

Rt. Hon. Speaker  
P.O. Oppose for  
Tabung.



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17/4/25

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REPUBLIC OF KENYA


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

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE: 17 APR 2025</b>	
<b>DAY: Thursday</b>	
<b>TABLED BY:</b>	Hon. Robert Mburu, MP Member
<b>CLERK-AT THE TABLE:</b>	A. Shibusko

*The Directorate of Audit, Appropriations & General-Purpose Committees*

The National Assembly

Parliament Buildings

**NAIROBI**



## 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 ( <i>L.N. NO. 187 OF 2024</i> ).....	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 ( <i>L.N. No. 187 of 2024</i> ).....	12
2.4 Summary of the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2024 ( <i>L.N. No. 187 of 2024</i> ) .....	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

<b>2.2 Object and Purpose of the Regulations.....</b>	<b>19</b>
<b>2.3 Legislative Context.....</b>	<b>19</b>
<b>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) .....</b>	<b>20</b>
<b>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).....</b>	<b>21</b>
<b>3.0 COMMITTEE OBSERVATIONS .....</b>	<b>22</b>
<b>3.1 Statutory Timelines.....</b>	<b>22</b>
<b>3.2 Consultations/Public Participation.....</b>	<b>23</b>
<b>3.3 Regulatory Impact Statement.....</b>	<b>23</b>
<b>4.0 COMMITTEE RECOMMENDATIONS .....</b>	<b>24</b>

## **ABBREVIATIONS AND ACCRONYMS**

<b>TF</b>	Terrorism Financing
<b>POTA</b>	Prevention of Terrorism Act
<b>AML</b>	Anti-Money Laundering
<b>CFT</b>	Combating the Financial Terrorism
<b>CPF</b>	Combating proliferation Financing
<b>ESAAMLG</b>	Eastern and Southern Africa Anti-Money Laundering Group
<b>ICRG</b>	International Cooperation Review Group
<b>FATF</b>	Financial Action Task Force
<b>FRC</b>	Financial Reporting Centre
<b>NTF</b>	National Task Force
<b>TFS</b>	Targeted Financial Sanctions
<b>UNSCR</b>	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 20<sup>th</sup> November 2024, forwarded to the Clerk of the National Assembly and laid on the table of the House on 16<sup>th</sup> 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 17<sup>th</sup> 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. Oluoch, Anthony Tom, M.P.**

Mathare Constituency

**ODM**

**Hon. Mwale, Nicholas S. Tindi M.P.**

Butere Constituency

**ODM**

**Hon. Mugabe Innocent Maino, M.P.**

Lukuyani Constituency

**ODM**

**Hon. Munyoro Joseph Kamau, M.P**

Kigumo Constituency

**UDA**

**Hon. Lenguris Pauline, M.P.**

Samburu County

**UDA**

**Hon Mnyazi Amina Laura, MP.**

Malindi Constituency

**ODM**

### 1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

**Ms. Esther Nginyo**  
*Clerk Assistant I (Team Leader)*

Mr. Wilson Dima 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*

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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 20<sup>th</sup> November 2024, forwarded to the Clerk of the National Assembly on 6<sup>th</sup> December, 2024 and laid on the table of the House on 16<sup>th</sup> 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, 17<sup>th</sup> 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 16<sup>th</sup> 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, 17<sup>th</sup> April, 2025, at Committee Room 21, 5<sup>th</sup> 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 20<sup>th</sup> November, 2024, received on the 5<sup>th</sup> December, 2024 and tabled on the 16<sup>th</sup> January, 2025 this being the 8<sup>th</sup> 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 20<sup>th</sup> November, 2024, received on the 5<sup>th</sup> December, 2024 and tabled on the 16<sup>th</sup> January, 2025 this

being the 8<sup>th</sup> 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 20<sup>th</sup> November 2024, forwarded to the Clerk of the National Assembly on 6<sup>th</sup> December, 2024 and tabled on 16<sup>th</sup> 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, 17<sup>th</sup> 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 16<sup>th</sup> 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, 17<sup>th</sup> 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 20<sup>th</sup> November, 2024, received on the 5<sup>th</sup> December, 2024 and tabled on the 16<sup>th</sup> January, 2025 this being the 8<sup>th</sup> 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**

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





Minutes for Adoption  
of the Report.

Phroni:  
17th April  
2025

**COMMITTEE ON DELEGATED LEGISLATION**  
**MEMBERS ATTENDANCE SCHEDULE**





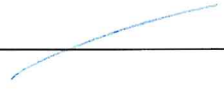

Date 17/04/2025 Venue Room 21, 5<sup>th</sup> Floor, Bunge Tower.

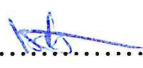
Start Time 10:15 a.m. Time Ended                     

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 Mwangi.....SIGNATURE.....

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