accompanied by information on the persons and entities holding such funds or assets subject to the order authorizing access; and
- (b) be accompanied by clear guidance to any persons and entities holding such funds or assets subject to the order.

(4) Upon receipt of the authorisation under sub-regulation (3), any person holding frozen funds or other assets shall unfreeze the funds or assets and facilitate access to the funds or assets as specified.

(5) Where an application under this regulation is rejected, the Committee shall notify the applicant of its decision indicating the reasons thereof.

24. (1) Any person or entity inadvertently affected by freezing or other measures due to a having the same or similar name with a designated person or entity on a domestic list, may make an application to the Committee that the person or entity involved is not the designated person or entity.

False positives.

(2) An application under in sub-regulation (1) shall be made, in writing, to the Committee, through the Secretary to the Committee, and shall include information indicating that the applicant is not the designated person.

(3) Within sixty days from date of receipt of the application under this regulation, the Committee shall make a determination of the application and, in writing, notify the applicant of its decision.

(4) In making a determination under this regulation, the Committee may request for additional information from the applicant or other competent authorities.

(5) Where the Committee approves an application under this regulation—

- (a) the Committee shall communicate its decision to all persons in accordance with the procedure under Regulation 5(2) and shall give guidance relating to the unfreezing of funds or other assets of the applicant;
- (b) any person who holds, controls or has in his custody or possession the frozen funds or other assets of the applicant shall immediately unfreeze those funds or other assets.

25. (1) The Committee shall notify—

Notices.

- (a) the competent parties or entities of—
 - (i) any amendment to the name of any person on the Sanctions List and the Domestic List; and
 - (ii) information required for inclusion in the list; and
- (b) competent authorities or countries of any measures taken by the Committee in accordance with these Regulations.

(2) The Committee shall provide additional information including supporting documents which become available to it in relation to designated persons or entities to the Sanctions Committee.

26. A person who obtains information on the breach of any provision of these Regulations shall, within forty-eight hours after obtaining such information, inform the Committee or report the breach to the nearest police station.

Duty to report violation of Regulations.

PART IV — RESTRICTIONS ON TRAVEL, DEALINGS IN ARMS AND OTHER PROHIBITIONS

27. (1) A person who is designated under these Regulations shall not enter or transit through Kenya, if the entry or transit would be contrary to a determination of the Security Council made under Article 41 of the Charter of the United Nations.

Entry of designated persons into Kenya.

(2) Notwithstanding the provisions of any other written law, a Director of the Kenya Citizens and Foreign Nationals Management Service shall not grant a visa under the Kenya Citizenship and Immigration Act to a designated person unless he or she has obtained the advice of the Cabinet Secretary that the visa is consistent with the provisions of subregulation (1).

Cap. 170.

(3) The provisions of this regulation shall not be construed to vary or waive the requirements imposed under the Kenya Citizenship and Immigration Act.

28. Notwithstanding the provisions of regulation 27(1), a designated person shall not be prevented from entering or transiting through Kenya where—

Exemptions allowed under the travel restrictions.

- (a) the designated person is a citizen of Kenya;
- (b) the entry or transit is necessary for compliance with a judicial process; and
- (c) the 1267/1989 Sanctions Committee determines, on a case-by-case basis, that the entry or transit is justified.

29. A person in Kenya or citizen of Kenya in any place outside Kenya shall not, directly or indirectly, enter into or deal in the supply, sale, transfer, carriage, delivery, training in or provision of technical assistance or any deal with any weapons or related materials of any type, knowing that the weapons or materials.

Transactions with designated person in relation to arms prohibited

- (a) are intended to be imported by a designated person; or
- (b) are to be supplied or delivered to, or to the order of, a designated person.

30. A person shall not use a ship or aircraft in Kenya or use a Kenyan ship or aircraft in any place outside Kenya for the carriage of weapons or related materials from or to a designated person.

Carriage of arms to designated person prohibited

31. No person shall avail any funds, assets, economic resources, or financial and other related services, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities, entities owned or controlled, directly or indirectly, by designated persons or entities, and persons and entities acting on behalf of, or at the direction of designated persons or entities unless licensed, authorised or otherwise notified in accordance with the relevant United Nations Security Council Resolutions.

Availing resources to prohibited persons.

32. No proceedings shall lie against any person or entity, including reporting institutions and relevant government agencies, in respect of effecting or implementing an order designating a person or entity or freezing the property or funds of a designated person or entity in good faith under these Regulations.

Protection from liability.

33. (1) A person or entity that contravenes the provisions of these Regulations commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years.

Penalties.

(2) Notwithstanding the penalty provided under sub-regulation (1), the Financial Reporting Centre, a supervisory body or self-regulatory body, as the case may be, may impose administrative sanctions on the financial institutions, designated nonfinancial businesses and professions for breach of the provisions of these Regulations, including—

- (a) warning;
- (b) administrative penalties of at least 100,000 shillings and not more than 3 million shillings for each violation;
- (c) banning the violator from working in the sector related to the violation for the period determined by the supervisory authority;

- (d) constraining the powers of the board of directors, supervisory or executive management members, managers or owners who are proven to be responsible of the violation including the appointment of temporary inspector;
- (e) suspending managers, board of directors, and supervisory and executive management members who are proven to be responsible of the violation for a period to be determined by the supervisory authority or request their removal;
- (f) suspend or restrict the activity or the profession for a period to be determined by the supervisory authority; or
- (g) cancel the licence.

34. A competent party and any person concerned with the implementation of these Regulations may prescribe administrative rules in relation to its employees, agents, or staff for the purposes of implementing the obligations imposed under these Regulations. Internal rules.

35. (1) A reporting institution and relevant government agency shall, within twenty-four hours of taking action or freezing funds or other assets of a designated person or entity, submit to the Committee and the Centre, in writing, a return in the format specified by the Centre in consultation with the Committee for that purpose. Return.

(2) A return submitted under subregulation (1) shall include the following information—

- (a) in the case of a reporting institution—
 - (i) the account number;
 - (ii) the name of the account owner or holder;
 - (iii) the time of freezing of all subject accounts;
 - (iv) the balance of the account as at the time of freezing the funds;
 - (v) the related accounts, if any, including the balance of monies in the accounts as at the time of freezing; and
 - (vi) an explanation as to the ground for the identification of related accounts; and
- (b) in the case of a government agency—
 - (i) the nature and description of the property;
 - (ii) the name of the owner or holder of the property;
 - (iii) the mode and date of acquisition of the property by the owner; and
 - (iv) the location of the property.

(3) A reporting institution and relevant government agency shall notify the Committee and the Centre of any attempted dealing with property or funds against which a freezing action against such property or funds has been taken, within twenty-four hours of such attempt.

36. A reporting institution shall regularly review the domestic or sanctions lists and monitor transactions in relation to entities specified in the lists on an on-going basis to mitigate against the risks of the occurrence of the financing of terrorism.

On-going monitoring of transactions.

37. The Cabinet Secretary may issue such instructions, directions, guidelines or rules as he or she may consider necessary for the better carrying out of the provisions of these Regulations.

Powers to issue directives and guidelines

38. (1) The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2023, are revoked.

Revocation of L.N. No. 152 of 2023.

(2) Despite the provisions of sub-regulation (1)—

- (a) any criminal proceedings taken or pending against any person immediately before the commencement of these Regulations may be continued by or against that person as if instituted under these Regulations; or
- (b) any investigation or inquiry instituted in terms of the revoked Regulations which was pending before the commencement of these Regulations shall be continued or disposed of as if instituted under these Regulations.

SCHEDULE

(r. 15(1))

ADDRESSES FOR DE-LISTING REQUESTS

PART A

Office of the Ombudsperson
Room TB-08041D United Nations
New York, NY 10017
United States of America
Tel: +1 212 963 2671
Fax: +1 212 963 1300/3778
E-mail: ombudsperson@un.org

PART B

Focal Point for De-listing
Security Council Subsidiary Organs Branch
Room TB-08041B
United Nations
New York, N.Y. 10017
United States of America
Tel. +1 917 367 9448
Fax. +1 212 963 1300/3778
Email: delisting@un.org

Made on the 20th November, 2024.

KITHURE KINDIKI,
Cabinet Secretary for Interior and National Administration.

LEGAL NOTICE NO. 188

THE PREVENTION OF TERRORISM ACT

(Cap. 59B)

IN EXERCISE of powers conferred by section 50 of the Prevention of Terrorism Act, the Cabinet Secretary for Interior and National Administration makes the following Regulations—

THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON PREVENTION, SUPPRESSION AND DISRUPTION OF PROLIFERATION FINANCING) (AMENDMENT) REGULATIONS, 2024

1. These Regulations may be cited as the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) (Amendment) Regulations, 2024.

Citation.

2. The Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) Regulations, 2023, in these Regulations referred to as the “principal Regulations” are amended in regulation 2, by inserting the following new definition in proper alphabetical sequence—

L.N. No. 189 of 2023.

“delisting” means deleting the name and other identification information of a designated person on a UNSC Sanction list;

“UNSCR” means the United Nations Security Council Resolution;

3. Regulation 5 of the principal Regulations is amended—

(a) in sub-regulation (3), by adding the following new paragraph immediately after paragraph (e)—

(f) any other person.

(b) in sub-regulation (4), by deleting the word “freezing” and substituting therefor the words “on the obligation to freeze”

4. Regulation 7 of the principal Regulations is amended by inserting the word “cumulatively” immediately after the word “undertaken”.

5. Regulation 11 of the principal Regulations is amended in sub-regulation (1) by deleting the word “freezing order” and substituting therefor the words “freezing action”.

6. Regulation 13 of the principal Regulations is amended by deleting sub-regulation (6) and substituting therefor the following new sub-regulation—

(6) The petition filed under this regulation shall be determined in accordance with the procedures of the relevant Sanction Committee.

7. Regulation 14 of the principal Regulations is amended —

- (a) by renumbering the existing regulation as sub-regulation (1);
- (b) in sub-regulation (1), by deleting the words “upon confirmation” and substituting therefore the words “upon delisting”;
- (c) by adding the following new sub-regulation immediately after sub-regulation (1)—

(2) Upon receipt of the notice under sub-regulation (1), the persons or entities, including designated non-financial business and professions holding targeted funds or other assets shall respect the delisting and unfreeze the funds or other assets.

8. Regulation 15 of the principal Regulations is amended by deleting the words “reporting institution” and substituting therefor the word “entity”.

9. The principal Regulations are amended deleting regulation 25 and substituting therefor the following new regulation —

Penalties.

25. (1) A person or entity that contravenes the provisions of these Regulations commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years.

(2) Notwithstanding the penalty provided under sub-regulation (1), the Financial Reporting Centre, a supervisory body or self-regulatory body, as the case may be, may impose administrative sanctions on the financial institutions, designated nonfinancial businesses and professions for breach of the provisions of these Regulations, including—

- (a) warning;
- (b) administrative penalties of at least 100,000 shillings and not more than 3 million shillings for each violation;
- (c) banning the violator from working in the sector related to the violation for the period determined by the supervisory authority;
- (d) constraining the powers of the board of directors, supervisory or executive management members, managers or owners who are proven to be responsible of the violation including the appointment of temporary inspector;

- (e) suspending managers, board of directors, and supervisory and executive management members who are proven to be responsible of the violation for a period to be determined by the supervisory authority or request their removal;
- (f) suspend or restrict the activity or the profession for a period to be determined by the supervisory authority; or
- (g) cancel the licence.

Made on the 20th November, 2024.

KITHURE KINDIKI,
Cabinet Secretary for Interior and National Administration.

**EXPLANATORY MEMORANDUM TO L.N 187 ON THE PREVENTION OF
TERRORISM ACT (IMPLEMENTATION OF UNITED NATIONS SECURITY
COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM REGULATIONS),
2024**

PART 1

Name of the Statutory instrument:	The Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2024.
Name of the parent Act:	The Prevention of Terrorism Act, 2012.
Enacted pursuant to:	Section 50 of the Prevention of Terrorism Act, 2012.
Name of the Ministry/ Department:	Ministry of Interior and National Administration.
Gazetted on:	20 th November 2024
Tabled on:	

PART II

1. The Purpose of the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2024

The purpose of the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2024 (POTA Regulations, 2024) is to give effect to and ensure the full implementation of the substantive provisions of the Parent Act particularly as relates to implementation of measures on Targeted Financial Sanctions in relation to terrorism financing.

2. The legislative Context

Section 50 of the Prevention of Terrorism Act, 2012 (POTA) empowers the Cabinet Secretary to make Regulations in respect of which regulations are required or authorised by this Act or in circumstances where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon

member States to apply those measures, the regulations are necessary to enable the application of these measures.

3. Policy Background

3.1 The country's regime to combat Terrorism Financing (TF) is largely contained in the Prevention of Terrorism Act, 2012 (POTA) and the attendant Regulations thereunder namely, the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2024.

3.2 Kenya's Anti-Money Laundering/Combating the Financing of Terrorism and Combating Proliferation Financing (AML/CFT/CPF) regime is under review by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the International Cooperation Review Group (ICRG) of the Financial Action Task Force (FATF) with Kenya currently being amongst the jurisdictions under increased monitoring (FATF Grey List).

3.3 Consequently, the country is required to address the strategic deficiencies identified in Kenya's Action Plan with the FATF within set timelines. Key among the deficiencies is to review Kenya's legal framework to implement Targeted Financial Sanctions (TFS) related to financing of terrorism anchored under the Prevention of Terrorism Act 2012 (POTA).

3.4 The Legal Sub Group of the National Task Force on Anti-Money Laundering and Counter-Terrorism Financing (NTF) has undertaken a comprehensive review of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2023 ("TF Regulations"). The NTF proposed that the Regulations be aligned with the requirements of the FATF Standards to address the outstanding deficiencies identified by the ESAAMLG and the FATF in relation to Kenya's implementation of Targeted Financial Sanctions (TFS) relating to Terrorism Financing (TF).

3.5 The new TF Regulations address freezing of TFS for TF without delay. The Reviewers were of the view that the process was long and convoluted and took more than twenty-four hours (the recommended timeline) to implement. To address this, the new Regulations provides the responsibility of receiving and circulating the United Nations Security Council Resolution UNSCR 1267 (UNSCR 1267) sanctions list to the Secretary of the Counter Financing Inter Ministerial Committee (CFTIMC) to action on behalf of the CFTIMC.

3.6 The Reviewers also found that there was no clarity with how Kenya implements United Nations Security Council Resolution 1373 (UNSCR 1373) with regard to designations, delisting and allowing access to frozen funds. To address this, the new Regulations has separated the mechanisms for implementation of UNSCR 1267 and UNSCR 1373 in terms of the procedures for designation and delisting of designated persons and entities.

3.7 The new Regulations also enhances the protection of third parties for implementing the obligations of Recommendation 6, which the Reviewers indicated to be missing.

3.8 As per the Mutual Evaluation Procedures, both the ESAAMLG and the FATF only consider legal instruments that are in force and effect. This means that the TF Regulations needed to be operationalized i.e. enacted or promulgated and in be in operation for the ESAAMLG and FATF to consider them. To enable Kenya meet the set deadlines, the Regulations needed to be in force by or before **20th November 2024**, as Kenya was required to submit its progress report to the ICRG by **22nd November 2024**, which it has done.

4. Consultation Outcome

4.1 Supervisory and Regulatory bodies, public institutions and Law Enforcement Agencies with a role to play in the implementation of requirements to combat TF and Reporting Institutions were consulted between August and October 2024.

4.2 The Legal Sub Group of the National Task Force on Anti-Money Laundering and Counter-Terrorism Financing (NTF) undertook a comprehensive review of

the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2023 ("TF Regulations") and. Recommended that the Regulations be suitably amended to align it with the requirements of the FATF Standards to address the outstanding deficiencies identified by the ESAAMLG and the FATF in relation to Kenya's implementation of Targeted Financial Sanctions (TFS) relating to Terrorism Financing.

4.3 The Regulations were then forwarded to the Attorney General for clearance, legislative drafting and publication in the Kenya Gazette.

5. Guidance

The Financial Reporting Centre (FRC) will sensitize stakeholders and the general public on the provisions of the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2024 (POTA Regulations, 2024) to create awareness on the same.

6. Impact

6.1 Impact on fundamental rights and freedoms

These regulations do not limit the fundamental rights and freedoms as enshrined in the Constitution.

6.2 Impact on the private sector

Reporting Institutions are already implementing the requirements for targeted financial sanctions so it will not occasion any new additional burden.

6.3 Impact on the public sector

The targeted financial sanctions mechanism is targeted at persons designated for supporting terrorism financing activities. It is a critical instrument in dealing with such persons. Designated persons will not be adversely affected by the implementation of the mechanism. Designated persons and third parties are afforded an opportunity by the mechanism provided in the regulations to apply for review.

6.4 An impact assessment statement

An impact assessment has not been prepared for this statutory instrument as it falls within the exceptions provided under section 9 of the Statutory Instruments Act.

7. Monitoring and Review

The Financial Reporting Centre shall monitor the application of the Prevention of Terrorism Act (Implementation of United Nations Security Council Resolutions on Suppression of Terrorism Regulations), 2024 to ensure compliance with the set standards. A review of the regulations shall be done by the Cabinet Secretary Ministry of Interior and National Administration with the approval of Parliament.

8. Contact Person

The Financial Reporting Centre shall implement the regulations and the contact person of the FRC shall be the Director General, Financial Reporting Centre, Private Bag - 00200, Nairobi, Tel: 0709858000, email: DG@frc.go.ke.