



REPUBLIC OF KENYA


Approved
SNA
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THIRTEENTH PARLIAMENT- SECOND SESSION (2023)

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (NATIONAL PEACE SUPPORT OPERATIONS FUND)
REGULATIONS, 2023 (LN. NO. 58 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 21 JUN 2023	DAY: Wednesday JUNE, 2023
TABLED BY:	Hon. Samuel Cheptonga (Chairperson) Delegated Legislation Committee
CLERK-AT THE TABLE:	Miriam Mado

The Directorate of Audit, Appropriations & Other Select Committees
The National Assembly
Parliament Buildings
NAIROBI.

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ABBREVIATIONS

AU	African Union
LN	Legal Notice
MOD	Ministry of Defence
PFM	Public Finance Management
PSO	Peace Support Operations
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order
TCC	Troops Contributing Countries
UN	United Nations

CHAIRPERSON'S FOREWORD

The Public Finance Management (National Peace Support Operations Fund) Regulations, 2022 ("the Regulations") are made *vide* LN No. 219 of 2022, pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning under section 24(4) of the Public Finance Management Act, (No. 18 of 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 on 14th of December, 2022, and received by the Clerk of National Assembly on 22nd December, 2022 (when the House was on recess) and were tabled before the House on the 14th of February, 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. They were subsequently referred to the Committee on Delegated Legislation for consideration.

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 joint meeting with National Treasury and Economic Planning and the Ministry of Defence on Friday, the 24th of March, 2023 in Naivasha to deliberate on Public Finance Management (National Peace Support Operations Fund) Regulations, 2022. Upon and during the deliberations, and granted that the Committee was still within its statutory timelines for consideration set out in section 15(3) of the Act, the Ministry of Defence informed the Committee of their intention to engage with the National Treasury to cause the Regulations published as LN. No. 219 of 2023 to be revoked to be able to address the issues that had emerged since the Regulations were published and during the meeting. It was resolved that the regulation –making authority review the Regulations in line with the issues raised and agreed upon during the meeting. At a further meeting held between the Committee and the Ministries, the reviewed Regulations published as LN No. 58 of 2023 on 4th May, 2023 submitted to the Clerk of the National Assembly on 9th May, 2023, were further scrutinized for conformity with the Constitution and the relevant statutes.

The purpose of the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023, Legal Notice No. 58 of 2023, which revoked Legal Notice No. 219 of 2022, is to establish a Fund to be known as National Peace Support Operations Fund with objects and purpose being to provide funds to support the participation in peace support operations by the Kenya Defence Forces. Further, and in particular, the Fund shall be used for:

- a) financing the establishment of equipment parks as approved by the Defence Council for PSO;
- b) financing for acquisition and maintenance of Contingent Owned Equipment and other assets for PSO;
- c) financing enhancement of units to attain appropriate levels at the United Nations peacekeeping capability readiness system;

- d) funding of capacity building programme including training facilities and infrastructure development for the purpose of PSO;
- e) funding force generation and force projection activities;
- f) funding research, monitoring and evaluation of activities related to PSO; and
- g) funding and facilitation of any other activities in furtherance of PSO approved by the Defense Council.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee invited the Regulation making Authority (The National Treasury) jointly with the Ministry of Defence to a scrutiny meeting on 24th March 2023 and 13th June, 2023 to consider the said Instruments and the following issues arose during the plenary -

Stakeholder Consultation

The Committee was apprised that the Taskforce responsible for preparation and development of the Regulations, held targeted consultations with key stakeholders whose input were taken into account before finalization of the Regulations

The Committee was further informed that the key stakeholders were the National Security Council, the Ministry of Foreign & Diaspora Affairs, the Ministry of Interior and Coordination of National Government and the State Law Office.

The Regulation-making authority contended that, and emphasised the importance of the appreciation of the fact that, consultations were targeted to the institutions, since they are the directly affected by the operationalization of the Regulations. The said institutions were invited *via* a letter and requested to make written submissions on the Regulations. A summarized responses log together with the Task Force resolutions was appended.

Having examined the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 (*LN. No. 58 of 2023*) against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Statutory Instruments Act, 2013 (*No. 23 of 2013*), the Public Finance Management Act, 2012 (*No. 18 of 2012*), The Committee **resolved to recommend to the House to approve in its entirety the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 (L.N. No. 58 of 2023).**

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.

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 Consideration of the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 (LN. No. 58 of 2023).**

HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* 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. During the scrutiny, the Committee is guided by the principles of good governance, rule of law considers whether the instrument-
 - 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 option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power 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-renewable 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 –

Hon. Chepkonga Kiprono Samuel, CBS, M.P. (Chairperson)

Ainabkoi Constituency

UDA

Hon. Githinji Robert Gichimu, M.P. (Vice Chairperson)

Gichugu Constituency

UDA

COMMITTEE MEMBERS

Hon. Mbui Robert, CBS, M.P

WDM-KENYA

Kathiani Constituency

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

UDA

Garrisa Township Constituency

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

KANU

Kilgoris Constituency

Hon. Kamene Joyce, M.P

WDM-KENYA

Machakos County

Hon. Onchoke, Mamwacha Charles, M.P.

UPA

Bonchari Constituency

Hon Kimaiyo, Gideon Kipkoech, M.P.

UDA

Keiyo South Constituency

Hon. Komingoi, Kibet Kirui,
M.P.UDA

Bureti Constituency

Hon. Chebor, Paul Kibet, M.P

UDA

Rongai Constituency

Hon. Yakub Adow Kuno, M.P

UPIA

Bura Constituency

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

UDM

Mandera North Constituency

Hon. Mwirigi John Paul, M.P.

UDA

Igembe South Constituency

Hon. Odoyo, Jared Okello, M.P.

ODM

Nyando Constituency

Hon. Chepkorir Linet, M.P.

UDA

Bomet County

Hon. Munyoro Joseph Kamau, M.P

UDA

Kigumo Constituency

Hon. Ruku, Geoffrey Kariuki Kiringa,
M.P.

DP

Mbeere North Constituency

Hon. Lenguris Pauline, M.P.

UDA

Samburu County

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

ODM

Butere Constituency

Hon Mnyazi Amina Laura, MP.

ODM

Malindi Constituency

Hon. Mugabe Innocent Maino, M.P.

ODM

Lukuyani Constituency

1.3 COMMITTEE SECRETARIAT

4. The secretariat facilitating the Committee comprises –

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel I

Mr. Jacknorine Buleemi
Clerk Assistant III

Ms. Winny Otieno
Clerk Assistant III

Mr. Brian Langwech
Clerk Assistant III

Ms Fiona Wanjiru
Legal Counsel II

Mr. Daniel Ominde
Research Officer III

Mrs. Sheila Chebotibin
Serjeant at Arms

Mr. Charles Ayari
Audio Officer

2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (NATIONAL PEACE SUPPORT OPERATIONS FUND) REGULATIONS (NO. 58 OF 2023)

2.1 Introduction

5. The Public Finance Management (National Peace Support Operations Fund) Regulations, 2022 Legal Notice No. 219 of 2022 were made pursuant to powers conferred on the Cabinet Secretary for National Treasury and Economic Planning by section 24(4) of the Public Finance Management Act, (No. 18 of 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 on 14th of December, 2022, and received by the Clerk of National Assembly on 22nd December, 2022 (when the House was on recess) and was tabled before the House on the 14th of February, 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act. 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 joint meeting with the National Treasury and Economic Planning and the Ministry of Defence on Friday, 24th March 2023 in Naivasha to deliberate on Public Finance Management (National Peace Support Operations Fund) Regulations, 2022.
8. Upon and during the deliberations, and granted that the Committee was still within its statutory timelines for consideration set out in section 15(3) of the Act, the Ministry of Defence informed the Committee of its intention to engage with the National Treasury to cause the Regulations published as LN. No. 219 of 2023 to be revoked to be able to address the issues that had emerged since the Regulations were published. It was resolved that the regulation-making authority review the Regulations in line with the issues raised and agreed upon during the meeting.
9. The reviewed Regulations were published as LN No. 58 of 2023 on 4th May 2023, submitted to the Clerk of the National Assembly on 9th May 2023 and tabled in the House on 6th June 2023. The Regulations were further scrutinized for conformity with the Constitution and the relevant statutes at a further meeting held between the Committee and the Ministries on 13th June 2023.
10. The Committee noted the need for the Regulations as Kenya had lost its position to some of the neighbouring countries in peace support operations due to the aging military equipment, which were not attracting reimbursement from the United Nations. The Fund, once established will help Kenya to acquire new military equipment.

2.2 Summary of the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 (Legal Notice No. 58 of 2023)

11. **Regulation 1 and 2**, are preliminary provisions which includes the citation and interpretation while **Regulation 3 and 4**, provides for the establishment of the National Peace Support Operations Fund, the seed capital of the fund, being seven billion shillings as appropriated by National Assembly.
12. **Regulation 5,6, 7, 8, 9 and 10** provide for, the object and purpose of the Fund, sources of the Fund, payments made out of the Fund, retention of receipts of earnings or accruals to the Fund, release and management of the Fund respectively.
13. **Regulation 11 and 12** provide for the functions of the Defence Council, the Administrator of the Fund, and while **Regulation 13** provides for the secretariat to provide support for the Administrator, known as the National Peace Support Operations Secretariat (NPSO).
14. **Regulation 14 and 15** provide for the opening of accounts of the Fund, in line with section 28 of the Public Finance Management Act, 2015, and the administration of the Fund to ensure that the accounts are not overdrawn.
15. **Regulation 16**, provides for advances from the Cabinet Secretary to the National Treasury, while **Regulation 17**, provides for investment of the Funds by the Defence Council and **Regulation 18**, provides for review of the Fund by the Cabinet Secretary at the lapse of ten years from its commencement.
16. **Regulation 19** provides for the preparation of annual estimates of revenue and expenditure of the Fund and **Regulation 20**, provides for the preparation of quarterly financial and non-financial reports as prescribed by the Public Sector Accounting Standards Board for approval. **Regulation 21**, provides for accounts and audits, as per the Public Audit Act, 2015.
17. **Regulation 22**, provides for administration of expenses. **Regulation 23**, provides for offences and penalties. **Regulation 24**, provides for the effects of winding up the fund, and **Regulations 25** provides for the revocation of the Legal Notice No. 219 of 2022 on Public Finance Management (National Peace Support Operations Fund) Regulations, 2022.

2.3 Purpose of the Regulations

18. The purpose of this Statutory Instrument is to establish a Fund to be known as National Peace Support Operations Fund whose object and purpose is to provide funds to support the participation in peace support operations by the Kenya Defence Forces. Further, and in particular, the Fund shall be used for:
 - a) financing the establishment of equipment parks as approved by the Defence Council for PSO;
 - b) financing for acquisition and maintenance of Contingent Owned Equipment and other assets for PSO;
 - c) financing enhancement of units to attain appropriate levels at the United Nations peacekeeping capability readiness system;

- d) funding of capacity building programme including training facilities and infrastructure development for the purpose of PSO;
- e) funding force generation and force projection activities;
- f) funding research, monitoring, and evaluation of activities related to PSO; and
- g) Funding and facilitation of any other activities in furtherance of PSO approved by the Defense Council.

2.4 Legislative Context

19. The National Assembly delegated the duty to establish national public funds to the Cabinet Secretary responsible for finance with the approval of the National Assembly. This is provided for under Section 24 (4) of the Public Finance Management Act, 2012. The Regulations are therefore developed within the meaning of Section 24 of the Public Finance Management Act, 2012 and the procedure envisioned under Statutory Instrument Act, 2013.

2.5 Policy Background

20. The 6th National Security Council Meeting held on 5th August, 2020 approved the National Policy for Peace Support Operations and the establishment of the National Peace Support Operations (PSO) Secretariat under the National Security Council.
21. Further, it approved the establishment of the proposed National Peace Support Operations Fund and directed the Cabinet Secretary National Treasury and Planning, the Cabinet Secretary for Defence and the Attorney General to take appropriate action.
22. The policy provided the necessary policy framework that would support the Republic of Kenya peace support activities as a member of the United Nations Security Council. The proposed establishment of a Peace Fund was to finance PSO separately from the Ministry of Defence Budget. It is expected that the fund would be self-sustaining, receiving revenue from United Nations/ African Union (AU) reimbursements for PSO activities.
23. Kenya has a long history of participation in PSOs, dating back to 1979 when the first comprehensive participation in peacekeeping operations was in Rhodesia, now Zimbabwe. Since then, the country has served in many UN/AU Peacekeeping Missions making her one of the leading Troop Contributing Countries (TCCs) globally. To date, over 55,000 troops have participated in various PSOs with several military officers occupying senior positions.
24. Kenya participates in PSO to secure her national interests, preserve territorial integrity, promote regional peace and security, advance economic prosperity, and project her image in fulfillment of international obligations.
25. Despite her long history of participation in PSOs, Kenya has not adequately consolidated the opportunities and leveraged herself as a leading nation in regional and international PSOs. Our effective participation in PSO has been hampered by various factors including Inadequate funding for PSO on the acquisition of standard military equipment.

26. For effective participation in PSO, adequate funding is critical. Over the years, the PSO funding has been factored in the Ministry of Defence (MOD) budget. This results in inadequate allocations and budgetary cuts that affect the ability to effectively participate in PSOs. To this end, the Ministry of Defence and the National Treasury and Planning have developed these Regulations with specific purpose of creating a Fund that will finance PSO.

3.0 COMMITTEE OBSERVATIONS

27. Having examined the Public Finance Management (National Peace Support Operations Fund) Regulations, 2022 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap. 2*), the Public Finance Act (*No. 18 of 2012*), and the Statutory Instruments Act (*No. 23 of 2013*) the Committee made the following observations –

3.1 Statutory Timelines

28. THAT the Regulations were published as LN No. 58 of 2023 on 4th May 2023 submitted to the Clerk of the National Assembly on 9th May 2023, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

3.2 Public Participation

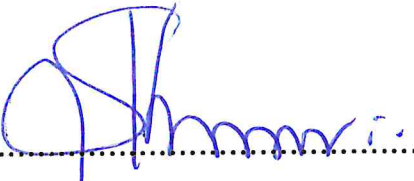
29. The Regulation –making authority submitted a detailed explanatory memorandum providing for the extent of consultation that they conducted. They further demonstrated to the Committee at the joint meeting, the persons and stakeholders consulted and submitted attendant documentation to that effect. The Committee after seeking a number of clarifications was satisfied with the level of public participation as contemplated under Articles 10 and 118 of the Constitution and sections 5, 5A, and the Schedule to the Statutory Instruments Act, 2013 read together with Standing Order 210 of the National Assembly Standing Orders.


3.3 Regulatory Impact Statement

30. 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.

4.0 COMMITTEE RECOMMENDATION

31. Having examined the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the Public Finance Act, **the Committee recommends that the House approves the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 (LN. No. 58 of 2023) in accordance with section 24(4) the Public Finance Management Act (No. 18 of 2012).**

Signed.....

Date.....

THE HON. CHEPKONGA SAMUEL KIPRONO, CBS, MP
(CHAIRPERSON)

ANNEXURES

- 1. Adoption List**
- 2. Legal Notice Number 58 of 2023 and the Explanatory Memorandum**
- 3. Committee Minutes**

SPECIAL ISSUE

Kenya Gazette Supplement No. 59

311

4th May, 2023

(Legislative Supplement No. 26)

LEGAL NOTICE NO. 58

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (NATIONAL PEACE SUPPORT OPERATIONS FUND) REGULATIONS, 2023

1. These Regulations may be cited as the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023.

Citation.

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

Interpretation.

“Administrator of the Fund” means the person designated as such under regulation 12 of these Regulations;

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

“Contingent Owned Equipment” means equipment and assets acquired by Government of Kenya for purpose of Peace Support Operations;

“Defence Council” means the Defence Council established under Article 241(5) of the Constitution;

“Equipment Park” means an area designated by the Defence Council for storage of Contingent Owned Equipment and assets;

“financial year” means the period of twelve months ending on the 30th June in each year;

“force generation” means a procedure in which required resources are mobilized with the necessary capabilities at the right scale and readiness for Peace Support Operations;

“force projection” means ability to deploy forces for Peace Support Operations;

“Fund” means the National Peace Support Operations Fund established under regulation 3 of these Regulations;

“Peace Support Operation (PSO)” means peace keeping, enforcement or any other support operation mandated by international or regional agencies involving diplomatic, humanitarian organizations, military and any other components deployed by the National Security Council outside the Country; and

“Public Sector Accounting Standards” has the meaning assigned to it under section 2 of the Act.

3. There is established a fund to be known as the National Peace Support Operations Fund which shall operate under the budgeting, accounting, reporting and auditing framework of the Act. Establishment of the Fund.

4. The initial capital of the Fund shall be seven billion shillings as appropriated by the National Assembly as follows— Capital of the Fund.

(a) one billion to be appropriated from the Exchequer; and

(b) six billion to be retained from Peace Support Operation reimbursable.

5. (1) The object and purpose of the Fund shall be to provide funds to support the participation in Peace Support Operations (PSO) by the Kenya Defence Forces in accordance with Article 240 (8)(a) of the Constitution. Object and purpose.

(2) Without prejudice to the generality of paragraph (1) of this regulation, the Fund shall provide for—

(a) financing the establishment of equipment parks as approved by the Defence Council for Peace Support Operation;

(b) financing for acquisition and maintenance of Contingent Owned Equipment and other assets for Peace Support Operation;

(c) financing enhancement of units to attain appropriate levels at the United Nations peacekeeping capability readiness system;

(d) funding of capacity building programmes including training facilities and infrastructure development for the purpose of Peace Support Operation;

(e) funding force generation and force projection activities;

(f) funding research, monitoring and evaluation of activities related to Peace Support Operation; and

(g) funding and facilitation of any other activities in furtherance of Peace Support Operation approved by the Defence Council.

6. The Fund shall consist of—

Sources of funds.

(a) moneys appropriated by the National Assembly for purposes of the Fund;

(b) moneys received as reimbursement from Peace Support Operation for the Government provision of Contingent Owned Equipment, assets and services excluding personnel reimbursements

(c) grants, donations, bequests or other gifts made to the Fund; and

- (d) moneys from any other source approved by the Cabinet Secretary.

7. (1) There shall be paid out of the Fund moneys in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

Payment out of the Fund.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual budget estimates approved by the Defence Council at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates shall be referred to the Defence Council and the Cabinet Secretary for approval.

8. The earnings of, or accruals to the Fund shall be retained in the Fund, and shall be spent only for the objects and purposes for which the Fund is established unless the Cabinet Secretary directs otherwise.

Retention of receipts.

9. (1) The funds shall only be released if—

Conditions for release of funds.

- (a) the release is approved by the Defence Council; and
- (b) the release is to meet the expenses related to the objects and purpose of the Fund.

(2) The Defence Council may set out other conditions and requirements for release of fund to ensure the efficient and effective management of resources.

(3) Monies may additionally be released out of the Fund where such release —

- (a) relates to expenditures that did not form part of the approved budget for the financial year in accordance with provisions of the Act; and
- (b) has been recommended by the Administrator of the Fund and submitted to the Defence Council for approval.

(4) For purposes of paragraph (3) of these Regulations, a supplementary budget shall be prepared by the Administrator of the Fund and approved in accordance with the provisions of regulation 7;

Provided that the release under the supplementary budget complies with the requirements of these Regulations.

10. The Fund shall be managed by the Defence Council

Management of the Fund.

11. The functions of the Defence Council shall be —

Functions of the Defence Council

- (a) to formulate policies and guidelines for the regulation and management of the Fund;
- (b) in liaison with other relevant government state departments and agencies, to continuously seek opportunities for participation in Peace Support Operation by the Government of Kenya and determine the allocation of financial resources from the Fund as required;
- (c) to approve annual estimates of revenue and expenditure for the Fund;

- (d) to ensure retention funds of the preceding financial year are revoted;
- (e) to ensure that only the personnel, assets and services provided to Peace Support Operation conform to the required standards and are earmarked for funding under these Regulations;
- (f) to approve and review investment of surplus funds from the Fund;
- (g) to advise the Cabinet Secretary on any additional sources of funds for the Fund; and
- (h) to approve the financial statements and non-financial reports prepared by the Administrator of the Fund.

12. (1) The Principal Secretary in the Ministry responsible for matters relating to defence shall be the Administrator of the Fund.

Administrator of the Fund.

(2) The Administrator of the Fund shall—

- (a) supervise and control the administration of the Fund;
- (b) open and operate bank accounts at the Central Bank of Kenya into which all moneys raised under the Fund shall be paid;
- (c) operate and maintain bank accounts in the manner as may be prescribed by the National Treasury from time to time;
- (d) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund;
- (e) establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations;
- (f) advise and consult the Defence Council and Cabinet Secretary on matters relating to the administration of the Fund;
- (g) keep proper books of accounts and other books and records relating to the Fund;
- (h) be the custodian of the Funds' assets, equipment and properties under the Fund;
- (i) prepare financial and non-financial performance report of the Fund and submit it to the Defence Council for approval;
- (j) furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor - General in accordance with the provisions of the Public Audit Act, 2015;
- (k) prepare quarterly reports on the receipts into and issues out of the Fund; and

(1) undertake any other duties as the Defence Council may assign.

(3) When discharging the functions under paragraph (2) of this regulation, the Administrator of the Fund shall—

- (a) comply with the ordinary budget cycle in the preparation of estimates for the Fund; and
- (b) submit estimates of revenue and expenditure to the Cabinet Secretary by the 31st January of the preceding financial year for approval.

13. (1) There shall be a secretariat to be known as the National Peace Support Operation Secretariat which shall provide secretariat support services to the operation of the Fund and shall be headed by the Administrator of the Fund.

Secretariat support for Administrator of the Fund.

(2) The Secretariat shall consist of such staff as the Defence Council may consider necessary for the proper performance of the functions of the Fund under these Regulations.

14. (1) The Administrator of the Fund shall cause an account in the name of the Fund to be maintained at the Central Bank of Kenya in line with section 28 of the Act and any Regulations made thereunder.

Bank Account of the Fund.

(2) All money payable into the Fund shall be received into the bank account of the Fund.

(3) The Fund's account shall be operated by the Administrator of the Fund and two other persons designated by the Defence Council from the Fund's Secretariat.

(4) The Administrator of the Fund may open and maintain other accounts in furtherance of the objective of the Fund.

15. The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.

Overdrawn accounts.

16. (1) If, in exceptional circumstances, the income from the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Cabinet Secretary to the National Treasury may, with the approval of National Assembly, make advances to the Fund and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Cabinet Secretary may determine, but any such advance shall be repaid from the income of the Fund.

Advances.

(2) The Defence Council shall ensure that in any financial year expenditure and commitments from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.

17. The Defence Council may with the consent of the Cabinet Secretary to the National Treasury invest any of the surplus funds in Government securities.

Investments of the funds.

18. (1) The Cabinet Secretary shall at the lapse of ten years from the date of commencement of these Regulations cause a review to be

Review of performance of the Fund.

conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations thereunder.

(2) The review shall determine whether the Fund has met the objectives for which it was established.

(3) The report on the review shall be submitted to the Cabinet and the National Assembly for approval.

19. (1) At least six months before the commencement of each financial year, the Administrator of the Fund shall cause to be prepared estimates of the revenue and expenditure of the fund for that year. Annual estimates.

(2) The annual estimates shall make provision for all estimated revenue and expenditure from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenue projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) expenses in furtherance of the objects and purpose of the Fund;
- (c) moneys for the administration expenses of the Fund including—
 - (i) the payment of salaries, allowances and other charges in respect of the secretariat staff, where applicable;
 - (ii) the payment of pensions, gratuities and other charges in respect of the staff Fund, where applicable; and
 - (iii) the proper maintenance of the office assets, equipment and properties under the Fund.

(3) The annual estimates shall be approved by the Defence Council before the commencement of the financial year to which they relate.

20. (1) The Administrator of the Fund shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board for approval. Quarterly reports.

(2) Upon approval under paragraph (1), the Administrator of the Fund shall submit the report to the National Treasury.

21. (1) The Administrator shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund. Accounts and audit.

(2) Within a period of three months from the end of each financial year, the Administrator shall submit to the Auditor-General with a copy to the National Treasury, Controller of Budget and the Commission for Revenue Allocation the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the financial year; and

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

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

22. The administrative expenses of the Fund shall not exceed three per centum of the approved budget of each financial year. Administration expenses.

23. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall be liable to the penalty provided for under section 199 of the Act. Offences and penalties.

24. (1) On winding up of the Fund in accordance with the Act and Regulations made thereunder— Effects of winding - up of the Fund.

(a) the Administrator of the Fund shall compile any valid outstanding obligations and commitments for payment;

(b) the Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;

(c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly; and

(d) assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to defence.

(2) Within three months upon the decision to wind up the Fund, the administrator of the Fund shall prepare final financial and non-financial statements of the Fund and submit them to the Defence Council for approval.

(3) Upon approval under paragraph (2), the administrator shall submit the final financial and non-financial statements to the Cabinet Secretary.

(4) The Cabinet Secretary shall submit a final statement of accounts to Parliament and to the Auditor-General for audit within three months from the date of the decision to wind up the Fund.

25. The Public Finance Management (National Peace Support Operations Fund) Regulations, 2022, are revoked. Revocation of LN. No. 219/2022.

Made on the 19th April, 2023.

NJUNGUNA NDUNG'U,
Cabinet Secretary for
The National Treasury and Economic Planning.

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM FOR THE PUBLIC FINANCE MANAGEMENT (NATIONAL PEACE SUPPORT OPERATIONS FUND) REGULATIONS, 2022

PART I

Name of instrument	:	Public Finance Management (National Peace Support Operations Fund) Regulations, 2022
Name of Parent Act	:	The Public Finance Management Act (<i>No. 18 of 2012</i>)
Enacted Pursuant to	:	Section 24(4) of the Public Finance Management Act
Name of Ministry	:	The National Treasury and Planning/Ministry of Defence
Gazetted on	:	
Tabled on	:	

PART II

1. Purpose of the Statutory Instrument

The purpose of this Statutory Instrument is to establish a Fund to be known as National Peace Support Operations Fund whose objects and purpose is to provide funds to support the participation in peace support operations by the Kenya Defence Forces. Further to this, and in particular, the Fund shall be used for:

- (a) financing the establishment of equipment parks as approved by the Defence Council for PSO;
- (b) financing for acquisition and maintenance of Contingent Owned Equipment and other assets for PSO;
- (c) financing enhancement of units to attain appropriate levels

at the United Nations peacekeeping capability readiness system;

- (d) funding of capacity building programme including training facilities and infrastructure development for the purpose of PSO;
- (e) funding force generation and force projection activities;
- (f) funding research, monitoring and evaluation of activities related to PSO; and
- (g) funding and facilitation of any other activities in furtherance of PSO approved by the Defence Council.

2. Legislative Context

The National Assembly delegated the duty to establish national public funds to the Cabinet Secretary responsible for finance with the approval of the National Assembly. This is provided for under Section 24 (4) of the Public Finance Management Act, 2012.

The Regulations are therefore developed within the meaning of Section 24 of the Public Finance Management Act 2012 and the procedure envisioned under Statutory Instrument Act, 2013.

3. Policy Background

- 3.1 The 6th National Security Council Meeting – 2020 held on 5th August, 2020 approved the **National Policy for Peace Support Operations** and the establishment of the National Peace Support Operations (PSO) Secretariat under the National Security Council.
- 3.2 The 6th National Security Council Meeting – 2020 also approved the establishment of the proposed **National Peace Support Operations Fund** and directed the Cabinet Secretary National Treasury and Planning, the Cabinet Secretary for Defence and the Attorney General to take appropriate action.
- 3.3 The policy provided the necessary policy framework that would support the Republic of Kenya peace support activities as a member of the United Nations Security Council. The proposed establishment of a Peace Fund

was to finance PSO separately from the Ministry of Defence budget. It is expected that the Fund would be self – sustaining receiving revenue from United Nations (UN)/African Union (AU) reimbursements for PSO activities.

3.4 Kenya has a long history of participation in PSOs, dating back to 1979 when the first comprehensive participation in peacekeeping operations was in Rhodesia, now Zimbabwe. Since then, the country has served in many UN/AU Peacekeeping Missions making her one of the leading Troop Contributing Countries (TCCs) globally. To date, over 55,000 troops have participated in various PSOs with several military officers occupying senior positions.

3.5 Kenya participates in PSO to secure her national interests, preserve territorial integrity, promote regional peace and security, advance economic prosperity, project her image in fulfillment of international obligations.

3.6 Despite her long history of participation in PSOs, Kenya has not adequately consolidated the opportunities and leveraged herself as a leading nation in regional and international PSO. Our effective participation in PSO has been hampered by various factors including **adequate funding for PSO** on the acquisition of standard military equipment.

3.7 For effective participation in PSO, adequate funding is critical. Over the years, the PSO funding has been factored in the MOD budget. This results in inadequate allocations and budgetary cuts that affect the ability to effectively participate in PSOs. To this end, the Ministry of Defence and the National Treasury and Planning have developed these Regulations with specific purpose of creating a Fund that will finance PSO.

4. Guidance

The National Treasury and Ministry of Defence shall sensitize the National Assembly, National Security Council, Ministry of Foreign and Diaspora Affairs, Ministry of Interior and National Administration and the State Law Office.

5. Stakeholder Consultations

The Taskforce responsible for preparation and development of the Regulations, held targeted consultations with key stakeholders and their input taken into account before finalization of these Regulations.

Some of the key stakeholders were the National Security Council, Ministry of Foreign & Diaspora Affairs, Ministry of Interior and Coordination of National Government and the State Law Office.

It is important to appreciate that consultations were targeted to the institutions, since they are the directly affected by the operationalization of these Regulations. These institutions were invited via a letter and requested to make written submissions on the Regulations. A summarized responses log together with the Task Force resolutions is appended.

6. Impact Assessment

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, No. 23 of 2013.

7. Review

The National Treasury shall monitor the application of the Regulations. This shall be done through the quarterly reports prepared by the Fund and forwarded to the National Treasury.

8. Contact

The contact person shall be the Cabinet Secretary or Principal Secretary, The National Treasury & Economic Planning.

Made on the.....10th Day of December....., 2022.



NJUGUNA NDUNGU, CBS
Cabinet Secretary for the National Treasury and Economic Planning

**MINUTES OF THE 16th SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON FRIDAY 24th MARCH, 2023, IN THE ACACIA I HALL,
LAKE NAIVASHA RESORT, NAKURU COUNTY AT 10.00 A.M.**

PRESENT

1. The Hon Samuel Kiprono Chepkonga, 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, MP
5. The Hon. John Paul Mwirigi, M.P.
6. The Hon. Jared Okello Odoyo M.P
7. The Hon. Joyce Kamene, M.P.
8. The Hon. Mjr. (Rtd). Abdullahi Bashir Sheikh, MP
9. The Hon. Kibet Kirui Kimingoi, M.P.
10. The Hon. Gideon Kimaiyo Kipkoech, M.P.
11. The. Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P
12. The Hon. Onchoke Charles Mamwacha. M.P
13. The Hon. Innocent Maino Mugabe, M.P.
14. The Hon. Adow Kuno Yakub, M.P.
15. The Hon. Paul Chebor, M.P.

APOLOGIES

1. The Hon. Nicholas S. Tindi Mwale, M.P.
2. The Hon. Joseph Kamau Munyoro, M.P.
3. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
4. The Hon. Linet Chepkorir M.P.
5. The Hon. Pauline Lenguris, M.P
6. The Hon. Laura Amina Mnyazi, M.P.

IN ATTENDANCE

MINISTRY OF DEFENCE

- | | |
|--------------------------------|--|
| 1. Hon. Aden Bare Duale, E.G.H | - Cabinet Secretary, Ministry of Defence |
| 2. Maj. Mohamed | - Military Assistant to Cs Defence |
| 3. Brigadier Yvonne Kerubo | - Senior Legal Counsel Ministry of Defence |
| 4. Mr. Sakwa Gerald | - Parliamentary Liaison Officer, MOD |
| 5. Mr. Jack Mwaniki | - Public Communications Officer |

THE NATIONAL TREASURY AND ECONOMIC PLANNING

- | | |
|--------------------------|---|
| 1. Mr. Jonah Wala | - Director, Accounting Services National Treasury |
| 2. CPA Dr. Solomon Ngahu | - Ag. DAG, National Treasury |

SECRETARIAT

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| 1. Ms. Esther Nginyo | - Clerk Assistant I |
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- c) Grants, donations, bequests or other gifts made to the fund; and
 - d) Monies from any other source approved by the Cabinet Secretary.
7. **Regulations VII** of the Regulations deals with the payment of the Fund which shall be paid out in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.
 8. **Regulations VIII** provides that the earnings of, or accrual to the Fund shall be retained in the Fund, and shall be spent only for the objects and purpose for which the Fund is established unless the Cabinet Secretary directs otherwise.
 9. **Regulations IX** provides that the Funds shall only be released if;
 - a) The release is approved by the Defence Council and;
 - b) The release is to meet the expenses related to the object and the purpose of the Fund
 10. **Regulations X** provides for the management of the Fund which shall be by the Defence Council established under Article 241(5) of the Constitution.
 11. **Regulations XI** provides for the functions of the Defence Council which shall be;
 - a) To formulate policies and guidelines for the Regulation and management of the Fund;
 - b) To continuously seek for opportunities for participation in PSO by the Government of Kenya and determine the allocation of financial resources from the Fund as required;
 - c) Approve annual estimates and expenditure for the Fund;
 - d) Ensure retention Funds of the preceding financial year are revoked;
 - e) To ensure that only personnel, assets and services provided to PSO conform to the required standards and are earmarked for funding under these Regulations;
 - f) To approve and review investment of surplus funds from the Fund;
 - g) To advise the Cabinet Secretary on any additional sources of funds for the Fund; and
 - h) To approve the financial statements and non- financial reports prepared by the Administrator of the Fund.
 12. **Regulations XII** provides for administration of the Fund that shall be under the Cabinet Secretary who shall;
 - a) Supervise and control the administration of the Fund;
 - b) Open and operate bank accounts at the Central Bank of Kenya into which all monies raised under the Fund shall be paid;

The Hon. Aden Bare Duale, E.G.H, Cabinet Secretary, Ministry of Defence briefed the Committee on the Public Finance Management (National Peace Support Operations Fund) Regulations, 2022 as follows, that:

1. The Regulations seek to establish a Fund to be known as National Peace Support Operations Fund whose objects and purpose is to provide a Fund to support the participation in the peace support operations by the Kenya Defence Forces, the National Police Service or any other organization as may be approved by the National Security Council.

2. **Regulations I and II** provides for the preliminary provisions including the citation and interpretation.

3. **Regulations III** outlines the establishment of the Fund. The Fund shall operate under the budgeting, accounting, reporting and auditing framework of the Act.

4. **Regulations IV** provides for the initial capital of the Fund which shall be seven billion shillings appropriated by the National Assembly as follows;

- a) One billion to be appropriated from the Exchequer
- b) Six billion to be retained from Peace Support Operations (PSO) reimbursable.

5. **Regulations V** provides for the purpose of the fund which shall be to provide funds to support the participation in Peace Support Operations by the Kenya Defence Forces, the National Police Service or any other organization in accordance with Article 240(8)(a) of the Constitution. In particular, the Fund shall be used for;

- a) Financing the establishment of equipment perks as approved by the Defence Council for PSO;
- b) Financing for acquisition and maintenance of Contingent Owned Equipment and other assets for PSO;
- c) Financing for enhancement of units to attain appropriate levels at the United Nations Peacekeeping capability readiness system;
- d) Funding of capacity building programmes including training facilities and infrastructure development for the purpose of PSO;
- e) Funding Force generation and Force projection activities;
- f) Funding research, monitoring and evaluation activities related to PSO and;

- c) Grants, donations, bequests or other gifts made to the fund; and
- d) Monies from any other source approved by the Cabinet Secretary.

7. **Regulations VII** of the Regulations deals with the payment of the Fund which shall be paid out in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

8. **Regulations VIII** provides that the earnings of, or accrual to the Fund shall be retained in the Fund, and shall be spent only for the objects and purpose for which the Fund is established unless the Cabinet Secretary directs otherwise.

9. **Regulations IX** provides that the Funds shall only be released if;

- a) The release is approved by the Defence Council and;
- b) The release is to meet the expenses related to the object and the purpose of the Fund

10. **Regulations X** provides for the management of the Fund which shall be by the Defence Council established under Article 241(5) of the Constitution.

11. **Regulations XI** provides for the functions of the Defence Council which shall be;

- a) To formulate policies and guidelines for the Regulation and management of the Fund;
- b) To continuously seek for opportunities for participation in PSO by the Government of Kenya and determine the allocation of financial resources from the Fund as required;
- c) Approve annual estimates and expenditure for the Fund;
- d) Ensure retention Funds of the preceding financial year are revoked;
- e) To ensure that only personnel, assets and services provided to PSO conform to the required standards and are earmarked for funding under these Regulations;
- f) To approve and review investment of surplus funds from the Fund;
- g) To advise the Cabinet Secretary on any additional sources of funds for the Fund; and
- h) To approve the financial statements and non-financial reports prepared by the

- c) Prepare, sign and transmit to the Auditor General , in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund;
- d) Establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations
- e) Advice and consult the Defence Council and Cabinet Secretary on matters relating to the administration of the Fund;
- f) Keep proper books of accounts and other records relating to the Fund;
- g) Be custodian of the Funds' assets, equipment and properties under the Fund;
- h) Prepare Financial and Non-Financial performance report of the Fund and submit it to the Defence Council for approval;
- i) Prepare quarterly reports on the receipts into and issues out of the Fund;
- j) Furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor General in accordance with the provisions of the Audit Act , 2015; and
- k) Undertake any other duty as Defence Council may assign.

13. **Regulations XIII** provides for the secretariat support for the Administration of the Fund which shall consist of such staff as the Defence Council Consider necessary.

14. **Regulations XIV** provides for the Fund bank account that shall be maintained at the Central Bank of Kenya in the name of the Fund in line with Section 28 of the Act and any Regulation made thereunder.

15. **Regulations XV** provides that the Fund shall ensure that the accounts of the Fund are not overdrawn.

16. **Regulations XVI** provides that the Cabinet Secretary to the National may, with the approval of the National Assembly make any advances to the Fund if the income from the Fund together with any surplus income from the previous year is insufficient to meet the actual estimated liabilities of the Fund. Such advances shall be paid from the income from the Fund.

17. **Regulations XVII** provides that the Defence Council with the consent of the Cabinet Secretary to the National Treasury invest any of the surplus Fund in Government Securities.

20. **Regulations XX** requires the Administrator to prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board for approval.

21. **Regulations XXI** provides that the Administrator shall cause to keep all proper books and records of accounts of the income, expenditure, assets, equipment and properties of the Fund that shall be submitted within a period of three months from the date of each financial year to the Auditor General with a copy to the National Treasury, Controller of Budget and the Commission for Revenue Allocation the accounts of the Fund together with a statement of income and expenditure for the Fund during the financial year and a statement of the assets and liabilities of the fund on the last day of that financial year.

22. The account of the Fund shall be audited upon in accordance with the Public Audit Act, 2015.

23. **Regulations XXII** provides for the Administrative expenses that shall not exceed three per centum of the approved budget of each financial year.

24. **Regulations XXIII** provides for the offences and penalties for any person who misappropriates any funds, or assist or cause any person to misappropriate or apply the Funds otherwise than in a manner provided in the Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding two million shillings or both.

25. **Regulations XXIV** provides that, on winding up of the Fund in accordance with the Act and Regulations made thereunder;

- a) The Administrator of the Fund shall compile any valid outstanding obligations and commitments for payment;
- b) The Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the National Government.
- c) The Cabinet Secretary shall pay any deficit in the Fund from the fund of the National Government in the National Exchequer Account with the Approval of the National Assembly.
- d) Assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating Defence.

26. Upon deliberation on the Public Finance Management (National Peace Support

iv. The Committee also sought to know the Agencies that took part in public participation on the Regulations.

v. The Committee also took note that Regulation 23 providing for offences and penalties was in contravention with the Statutory Instruments Act, 2013. There was need to cross-reference the offences and penalties with the PFM Act, 2012.

27. In his response, the Cabinet Secretary Ministry of Defense stated that the functions of the Defence Council are as stipulated in Section 20 of the Defence Forces Act. No. 25 of 2012.

28. The Cabinet Secretary also submitted to the Committee that effective public participation had been carried out with the relevant bodies including the National Security Council, Ministry of Foreign and Diaspora Affairs, Ministry of Interior and Coordination of National Government and the State Law office.

29. Further, the Cabinet Secretary requested to appear again before the Committee with conclusive answers to the issues raised on the Regulations.

MIN. DAA&OSC/CDL/110/2023 ANY OTHER BUSINESS.

There was no any other business under this agenda item.

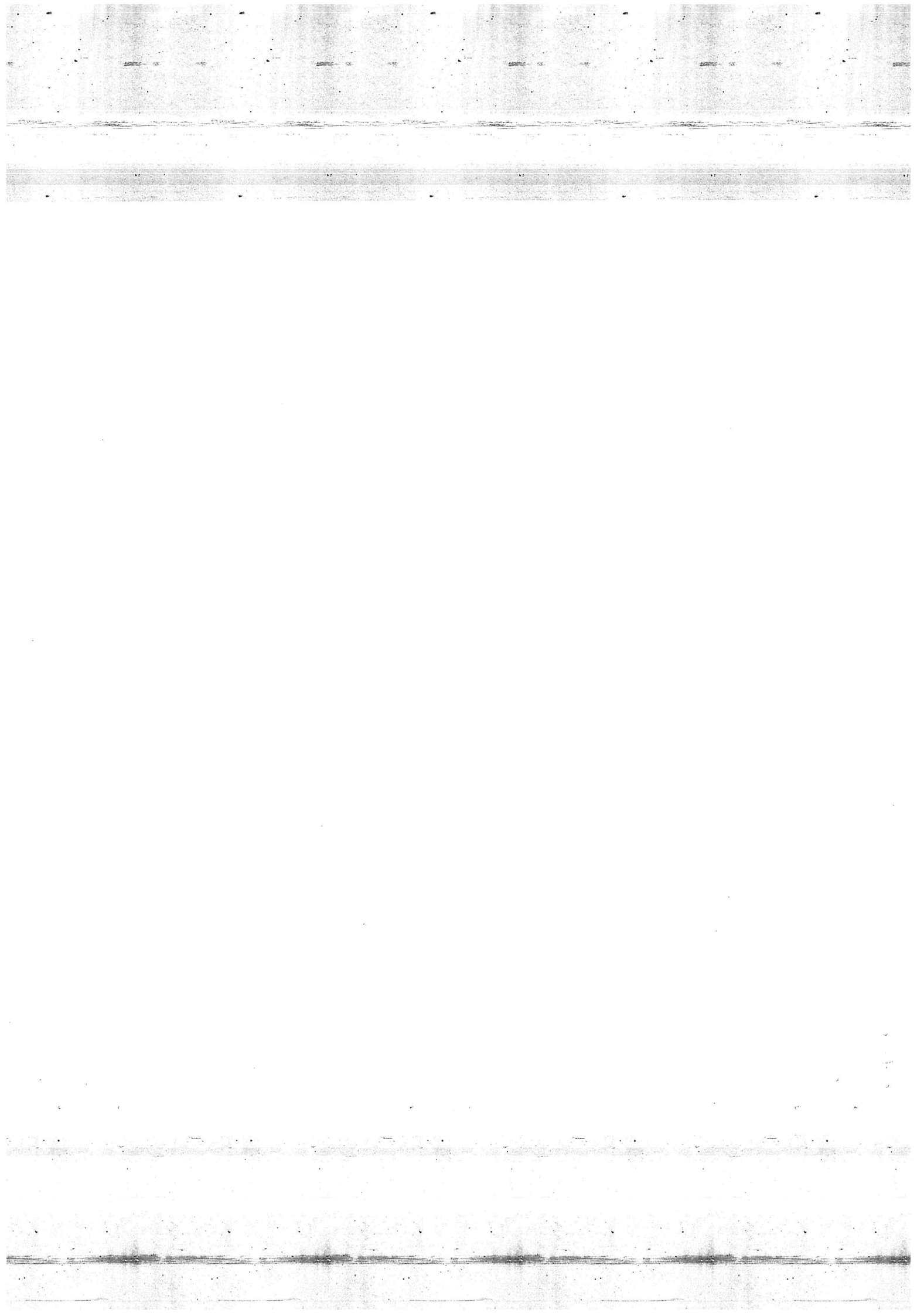
MIN. DAA&OSC/CDL/111/2023 ADJOURNMENT.

There being no other business, the meeting was adjourned at Fifteen Minutes past Twelve O'clock. The next meeting will be held on Friday, 24th March, 2023 at Two O'clock.

SIGNED:

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

DATE: 13th April 2023



**MINUTES OF THE 35TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY, 20TH JUNE, 2023 IN THE SMALL DINING,
NEW WING, MAIN PARLIAMENT BUILDING AT 10:00 AM.**

PRESENT

1. The Hon Samuel Kiprono Chepkonga, 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, MP
5. The Hon. Nicholas S. Tindi Mwale, M.P.
6. The Hon. John Paul Mwirigi, M.P.
7. The Hon. Jared Okello Odoyo M.P.
8. The Hon. Innocent Maino Mugabe, M.P.
9. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P
10. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
11. The Hon. Joseph Kamau Munyoro, M.P.
12. The Hon. Pauline Lenguris, M.P
13. The Hon. Linet Chepkorir M.P.
14. The Hon. Paul Chebor, M.P.

APOLOGIES

1. The Hon. Joyce Kamene, M.P.
2. The Hon. Gideon Kipkoech Kimaiyo, M.P.
3. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP
4. The Hon. Onchoke Charles Mamwacha. M.P.
5. The Hon. Laura Amina Mnyazi, M.P.
6. The Hon. Adow Kuno Yakub, M.P.
7. The Hon. Kibet Kirui Komingoi, M.P.

SECRETARIAT

- | | | |
|-------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms Winnv Otieno | - | Clerk Assistant III |

- | | | | |
|----|---------------------|---|-------------------------------|
| 1. | Ms. Rispah Simiyu | - | Ag. Commissioner General |
| 2. | Mr. Mohamed Omar | - | Commissioner |
| 3. | Mr. Maurice Oray | - | Deputy Commissioner |
| 4. | Ms. Josphine Mogure | - | CM-SIRM |
| 5. | Ms. Sharon Kirai | - | Parliamentary Liaison Officer |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. Briefing by the Cabinet Secretary National Treasury and Economic Planning on the following Regulations;
 - i. The Value Added Tax (Electronic Internet and Digital Marketplace Supply) Regulations, 20232.
 - ii. The Excise Duty (Excisable Goods Management) (Amendment) Regulations, 2023, 2023
 - iii. Adoption of the Public Finance Management (National Pecae Support Operations Fund) Regulations, 2023.
7. Any Other Business; and
8. Adjournment

MIN. DAA&OSC/CDL/226/2023

PRELIMINARIES

The Chairperson called the Meeting to order at 10:30 a.m. He welcomed all present to the meeting after which he prayed followed by a round of introduction.

MIN. DAA&OSC/CDL/227/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by the Hon. Jared Okello MP and seconded by the Hon. Pauline Lenguris, M.P.

MIN. DAA&OSC/CDL/228/2023

CONFIRMATION OF MINUTES

Minutes of the 32nd Sitting held on Tuesday, 13th June, 2023, were confirmed as true records of the deliberations as proposed by the Hon. Innocent Maino Mugabe, M.P. and seconded by the

Ms. Rispah Simiyu, Ag. Commissioner General, KRA, briefed the Committee on The Value Added Tax (Electronic, Internet and Digital Marketplace Supply) Regulations, 2023 as follows, that;

1. **Regulations 1 and 2** provides for the Citation and Interpretation of the Regulations.
2. **Regulation 3** provides for electronic, Internet or digital market supplies which includes;
 - a) Downloadable digital content,
 - b) Subscription based media,
 - c) Over the top services,
 - d) Software programmes
 - e) Electronic data management
 - f) Music and Games,
 - g) Search Engines and automated help desk services,
 - h) Online Education programmes,
 - i) Digital content for listening, viewing or playing on any audio, visual or digital media,
 - j) Ticketing services for events, theatre, restaurants and similar services,
 - k) Services to link the supplier to the recipient including transport hailing platforms,
 - l) Electronic services specified under section 8(3),
 - m) Sales, licensing,
 - n) Facilitation of online payment for exchange, transfer of digital assets excluding services exempted under the Act.
 - o) Any other services provided through an electronic, internet and digital marketplace that is not exempted under the Act.
3. **Regulation 4** provides that the Tax shall apply to taxable electronic, internet or digital marketplace supply made in Kenya.
4. **Regulation 5** provides for a simplified tax registration framework that shall be done within 30 days after the date of making taxable supply in accordance with section 34 if -
 - a) The supplies are made by a person from an export country to a recipient in Kenya,
 - b) The person is conducting business in Kenya in accordance to section 8(2) and
 - c) Any of the following circumstances apply-
 - i. The recipient of the supply is in Kenya,
 - ii. The payment for services is made to the supplier in the export country from a bank registered under the banking Act, or
 - iii. The payment of services that is made to the supplier in the export country is authorized in Kenya

- e) The website or uniform resource locator of the applicant through which business is conducted,
- f) The national tax identifier number issued to the applicant in the applicants' jurisdiction,
- g) The certificate of Registration or incorporation issued to the applicant in the country where the applicants' business is registered or incorporated and
- h) Any other information that the commission may require.

6. **Regulation 7** provides for the appointment of a tax representative in accordance to section 15A of the Tax procedures Act,2015.

7. **Regulation 8** provides that an electronic, internet or digital marketplace shall be deemed to have made in Kenya where the recipient of the supply is in Kenya.

8. **Regulation 9** provides that the time that an Electronic, internet or digital marketplace supply is made in Kenya shall be earlier of-

- a) A date on which the payment for the supply is received in whole or in part; or
- b) The date on which the invoice or receipt of the supply is issued

9. **Regulation 10** provides for exemptions to suppliers who makes an electronic, internet or digital marketplace supply from an export country who is registered under the Regulations shall not be required to issue an electronic tax invoice.

10. **Regulation 11** provides that a deduction of input tax by a supplier shall not be allowed for transactions relating to an electronic, internet or digital marketplace supply.

11. **Regulation 12** provides that a tax in respect of an electronic, internet or digital marketplace supply made to a recipient in Kenya shall be paid by the supplier or the tax representative of the supplier.

12. **Regulation 13** provides for any amendment to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act,2015.

13. **Regulation 14** provides that a person who fails to comply with the provisions of these Regulations Commits an offence and shall be liable to penalties prescribed under the Act or Tax Procedures Act, 2015.

14. **Regulation 15** provides for the revocation of the Value Added Tax (Digital Market Supply) Regulations, 2020.

15. The Committee sought clarification on Regulation 14 on the penalties. The Commission needed to be specific on which they based the penalties. The Regulations provided for penalties in the Value Added Tax Act and Tax Procedures Act.

16. The Committee noted that the Regulations were published on 21st March, 2023 and submitted to the National Assembly on 18th April 2023, which was outside the timelines

Ms. Rispah Simiyu, Ag. Commissioner General KRA, briefed the Committee on The Excise Duty (Excisable goods Management System) (Amendment) Regulations, 2023 as follows, that;

1. **Regulation 1** provided for the citation of the Regulations.
2. **Regulation 2** provided for the amendment of the Excise Duty (Excisable Goods Management System) Regulations, 2017 in Regulation 3 in the Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 by deleting the words “except motor vehicles, manufactured in or imported into Kenya”
3. **Regulation 3** provided for the amendment of the Principal Regulation in Regulation 6 by inserting the words “and compliance management activities in respect of excisable goods” immediately after the word “system”.
4. **Regulation 4** provided for the amendment of in Regulation 28 by deleting sub Regulation (1) and substituting therefore with the following new sub regulations-

(1) Goods not liable to excise duty under section 7(1) shall be exempted from the requirements of excise stamps.

5. **Regulation 5** provided for the deletion of the schedule and replacing it with;

- | | |
|--|------------|
| 1. Cigars, charoots, cigarillos, containing tobacco or tobacco substitutes stamp | Ksh.5 per |
| 2. Cigarettes containing tobacco or tobacco substitutes stamp | Ksh. 5 per |
| 3. Other Manufactured Tobacco and manufactured tobacco substitutes Stamp | Ksh. 5 per |
| 4. Electronic cigarettes and other nicotine delivery devices stamp | Ksh. 5 Per |
| 5. Liquid nicotine for electronic cigarettes stamp | Ksh. 5 per |

10. Beers, cider, perry mead opaque beer mixtures of fermented beverages with non-alcoholic beverages
Stamp. Ksh. 3 Per
11. Bottled or similarly packaged water
Stamp. Ksh. 0.5 Per
12. Other non -alcoholic beverages, not including fruit and vegetable juices
Stamp. Ksh. 2.2 Per
13. Fruit juices (including grape must) and vegetable juices, fermented and not containing added spirits, whether or not containing added sugar or other sweetening matter
Stamp. Ksh. 2.2 Per
14. Cosmetics and beauty products of tariff heading 3303,3304,3305 and 3307.

6. The Committee observed that an international company was involved in the production of the stamp duties which the country was buying at higher cost than the value that was being paid for such stamps. This in effect had led to high pending bills for the part of the government to the supplier of the stamps. There was need to consider having a local supplier upon expiry of the contract.
7. The increment on the pricing of the stamp duty on commodities such as cigarette, alcoholic and beauty products was making the country less competitive with the neighbouring countries. This had attracted influx of cheaper products from the neighbouring country. Ag. Commissioner General noted that the influx of alcoholic beverages from the neighbouring countries was as a result of cheaper cost of raw materials such as ethanol in the manufacturing of the alcoholic beverages.
8. The Soma Label Application had been infiltrated by counterfeit stamps hence encouraging sale of counterfeit products in the market. In their response, the Ag. Commissioner General indicated that the Application security features had been enhanced to ensure that duplication of stamps was detected.

MIN. DAA&OSC/CDL/231/2023

**ADOPTION OF THE REPORT ON THE
PUBLIC FINANCE MANAGEMENT
(NATIONAL SUPPORT OPERATIONS
FUND)
REGULATIONS, 2023.**

The Committee considered and adopted the Report on the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023 as proposed by the Hon. Innocent Maino

Dr. David O. Oduor, The Hon. Dada Joseph Karimuri Karimuri M.P. with the

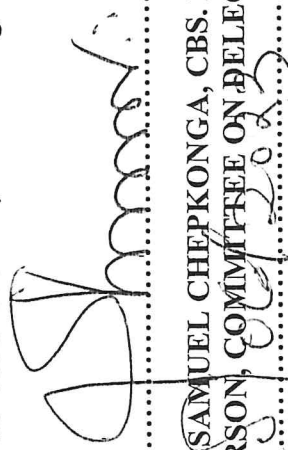
MIN. DAA&OSC/CDL/232/2023 ANY OTHER BUSINESS

There was no business under this agenda item.

MIN. DAA&OSC/CDL/233/2023 ADJOURNMENT

There being no other business, the meeting was adjourned at Thirty Minutes past Twelve O'clock.

SIGNED:




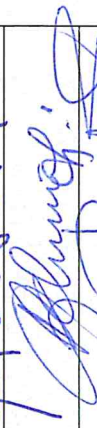
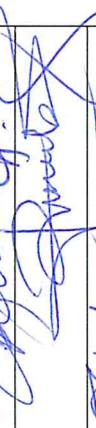

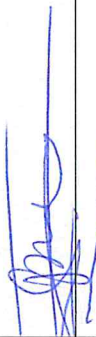
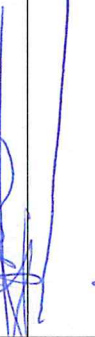





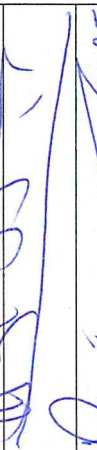
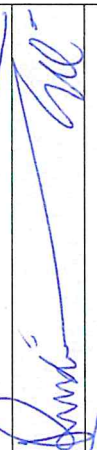
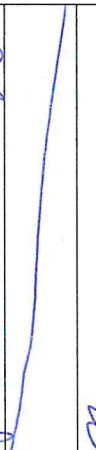


THE HON. SAMUEL CHEPKONGA, CBS. M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION
DATE: 23 Feb 2023



COMMITTEE ON DELEGATED LEGISLATION ADOPTION LIST

DATE: 20th 106/23 VENUE: SMALL DINING STARTING TIME: 10:00 AM
NEW WING ENDING TIME: 12:00 PM

AGENDA: ADOPTION OF THE REPORT ON THE PUBLIC FINANCE MANAGEMENT
(NATIONAL PEACE SUPPORT OPERATIONS FUNDS) REGULATIONS 2023 LN 58

	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	
3.	The Hon. Mbui, Robert, M.P.	
4.	The Hon. Sunkuli Julius Lekakeny, EGH, EBS, MP	
5.	The Hon. Mwirigi, John Paul, M.P.	
6.	The Hon. Kamene, Joyce, M.P.	
7.	The Hon. Mwale, Nicholas S. Tindi, M.P.	
8.	The Hon. Odoyo, Jared Okello, M.P.	
9.	The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.	
10.	The Hon. Chepkorir, Linet, M.P.	
11.	The Hon. Munyoro, Joseph Kamau, M.P.	
12.	The Hon. Kimaiyo, Gideon Kipkoech, M.P.	
13.	The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.	
14.	The Hon. Komingoi, Kibet Kirui, M.P.	
15.	The Hon. Chebor, Paul Kibet, M.P.	
16.	The Hon. Lenguris, Pauline, M.P.	

21.	The Hon. Mjr. (Rtd).Dekow Barrow Mohamed, M.P.	<i>Hd/Mr</i>
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