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**THE NATIONAL ASSEMBLY**

**TWELFTH PARLIAMENT- THIRD SESSION (2019)**

**COMMITTEE ON DELEGATED LEGISLATION**

**REPORT ON THE CONSIDERATION OF THE PRIVATE  
SECURITY (GENERAL) REGULATIONS, 2019  
(Legal Notice No. 108 of 2019)**

**NOVEMBER 2019**

	
<b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE:</b> 06 NOV 2019	<b>DAY:</b> Wednesday
<b>TABLED BY:</b>	hon. Mwangi Githongo
<b>CLERK AT THE TABLE:</b>	Griffith Anebet

*Directorate of Committee Services  
The National Assembly,  
Parliament Buildings,  
**NAIROBI.***



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## ABBREVIATIONS

<b>KEPSA</b>	Kenya Private Sector Alliance
<b>KSIA</b>	Kenya Security Industry Association
<b>LN</b>	Legal Notice
<b>NITA</b>	National Industrial Training Authority
<b>PROSAK</b>	Protective & Safety Association of Kenya
<b>PSIA</b>	Protective Security Industry Association
<b>PSRA</b>	Private Security Regulations Act, 2016
<b>RMA</b>	Regulatory Making Authority
<b>SI</b>	Statutory Instruments
<b>SO</b>	Standing Order



## CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by sections 11(2), 45(2), 46(4), 47(5), 48(4), 51(2), 61(4) and 70 of the Private Security Regulation Act (PSRA), 2016, the Cabinet Secretary for Interior and Coordination of National Government made the Private Security (General) Regulations, 2019 to operationalise the Private Security Regulations Act, 2016.

The Regulations were published vide Legal Notice No.108 of 2019 on 5<sup>th</sup> July, 2019, received by the Clerk of the National Assembly on 11<sup>th</sup> July, 2019 and tabled before the House on 23<sup>rd</sup> July, 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

Pursuant to section 16 of the SI Act, the Committee conferred with the regulation making authority through a meeting held on 29<sup>th</sup> October, 2019 at Parliament Buildings. The delegation was led by Dr (Eng.) Karanja Kibicho, the Principal Secretary, State Department for Interior. The Committee also acceded to requests by various stakeholders to appear before it to present their submissions regarding the Regulations. These include – the Kenya Private Sector, the Joint Security Industry Association, the National Industrial Training Authority (NITA) and the Kenya National Private Security Worker's Union.

The Committee also received views from Lt.Col.(Rtd) Julius Githiri an interested member of the public who is also the Founder and Executive Director of the Institute of Professional Security Studies.

Having considered the Private Security (General) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Private Security Regulation Act, 2016 and the Statutory Instruments Act (No 23 of 2013), the Committee recommends to the House the **annulment** of the Regulations for the following reasons –

- i. **inadequate public participation contrary to Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210.**
- ii. **Contrary to section 13(a) of the Statutory Instruments Act, the power to make regulations has not been properly invoked;**
- iii. **contrary to section 13(a) and 13 (h) of the Statutory Instruments Act, 2016 the regulations are defective in drafting and the power to make regulations has not been properly invoked or require elucidation;**
- iv. **pursuant to section 13(c) of the Statutory Instruments Act, the issues addressed in Regulation 25(5) would be better addressed in a statute and not the Regulations.**
- v. **unjustifiable delay in the publication of the Regulations or laying before Parliament contrary to section 13(j) of the Statutory Instruments Act, 2013;**

- vi. **contrary to section 13(k) of the Statutory Instruments Act, the Regulations make rights, liberties or obligations unduly dependent upon non-reviewable decisions;**
- vii. **contrary to section 13(l) of the Statutory Instruments Act, the Regulations make rights, liberties or obligations unduly dependent on insufficiently defined administrative powers; and**
- viii. **Contrary to section 13(m) of the Statutory Instruments Act, the Cabinet Secretary inappropriately delegates powers to the Authority to make guidelines on training facilities (Regulation 19 (2)(a)).**

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 section 15(1) of the Statutory Instruments Act, 2013 and Standing Order 210 (4) (b), it is my pleasure and duty to present to the House the Committee's **Report on the Consideration the Private Security (General) Regulations, 2019 (Legal Notice No. 108 Of 2019).**

**HON. GLADYS BOSS SHOLLEI 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 accordance 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 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 -

#### **Chairperson**

Hon. Gladys Boss Shollei CBS MP  
Uasin Gishu County Woman Representative

#### **Jubilee Party**

#### **Vice- Chairperson**

Hon. Fatuma Gedi, MP  
Wajir County Woman Representative  
**Party for Development and Reforms**

#### **MEMBERS**

Hon. Waihenya Ndirangu, MP  
Roysambu Constituency

#### **Jubilee Party**

Hon. Ronald Tonui, MP  
Bomet Central Constituency

#### **Jubilee Party**

Hon. Alice Wahome, MP,  
Kandara Constituency

#### **Jubilee Party**

Hon. William Kamoti, MP  
Rabai Constituency

#### **Orange Democratic Movement**

Hon. Robert Mbui, MP  
Kathiani Constituency,  
**Wiper Democratic Movement -Kenya**

Hon. Martha Wangari, MP  
Gilgil Constituency

#### **Jubilee Party**

Hon. Daniel Maanzo, MP  
Makueni Constituency  
**Wiper Democratic Movement -Kenya**

Hon. Gideon Mulyungi, MP  
Mwingi Constituency  
**Wiper Democratic Movement – Kenya**

Hon. Muriuki Njagagua, MP  
Mbeere North Constituency  
**Jubilee Party**

Hon. William Kassait Kamket, MP  
Tiaty Constituency  
**KANU**

Hon. Timothy Wanyonyi, MP  
Westlands Constituency  
**Orange Democratic Movement**

Hon. (Dr.) Wilberforce Oundo, MP  
Funyula Constituency  
**Orange Democratic Movement**

Hon. George G. Murugara, MP  
Tharaka Constituency  
**Jubilee Party**

Hon. Jennifer Shamalla, MP  
Nominated  
**Jubilee Party**



Hon. Munene Wambugu, MP  
Kirinyaga Central Constituency  
**Jubilee Party**

Hon. Muturi Kigano, MP  
Kangema Constituency  
**Jubilee Party**

Hon. Patrick Kariuki Mariru, MP  
Laikipia West Constituency  
**Jubilee Party**

Hon. Sammy Seroney, MP  
Nominated  
**Wiper Democratic Movement - Kenya**

Hon. Tindi Mwale, MP  
Butere Constituency  
**Amani National Congress**

Hon. Alfred W. Sambu, MP  
Webuye East  
**Amani National Congress**

Hon. Abdi Koropu Tepo, MP  
Isiolo South Constituency  
**Kenya Patriots Party**

### 1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Ms. Susan Maritim  
*Senior Clerk Assistant (Team Leader)*

Mr. Jimale Mohamed  
*Second Clerk Assistant*

Mr. Wilson Dima Dima  
*Principal Legal Counsel*

Mr. Josphat Motonu  
*Fiscal Analyst I*

Ms. Anne Njeri Kigoro  
*Research Officer III*

Ms. Winnie Kiziah  
*Media Relations Officer II*

Mr. Anthony Wamae  
*Serjeant at Arms*

Mr. Charles Ayari  
*Superintendent of Electronics*

Ms. Mary Otieno  
*Office Superintendent*

## **2.0 CONSIDERATION OF THE PRIVATE SECURITY (GENERAL) REGULATIONS, 2019**

### **2.1 Introduction**

5. The Cabinet Secretary for Interior and Coordination of National Government made the Private Security (General) Regulations, 2019 in exercise of the powers conferred by section 11(2), 45(2), 46(4), 47(5), 48(4), 51(2), 61(4) and 70 of the Private Security Regulation Act (PSRA), 2016.
6. The Regulations were published vide Legal Notice N0.108 of 2019 on 5<sup>th</sup> July, 2019, received by the Clerk of the National Assembly on 11<sup>th</sup> July, 2019 and tabled before the House on 23<sup>rd</sup> July, 2019.

### **2.2 Enabling Provisions of the Private Security Regulation Act, 2016**

7. The enabling provisions are –
  - i. section 11(2) provides for making of regulations on the procedure for the appointment of members of the Private Security Regulatory Authority Board;
  - ii. section 45(2) provides for making of regulations relating to the cooperation, scope, mechanism and command in the case of cooperation between national security organs with the private security service providers in the maintenance of law and order;
  - iii. section 46(4) provides for making of regulations on the responsible exercise of the power of arrest granted under the Act;
  - iv. section 47(5) provides for making of regulations on the responsible exercise of the power of arrest granted under the Act within three months of the commencement of the Act;
  - v. section 48(4) provides for making of regulations on the power to record and temporarily withhold identification documents granted under the Act;
  - vi. section 51(2) provides for making of regulations (in *consultation with private security providers*) relating to use, manufacture, importation, selling, distribution and possession of security equipment and tools of trade used in the industry. The regulations are also to provide for the classification of security equipment that may not be used without the authority of the Cabinet Secretary.
  - vii. section 61(4) provides for making of regulations on the qualifications and appointment of the Private Security Fidelity Fund Board of Trustees and any other provisions necessary to prescribe with regard to the Fund.
  - viii. section 70 provides for making of general regulations for the purpose of proper administration and giving effect to the Private Security Regulation Act to prescribe the following –
    - a. various forms to be used under the Act;

- b. the procedure for applications for the grant or renewal of licences and registration certificates and any appeals under the Act;
- c. the employment of personnel by registered private security firms;
- d. the provision of uniforms and equipment to employees of private security firms;
- e. the provision of protective gear and tools;
- f. guidelines for registered private security providers; or
- g. membership of private security service providers to corporate bodies

### **2.3 Overview of the Regulations**

8. Part I (Preliminary) deals with the citation and interpretations.
9. Part II provides for the procedure of appointment of members of the Private Security Regulatory Authority Board.
10. Part III provides for the procedure and requirements for registration of private security service providers, both individual and corporate.
11. Part IV provides for employment and training requirements of personnel in the private security services industry while Part V speaks to the equipment and tools of trade used in the industry.
12. The guidelines for cooperation with national security organs have been stipulated in Part VI.
13. Part VII operationalises the Private Security Fidelity Fund and provides for its administration and application.
14. Part VIII provides for the exercise of certain powers provided for under the parent Act including the power of arrest, search, record and temporary withholding of identification documents.
15. The First, Second and Third Schedules provide for the forms, fees and specifications and standards for equipment and facilities respectively.

### **2.4 Purpose of the Regulations**

16. The Regulations seek to –
  - i. Provide procedure for appointment of Members to the Private Security Regulatory Authority Board.
  - ii. Provide procedure, requirements and statutory forms for registration as an individual private security provider.
  - iii. Provide procedure, requirements and statutory forms for registration and licensing as a Corporate Private Security provider.
  - iv. Provide requirements for the employment and training of personnel in the private security industry.



- v. Provide for the requirements for the use of security equipment, tools of trade including uniforms, animals, communication equipment and vehicles.
- vi. Provide for the specifications and standards of equipment and facilities used in private security.
- vii. Provide the scope and procedure for cooperation between private security industry and national security industry.
- viii. Operationalize the Private Security Fidelity Fund, its Board of Trustees, Sources of the funds, uses of the fund and administration of the fund.
- ix. Provide rules for the exercise of the power of arrest by a registered private security officer.
- x. Provide rules for the exercise of the power of search by a registered private security officer.
- xi. Provide rules for the exercise of the power to record and temporarily withhold identification documents by a registered private security officer.
- xii. Provide the categories and fees for corporate private security providers.
- xiii. Provide for the categories and fees for individual private security providers.

## 2.5 Scrutiny of the Regulations

17. The Committee considered the Private Security (General) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Private Security Regulation Act, 2016 and the Statutory Instruments Act (*No 23 of 2013*).
18. Pursuant to section 16 of the SI Act, the Committee conferred with the regulation making authority through a meeting held on 29<sup>th</sup> October, 2019 at Parliament Buildings. The delegation was led by Dr (Eng.) Karanja Kibicho, the Principal Secretary State Department for Interior.
19. The Committee also acceded to requests by various stakeholders to appear before it to present their submission regarding the Regulations. These include – the Kenya Private Sector, the Joint Security Industry Association, the National Industrial Training Authority (NITA) and the Kenya National Private Security Worker’s Union. The meeting was held on 29<sup>th</sup> October, 2019. The Committee also received views from Lt. Col. (Rtd) Julius Githiri an interested member of the public who is also the Founder and Executive Director of the Institute of Professional Security Studies.
20. The Committee also met on 2<sup>nd</sup> November, 2019, while in Diani, Kwale County, to consider **the Private Security (General) Regulations, 2019 among other Instruments.**

They presented as follows –

### 2.5.1 Submissions by the State Department for Interior

21. Dr. (Eng.) Karanja Kibicho, the Principal Secretary, State Department for Interior, appeared before the Committee on 29<sup>th</sup> October, 2019 accompanied by Mr. Fazul

Mohammed, Chief Executive Officer of the Private Security Regulation Authority and other officials.

22. The Principal Secretary informed the Committee that the Ministry in coming up with the Regulations tried as much as possible to incorporate views from all concerned stakeholders and that the Ministry has since the enactment of the Act in March, 2016 been setting up the infrastructure and framework for Regulations stipulated under the law.
23. Stakeholders consulted included the: Private Security Regulatory Authority as stipulated in Section 70 of the PSRA, 2016, the National Security Advisory Council, industry employers' association, the Kenya National Private Security Workers' Union, corporate private security providers, individual private security providers, private security services consumers, Civil Society Organisations and the general public.
24. The public engagements were conducted by the County Commissioners who are the National Government representatives in the Security and Intelligence Committees. A meeting was also conducted at the Kenya School of Government which, he observed, was inclusive and comprehensive.
25. The Principal Secretary reiterated that the 6 months compliance timeframe provided in the Regulations can be negotiated with the stakeholders.
26. Dr. Kibicho also pleaded with the Committee to consider approving the Regulations which will among others, improve the welfare of the approximately 500, 000 guards whose working conditions and remuneration need improving.

#### **2.5.2 Submissions by the Joint Security Industry Association**

27. The Joint Security Industry Association appeared before the Committee on 29<sup>th</sup> October, 2019 led by Mr. Enock Makanga and Mr. Cosmas Mutava. The Association brings together three security industry associations namely the Kenya Security Industry Association (KSIA), the Protective Security Industry Association (PSIA), the Protective & Safety Association of Kenya (PROSAK).
28. The Joint Security Industry Association reiterated that the private security sector employs approximately 500,000 security officers who offer security services to industrial, residential and commercial properties both in public and private institutions. Hence the significance of this sector to the economy cannot not be overstated.
29. The Association applauded the Ministry of Interior and National Coordination for operationalising the Private Security Regulations Act, 2016 by gazetting the Regulations. The Association however took issue with some of the provisions in the Regulations.
30. The **eight (8) key issues** raised by the Association are as follows –
  - i. the **six (6) months compliance period under Regulation 17 is too short** to comply with the stipulated requirements. The Association proposes a minimum of five years transition period to be able to fully comply with the Act.



- ii. **Regulation 19** provides for the mandatory training of security officers, managers and directors prior to issuance of individual and corporate licences to operate. The Association posits that there is no accredited institution, trainers, assessment criteria and approved curriculum by the PSRA, 2016. It is therefore not feasible to train 500,000 people in 6 months.
- iii. **inadequate public participation:** The Association alleged that the regulation making authority did not adequately conduct public participation in the 47 Counties and in particular with the private security providers.
- iv. **Regulation 16(e) requires proof of compliance with the set minimum wages.** The Association proposes harmonisation of legislation governing labour matters particularly in private security. If the Regulations are effected in the current form, companies would need to pay a salary of Kshs 27,993 for a night guard and Kshs 25,641 for a day guard. A client would therefore be required to charge clients a minimum Kshs 51,000, less administrative costs and other related charges. The Association therefore found the **costs unsustainable in an already burdened economic environment**. The Association also submitted that even government agencies are yet to comply with minimum wage owing to the unsustainability of the Order.
- v. **Under representation in the Private Security Authority Board:** The Association opines that the two slots provided in Section 11(1)(vii) of the PSRA, 2016 are not adequate to represent their interests in the 11-member Board.
- vi. On the **Private Security Fidelity Fund established by Section 61 of the PSRA, 2016** whose Board of Trustees is established in **Regulation 27**, the Association observed that it needs more positions on the Board and that the use of the funds be clearly defined in accordance with the relevant legislations.
- vii. On the **Licences and Fees stipulated in the Second Schedule of the Regulations**, the Associations found the licences and fees very punitive and restrictive given the unfavourable economic conditions currently prevailing and the fact that the businesses pay many other licences e.g. County Licences, NEMA among others.
- viii. Section 53(a) and (b) of the PSRA, 2016 prohibits the use of firearms by private security service providers. **Regulation 25(5) implies that private security service providers may be armed when exercising the powers of a police officer**. The Association proposes more stakeholder engagement and public participation in view of the fact that private security service providers are the first casualties in case of attack.

### 2.5.3 Submissions by the National Industrial Training Authority

31. The National Industrial Training Authority (NITA) appeared before the Committee on 29<sup>th</sup> October, 2019, represented by Mr. Stephen Ogenga, Ag. Director General. He

informed the Committee that it has been involved in the development of the curricula for private security providers.

32. NITA made the following proposals to the Committee –

- (i) review of the Regulations to complement functions of the existing Industrial Training Act CAP 237;
- (ii) reviewing of the PSRA, 2016 on training sections to complement and eliminate duplication with the Industrial Training Act, CAP 237; and
- (iii) review PSRA, 2016 to incorporate NITA in the PSRA Board established in Section 11 of the said Act.

33. The Committee observed that NITA's request to the Committee is not within the Committee's mandate and can only be realised through an amendment to the PSRA, 2016.

#### 2.5.4 Submissions by the Kenya National Private Security Worker's Union

34. The Kenya National Private Security Worker's Union (KNPSWU) appeared before the Committee on 29<sup>th</sup> October, 2019 led by Mr. Isaac Andabwa, the Union's National General Secretary. The Union informed the Committee that it supports the Regulations as published.
35. The Union protested the **five-year transition period requested by the private security providers as it would hurt members of the Union** (guards) owing to the low wages and poor working conditions currently being experienced.
36. The Union accused the private security providers of wanting to delay the implementation of the Regulations for their own economic benefit in as far as remuneration of the guards is concerned to benefit the Companies at the expense of the guards' wellbeing. The Union claimed that the subsidiaries of the foreign security providers, namely G4S, Wells Fargo, KK, Ultimate Security and Fidelity Security had already complied with the Regulations in as far as the minimum wage is concerned. The local companies should follow suit.

#### 2.5.5 Submissions by the Kenya Private Sector Alliance

37. In its written memoranda to the Committee dated 31<sup>st</sup> October, 2019, the Kenya Private Sector Alliance (KEPSA) submitted that –

- i. **public participation on the Regulations was inadequate** since only one forum was held on 1<sup>st</sup> March, 2019 at the Kenya School of Government;
- ii. there is need for a **staggered implementation** approach to allow for wider stakeholder engagement and build consensus on pertinent issues especially in as far as the issue of fees and levies is concerned.
- iii. **Regulation 21** provides for the approved equipment and tools approved by the Authority that the private security service providers are expected to have. This



is already a function undertaken by the Communications Authority of Kenya hence a duplication of roles.

- iv. On **Regulation 30 on utilisation of the Fidelity Fund**, KEPSA proposes that the Authority is funded by the Government and the **Fidelity Fund be instead allocated to the welfare of the security officers.**

#### **2.5.6 Submission by the Executive Director of the Institute of Professional Security Studies**

38. Lt. Col. (Rtd) Julius Githiri an interested member of the public who is also the Founder and Executive Director of the Institute of Professional Security Studies appeared before the Committee on 29<sup>th</sup> October, 2019 to present his views. Lt. Col. Githiri informed the Committee that the Regulations are necessary for the security sector and the process of drafting them has eluded the sector for many years hence welcomed the move by the Ministry to gazette the Regulations.

### **3.0 COMMITTEE OBSERVATIONS AND GROUNDS FOR RECOMMENDING ANNULMENT**

39. Having scrutinised the Instrument against the relevant provisions of the law and submissions by various stakeholders and the regulation making authority, the Committee observed THAT –

- 1) **Contrary to Articles 10, and 118 of the Constitution read with section 5 and 5A of the Statutory Instruments Act, there appears to be inadequate public participation:** Members were dissatisfied with the extent and conduct of public participation. Consumers and members of the general public were not adequately involved. Collection of the views of the members of the public was only conducted in Nairobi, excluding all other 46 counties.
- 2) The regulation making authority claimed to have conducted public participation in all the 47 counties, coordinated by the County Commissioners, but they provided no evidence to that effect. Members also observed that that certain key stakeholders and consumers of the services were excluded.
- 3) **Contrary to section 13(a) of the Statutory Instruments Act, the power to make regulations has not been properly invoked.** The Regulations are therefore not in accord with the provisions of the Constitution, the Act pursuant to which they are made and the Statutory Instruments Act. For example –
  - (i) Pursuant to **Article 259(11) of the Constitution**, where a power conferred on a person is exercisable *only on the advice... of another person*, the power may be exercised only with the advice of the other person [which has to be expressly demonstrated in the enactment provision of the Regulation]. The regulation making authority therefore should have **demonstrated this in the enactment provision.**
  - (ii) **Section 45(2) requires consultation with the Inspector General and the Authority** before making regulations relating to the cooperation,

scope, mechanism and command in the case of cooperation with the private security service providers.

(iii) **Section 51(2) requires consultation with the Authority** and private security service providers before making regulations relating to use, manufacture. Importation, selling, distribution, possession and classification of security equipment.

(iv) **Section 70 of the Act requires consultation with the Authority** before making general regulations for the purpose of proper administration and giving effect to the Act.

- 4) **Use of fire arms: Section 13(c) of the Statutory Instruments Act** requires the Committee to consider whether the Regulations contain a matter which in the opinion of the Committee should be more properly be dealt with in an Act of Parliament. In considering **Regulation 25(5), Members were of the opinion that the exercise of the powers of a police officer implies the use of firearms by private security providers** when working under the command of a police officer. **The use of firearms has been prohibited under section 53 of the parent Act.**

Members were of the opinion that the **issues addressed in Regulation 25(5) would be better addressed in a statute and not the Regulations.**

- 5) **Contrary to section 13(j) of the Statutory Instruments Act, there appears to be an unjustifiable delay in the publication of the Regulations** or laying before Parliament. Section 47(5) of the parent Act required the Cabinet Secretary to make regulations on the power of search within 3 months of the commencement of the Act, which date of commencement was 3<sup>rd</sup> June, 2016. Accordingly, the latest date by which the regulations ought to have been made should have been the 3<sup>rd</sup> of September 2016.
- 6) **Contrary to section 13(m) of the Statutory Instruments Act**, which requires the Committee to consider if the Regulations inappropriately delegate legislative powers, in **Regulation 19(2)(a), the Cabinet Secretary inappropriately delegates powers to the Authority to make guidelines on training facilities.** Guidelines are by themselves statutory instruments within the meaning of section 2 of the Statutory Instruments Act and ought only to be by the regulation making authority under the Act.
- 7) **Power of arrest:** Under section 13 (q) of the Statutory Instruments Act which calls upon members during scrutiny to consider whether the regulations accords any other reason that the Committee considers fit to examine, the Committee members were concerned about the **possibility of the abuse of the power of arrest**, especially on detention after arrest. The power of arrest by private security officers is granted under section 46 of the parent Act. This power is exercised by private security officers as private citizens. The Criminal Procedure Code under section 34 and 35 provides further provides guidelines on



arrests and disposal by private citizens respectively. The Constitution under Article 49 provides further the rights of an arrested person.

- 8) **Extension of time for compliance under Regulation 17 on Registration:** Regulation 17 provides for registration within 6 months after commencement of the Regulations. The stakeholders requested that the commencement date of the Regulations be extended as February 2020 would be too soon. The Principal Secretary for State Department of Interior also agreed with the stakeholders on the need for extension. Since the Regulations are already published, unless the provisions are amended, the period may not change.
- 9) **Minimum wage:** Regulation 16 (e) makes it a registration requirement to have proof of compliance with the set minimum wages published under the Labour Institutions Act. Members were of the opinion that it may not be practically possible to implement the requirement of minimum wage under the published Regulations within the time granted and since matters security affect all citizens entitled to the services of the private security guards, it would, **contrary to section 13(l) of the Statutory Instruments Act, make rights, liberties or obligations unduly dependent on insufficiently defined administrative powers.**
- 10) **Election and nomination of Board Members: section 13(q) of the SI Act** allows the Members to consider any other matter that the Committee finds fit to examine. As such, on **Regulation 6(4)** as read with Regulation 10 on election and appointment of representatives to the Board, Members were of the opinion that the Regulations violate **the principle of universal suffrage** by requiring the Cabinet Secretary to nominate one person from the three elected representatives, even where the person appointed is not the one who garnered the highest number of votes. This may **contrary to section 13(k) of the Statutory Instruments Act, make rights, liberties or obligations unduly dependent upon non-reviewable decisions.**
- 11) **Contrary to section 13(h) of the Statutory Instruments Act, certain provisions of the Regulations are defective in drafting or require elucidation which include -.**
  - (i) **Regulation 27:** The Heading on Part VII provides for “levy” while the marginal notes provide for a Fund.
  - (ii) **Article 94 (6) of the Constitution and Standing Order 118** provides that where legislative power has been delegated to a body, the body, in the exercise of such powers shall, while **making** regulations observe that the regulations made conform to and are within the purpose and objectives for which that authority is conferred; the limits of the authority; the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.

- (iii) Section 70 of the Act provides that the Cabinet Secretary shall make general regulations for the purpose of proper administration of and giving effect to the Act. Section 70 (2) of the Act further specifies matters to be addressed by the “general regulations”. This therefore implies that to conform to the above constitutional requirements, the regulations on all other matters are to be made and published separately.

**The regulation making body has instead lumped together all the Regulations under the Act as general regulations contemplated under section 70 (1) and (2) of the parent Act, ignoring that Regulations under sections 11(2), 45(2), 51(2), 61(4) according to the arrangements of the parent Act ought to be made and published separately. Article 94(6) requires that each issue be specifically addressed and be done to the letter of the law.**


- (iv) **The regulation making body makes provisions for the exercise of the power of arrest under Regulation 37, without invoking the enabling provision under section 46(4) of the parent Act.**
- (v) **The regulation making body makes provisions for the exercise of the power of search under Regulation 38, without invoking the enabling provision under section 47(5) the parent Act.**
- (vi) **The regulation making body makes provisions for power to record and temporarily withhold identification documents under Regulation 39, without invoking the enabling provision under section 48(4) of the parent Act.**
- (vii) **Section 33 of the parent Act does not expressly empower the Cabinet Secretary to make regulations, and therefore was improperly invoked. Section 33(4) merely states that applications under section 33 be made to the authority in such form and manner as may be prescribed.**

#### 4.0 COMMITTEE RECOMMENDATION

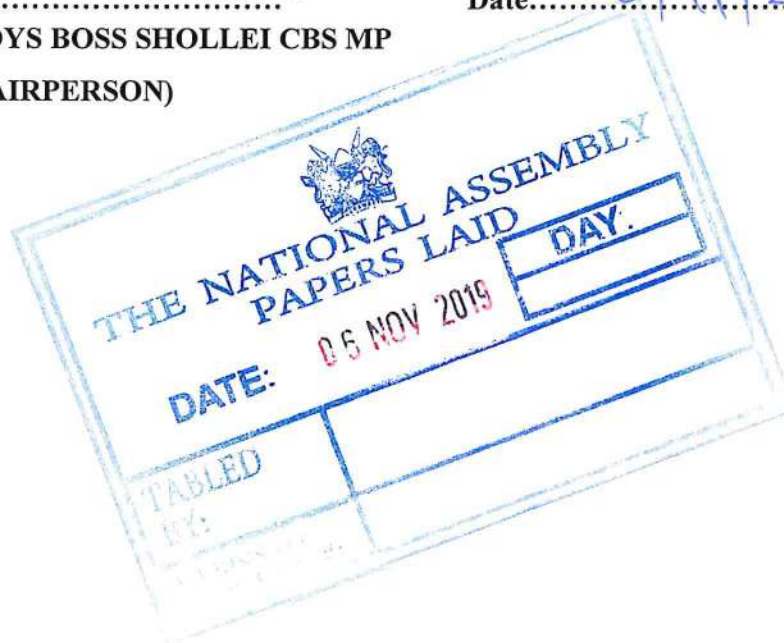
1. Pursuant to Standing Order 210 (4) (b) and section 15 (1) of the Statutory Instruments Act and having examined the Private Security (General) Regulations, 2019 against the Constitution, the Interpretations and General Provisions Act (Cap 2) Laws of Kenya, the Private Security Regulation Act, 2016 and the Statutory Instruments Act (No 23 of 2013) and the respective laws pursuant to which they are made, the Committee recommends that the House **annuls in entirety** the said statutory instrument for the following reasons –
  - i. **inadequate public participation contrary to Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210;**
  - ii. **Contrary to section 13(a) of the Statutory Instruments Act, the power to make regulations has not been properly invoked;**



- iii. contrary to section 13(a) and 13 (h) of the Statutory Instruments Act, 2016 the regulations are defective in drafting and the power to make regulations has not been properly invoked or require elucidation;
- iv. pursuant to section 13(c) of the Statutory Instruments Act, the issues addressed in Regulation 25(5) would be better addressed in a statute instead of the Regulations
- v. unjustifiable delay in the publication of the Regulations or laying before Parliament contrary to section 13(j) of the Statutory Instruments Act, 2013;
- vi. contrary to section 13(k) of the Statutory Instruments Act, the Regulations make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- vii. contrary to section 13(l) of the Statutory Instruments Act, the Regulations make rights, liberties or obligations unduly dependent on insufficiently defined administrative powers; and
- viii. Contrary to section 13(m) of the Statutory Instruments Act, the Cabinet Secretary inappropriately delegates powers to the Authority to make guidelines on training facilities (Regulation19(2)(a)).

Signed.....  
HON. GLADYS BOSS SHOLLEI CBS MP  
(CHAIRPERSON)

Date.....06/11/2019



## **5.0 ANNEXURES**

1. Adoption List
2. Legal Notice 108, Explanatory Memorandum & Regulatory Impact Statement
3. Committee Minutes
4. Submissions by various stakeholders

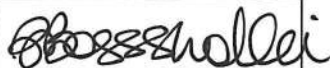


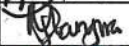





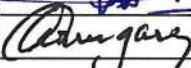




## COMMITTEE ON DELEGATED LEGISLATION

### ADOPTION LIST

Report on the Consideration of the Private Security (General) Regulations, 2019

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 5 November 2019

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei CBS MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Robert Mbui, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Muriuki Njagagua, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Timothy Wanyonyi, MP	
10.	Hon. William Kamoti Mwamkale, MP	
11.	Hon. Patrick Kariuki Mariru, MP	
12.	Hon. Ronald Kiprotich Tonui, MP	
13.	Hon. William Kassait Kamket, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. George Gitonga Murugara, MP	
16.	Hon. Jennifer Shamalla, MP	
17.	Hon. Muturi Kigano, MP	
18.	Hon. (Dr.) Wilberforce Oundo, MP	
19.	Hon. Sammy Seroney, MP	
20.	Hon. Tindi Mwale, MP	
21.	Hon. Gideon Mulyungi, MP	
22.	Hon. Abdi Tepo, MP	
23.	Hon. Alfred Sambu, MP	





**MINUTES OF THE 60TH SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD ON SATURDAY 2<sup>ND</sup> NOVEMBER, 2019 AT 10.00 A.M. IN  
THE WARAIRA CONFERENCE CENTRE, JAKARANDA, DIANI, KWALE  
COUNTY**

---

**PRESENT**

- |   |                           |
|---|---------------------------|
| <b>1. The Hon. Fatuma Gedi, MP</b>      | <b>- Vice Chairperson</b> |
| 2. The Hon. George Murugara, MP         |                           |
| 3. The Hon. Robert Mbui, MP             |                           |
| 4. The Hon. Waihenya Ndirangu, MP       |                           |
| 5. The Hon. Daniel Maanzo, MP           |                           |
| 6. The Hon. Timothy Wanyonyi, MP        |                           |
| 7. The Hon. Kamoti Mwamkale, MP         |                           |
| 8. The Hon. Martha Wangari, MP          |                           |
| 9. The Hon. (Dr.) Wilberforce Oundo, MP |                           |
| 10. The Hon. Muriuki Njagagua, MP       |                           |
| 11. The Hon. Jennifer Shamalla, MP      |                           |
| 12. The Hon. Gideon Mulyungi, MP        |                           |
| 13. The Hon. George Murugara, MP        |                           |
| 14. The Hon. Sammy Seroney, MP          |                           |

**ABSENT WITH APOLOGY**

- |   |                      |
|---|----------------------|
| <b>1. The Hon. Gladys Boss Shollei CBS MP</b> | <b>- Chairperson</b> |
| 2. The Hon. Alice Wahome, MP                  |                      |
| 3. The Hon. Munene Wambugu, MP                |                      |
| 4. The Hon. Ronald Tonui, MP                  |                      |
| 5. The Hon. Patrick Mariru, MP                |                      |
| 6. The Hon. Muturi Kigano, MP                 |                      |
| 7. The Hon. Kassait Kamket, MP                |                      |
| 8. The Hon. Abdi Koropu Tepo, MP              |                      |
| 9. The Hon. Tindi Mwale, MP                   |                      |

**ABSENT**

The Hon. Alfred Sambu, MP

**IN-ATTENDANCE**

**National Assembly Secretariat**

- |                       |   |                                       |
|-----------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim  | - | Senior Clerk Assistant                |
| 2. Mr. Jimale Mohamed | - | Second Clerk Assistant                |
| 3. Mr. Dima Dima      | - | Principal Legal Counsel               |
| 4. Ms. Anne Kigoro    | - | Research and Policy Analyst           |
| 5. Mr. Charles Ayari  | - | Superintendent of Electronics (Audio) |

- |                             |   |                       |
|-----------------------------|---|-----------------------|
| 6. Ms. Mary Otieno          | - | Office Superintendent |
| 7. Ms. Millicent O. Akhonya | - | Legal Pupil           |

**MIN.NO. /NA/CDL/2019/347      PRAYER AND RELIMINARIES**

The meeting commenced at 10.15 a.m. with the Prayer.

**MIN.NO. /NA/CDL/2019/348      CONSIDERATION      OF      PRIVATE  
SECURITY (GENERAL), REGULATIONS  
2019**

The Committee observed the following:-

- (i) The Cabinet Secretary for Interior and Coordination of National Government made the Private Security (General) Regulations, 2019 in exercise of the powers conferred by section 11(2), 45(2), 46(4), 47(5), 48(4), 51(2), 61(4) and 70 of the Private Security Regulation Act, 2016.
- (ii) The regulations were published vide Legal Notice N0.108 of 2019 on the 5<sup>st</sup> July, 2019, received by the Clerk of National Assembly on 11<sup>th</sup> July, 2019 and tabled before the House on 23<sup>rd</sup> July, 2019, being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Committee also noted the enabling Provisions of the Parent Act

1. Pursuant to section 11(2) of the parent Act the Cabinet Secretary is to make regulations on the procedure for the appointment of members of the Private Security Regulatory Authority Board.
2. Pursuant to section 45(2) of the parent Act the Cabinet Secretary in consultation with the Inspector General and the Authority, is to make regulations relating to the cooperation, scope, mechanism and command in the case of cooperation between national security organs with the private security service providers in the maintenance of law and order.
3. Pursuant to section 46(4) of the parent Act the Cabinet Secretary is to make regulations on the responsible exercise of the power of arrest granted under the Act.
4. Pursuant to section 47(5) of the parent Act the Cabinet Secretary is to make regulations on the responsible exercise of the power of arrest granted under the Act within three months of the commencement of the Act.
5. Pursuant to section 48(4) of the parent Act the Cabinet Secretary is to make regulations on the power to record and temporarily withhold identification documents granted under the Act.
6. Pursuant to section 51(2) of the parent Act, the Cabinet Secretary in consultation with the Authority and private security service providers, is to make regulations relating to use, manufacture, importation, selling, distribution and possession of security equipment and tools of trade used in the industry. The regulations are also to provide for the classification of security equipment that may not be used without the authority of the Cabinet Secretary.
7. Pursuant to section 61(4) of the parent Act the Cabinet Secretary is to make regulations on the qualifications and appointment of the Private Security Fidelity

Fund Board of Trustees and any other provisions necessary to prescribe with regard to the fund.

8. Pursuant to section 70 of the parent Act the Cabinet Secretary in consultation with the Authority, is to make regulations for the purpose of proper administration and giving effect to the Act. The general regulations are to be on the following:-
  - a. various form to be used under the Act;
  - b. the procedure for applications for the grant or renewal of licences and registration certificates and any appeals under the Act;
  - c. the employment of personnel by registered private security firms;
  - d. the provision of uniforms and equipment to employees of private security firms;
  - e. the provision of protective gear and tools;
  - f. guidelines for registered private security providers; or
  - g. Membership of private security service providers to corporate bodies.

The Committee further observed the overview of the Regulations

- 1) Part II of the regulations speaks to the procedure of appointment of members of the Private Security Regulatory Authority Board. The regulations provide for the process of formation of private security providers' associations, and election of their representatives to the Board.
- 2) Part III provides for the procedure and requirements for registration of individuals and licensing of cooperate private security service providers.
- 3) Part IV provides for employment and training requirements of personnel in the private security services industry while Part V speaks to the equipment and tools of trade used in the industry.
- 4) The guidelines for cooperation with national security organs have been stipulated in Part VI.
- 5) Part VIII operationalises the Private Security Fidelity Fund and provides for its administration and application.
- 6) Part VIII provides for the exercise of certain powers provided for under the parent Act including the power of arrest, search, record and temporary withholding of identification documents.
- 7) The first, second and third schedules provide for the forms, fees and specifications and standards for equipment and facilities respectively.

#### **Committee observations**

##### **(a) Statutory Timelines**

That the Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (hereinafter referred to as the Act) having been published on the 5<sup>th</sup> of July, 2019, received by the Clerk of National Assembly on the 11<sup>th</sup> of July, 2019 and tabled on the 23<sup>rd</sup> of July, 2019.

##### **(b) Consultation / Public participation**



Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210 require the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.

Pursuant to section 16 of the Act, the committee had a meeting with the regulation making authority on 29th October, 2019 and was taken through the regulations. Members expressed concern and sought to know the nature, conduct and extent of public participation conducted by the regulation making body.

The regulation making authority submitted vide their explanatory memorandum that they took into account the views of key stakeholders such as the Private Security Regulation Authority, The National Security Advisory Council, Industry Employers' Associations, The Kenya National Private Security Workers' Union, Corporate Private Security Providers, Individual Private Security Providers, Private Security Services Consumers, Civil Society Organizations and the general public (Nairobi).

They also submitted that more engagements with stakeholders will be conducted for purposes of sensitization and implementation of the Legal Notice.

#### **(c) Regulatory Impact Statement**

Sections 6, 7, and 8 of the Act requires the regulatory making authority to carry out a Regulatory Impact Assessment and submit to Parliament a Regulatory Impact Statement if the proposed regulation has significant cost or impact to the community or a sect of the community.

The Private Security (General) Regulations, 2019 require a Regulatory Impact Statement within the meaning of Sections 6, 7 and 8 of the Act.

The regulation making authority submitted to the committee a Regulatory Impact Statement which concluded that the regulations will create an enabling environment for the private security industry to grow and in general improve on the industry standards, employment opportunities and standards, workers welfare, ensure better provision of better services and ultimately improve public safety and security.

#### **Other concerns raised -**

1. Contrary to section 13(a) of the Statutory Instruments Act, the **power to make regulations has not been properly invoked**, and thus the regulations are not in accord with the provisions of the Constitution, the Act pursuant to which they are made and the Statutory Instruments Act.
  - (i) Pursuant to article 259(11) of the Constitution, where a power conferred on a person is exercisable only on consultation with another person, the power may be exercised only after that consultation. The regulation making authority therefore should have **demonstrated this in the enabling clause**.
    - a. Section 45(2) requires consultation with the Inspector General and the Authority before making regulations relating to the cooperation, scope,

mechanism and command in the case of cooperation with the private security service providers.

- b. Section **51(2)** requires consultation with the Authority and private security service providers before making regulations relating to use, manufacture. Importation, selling, distribution, possession and classification of security equipment.
- c. Section **70** of the Act requires consultation with the Authority before making general regulations for the purpose of proper administration and giving effect to the Act.

(ii) **Article 94 (6)** of the Constitution and **Standing Order 118** provides that where legislative power has been delegated to a body, the body in the exercise of such power shall expressly specify

- a. the purpose and objectives for which that authority is conferred,
- b. the limits of the authority,
- c. the nature and scope of the law that may be made, and
- d. the principles and standards applicable to the law made under the authority.

- Section 70 of the act provides that the CS shall make general regulations for the purpose of proper administration of and giving effect to the Act. Section 70 (2) of the act further specifies matters to be addressed by the “general regulations”. This therefore implies that regulations on all other matters were to be made and published separately.
- The regulation making body has instead lumped together all the regulations under the Act as general regulations contemplated under section 70 (1) and (2) of the Parent Act, ignoring that regulations under sections 11(2), 45(2), 51(2), 61(4) of the Parent Act ought to be made and published separately. Article 94(6) requires that each issue be specifically addressed and be done to the letter of the law.

(iii) Section 33 of the parent Act does not expressly empower the CS to make regulations, and therefore was improperly invoked. Section 33(4) merely states that applications under section 33 be made to the authority in such form and manner as may be prescribed.

(iv) The regulation making body makes provisions for the exercise of the power of arrest under regulation 37, without invoking the enabling provision under section 46(4) of the parent Act.

(v) The regulation making body makes provisions for the exercise of the power of search under regulation 38, without invoking the enabling provision under section 47(5) of the parent Act.

(vi) The regulation making body makes provisions for power to record and temporarily withhold identification documents under regulation 39, without invoking the enabling provision under section 48(4) of the parent Act.

2. The foregoing remarks under 1. above makes the regulations defective in drafting contrary to section 13 (h) of the Statutory Instruments Act.
3. Contrary to section 13(j) of the Statutory Instruments Act, there appears to be an unjustifiable delay in the publication of the regulations or laying before Parliament.
  - ✓ Section 47(5) of the parent Act required the CS to make regulations on the power of search **within 3 months of the commencement of the Act**, whose date of commencement was 3<sup>rd</sup> June, 2016. The latest date by which the regulations should have been made should have been the 3<sup>rd</sup> of September 2019.

### **Issues Raised by the Members**

#### **1. Inadequate public participation**

Members were dissatisfied with the extent and conduct of public participation, consumers and members of the general public were not adequately involved. Collection of the views of the members of the public was only conducted in Nairobi, excluding all other 46 counties.

The regulation making authority claimed to have conducted public participation in all the 47 counties, coordinated by the County Commissioners, but they provided no evidence to that effect.

Members also felt that certain key stakeholders and consumers of the services were excluded.

#### **2. Extension of time of compliance under regulation 17 on registration**

Regulation 17 provides for registration within 6 months after commencement of these regulations. Unless amended the period may not change.

#### **3. Regulation 25(5)**

The exercise of the powers of a police officer implies the use of firearms by private security providers when working under the command of a police officer. The use of firearms has been prohibited under section 53 of the Parent Act.

Members were of the opinion that the issues addressed in regulation 25(2) would be better addressed in a statute and not the regulation.

#### **4. Regulation 6(4) as read with 10 on election of representatives to the Board.**

The regulation violates the principle of universal suffrage by requiring the CS to nominate one person from the three elected representatives.

#### **5. Fidelity Levy under regulation 27**

The regulations do not establish the levy. It has been established in the Act under section 60.

Error in drafting of regulation 27 -head says levy, the marginal notes provide for a fund

#### **6. Power of arrest**

Members were apprehensive of the possibility of the abuse of this power, especially on detention after arrest. The power of arrest by private security officers is granted under the Parent Act, section 46. This power is exercised by private security officers as private citizens.



The Criminal Procedure Code under section 34 and 35 provides further guidelines on arrests and disposal by private citizens respectively. The Constitution under article 49 provides further on the rights of an arrested person.

**7. Minimum wage**

Regulation 16 (e) makes it a registration requirement to have proof of compliance with the set minimum wages published under the Labour Institutions Act.

Regulation 16 (e) read along SI sec 13(q) of the SI Act allows the members to consider any other matter that the committee finds fit to examine.

- 8. Regulation 19 (2) (a)-** inappropriate delegation of powers to the Authority to make guidelines on training facilities.

**Recommendations**

The Committee noted that the Regulations were beneficial and were intended to give further guidelines for the operation of private security services industry, and to operationalize the provisions of the Private Security Regulation Act, 2016.

The foregoing notwithstanding, it is our considered opinion that the regulations should not be acceded to and approved for operation by the Ministry on grounds that:-


- a. They are not in accord with the provisions of the Constitution, the Act pursuant to which they are made and the Statutory Instruments Act.
- b. The regulations are defective in drafting
- c. There appears to be an unjustifiable delay in its publication or laying before Parliament

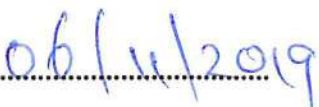
**Resolution**

The decision to annul the Regulation was proposed by the Hon. Timothy Wanyonyi, MP and seconded by Hon. (Dr.) Wilberforce Oundo, MP.

**MIN.NO. /NA/CDL/2019/349      ADJOURNMENT**

The meeting was adjourned at 4.35 p.m. to reconvene following day at 10.00 a.m., same venue.

Signed: ..... 

Date: ..... 

**HON. GLADYS BOSS SHOLLEI CBS MP**  
**(CHAIRPERSON)**



**MINUTES OF THE 57TH SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD ON TUESDAY 29<sup>TH</sup> OCTOBER, 2019 AT 10.00 A.M. IN THE  
MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS**

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**PRESENT**

- |  |   |                  |
|--|---|------------------|
| 1. The Hon. Gladys Boss Shollei CBS MP | - | Chairperson      |
| 2. The Hon. Fatuma Gedi, MP            | - | Vice Chairperson |
| 3. The Hon. Robert Mbui, MP            |   |                  |
| 4. The Hon. Waihenya Ndirangu, MP      |   |                  |
| 5. The Hon. Daniel Maanzo, MP          |   |                  |
| 6. The Hon. Kamoti Mwamkale, MP        |   |                  |
| 7. The Hon. Munene Wambugu, MP         |   |                  |
| 8. The Hon. Muriuki Njagagua, MP       |   |                  |
| 9. The Hon. Jennifer Shamalla, MP      |   |                  |
| 10. The Hon. Gideon Mulyungi, MP       |   |                  |
| 11. The Hon. George Murugara, MP       |   |                  |
| 12. The Hon. Sammy Seroney, MP         |   |                  |
| 13. The Hon. Kassait Kamket, MP        |   |                  |
| 14. The Hon. Abdi Koropu Tepo, MP      |   |                  |

**ABSENT WITH APOLOGY**

1. The Hon. Alice Wahome, MP
2. The Hon. Timothy Wanyonyi, MP
3. The Hon. Ronald Tonui, MP
4. The Hon. Patrick Mariru, MP
5. The Hon. (Dr.) Wilberforce Oundo, MP
6. The Hon. Muturi Kigano, MP
7. The Hon. Martha Wangari, MP
8. The Hon. Tindi Mwale, MP

**ABSENT**

The Hon. Alfred Sambu, MP

**IN-ATTENDANCE**

**SO. 195 Attendance by Non-Committee Member**

1. Hon. Geoffrey Osotsi, MP
2. Hon. (Maj.) Bashir Sheikh Abdullahi, MP

**National Assembly Secretariat**

- |                             |   |                                       |
|-----------------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim        | - | Senior Clerk Assistant                |
| 2. Mr. Jimale Mohamed       | - | Second Clerk Assistant                |
| 3. Mr. Dima Dima            | - | Principal Legal Counsel               |
| 4. Ms. Anne Kigoro          | - | Research and Policy Analyst           |
| 5. Mr. Charles Ayari        | - | Superintendent of Electronics (Audio) |
| 6. Mr. Brian Wechabe        | - | Legal Intern                          |
| 7. Ms. Millicent O. Akhonya | - | Legal intern                          |
| 8. Ms. Winnie Kiziah        | - | Media Relations Officer               |



## **Ministry of Interior and Coordination of National Government**

1. Dr.(Eng.) Karanja Kibicho - Principal Secretary
2. Mr. Fazul Mohammed - CEO, Private Security Regulation Authority
3. Mr. Moffat Mkangi - Secretary, Internal Security
4. Mr. Dan Mwangi - Ministry of Interior
5. Mr. Silvanus Seme - KEPSA

## **National Industrial Training Authority (NITA)**

Helen Odegi

## **Private Security Associations**

1. Mr. Enock Okeyoh - National Chairman, Kenya Private Security Industry Association
2. Mr. Francis Shiyukah - CEO, Kenya Private Security Industry Association
3. Mr. Cosmas Mutava - Chairman, Protective Security Industry Association
4. Mr. Enock Makanga - Chairman, Protective Safety Association of Kenya
5. Mr. Delano Kiilu - CEO, Protective Safety Association of Kenya
6. Annette Kimitei - Seneca World
7. Steve Barry - G4S

## **Kenya National Private Security Workers' Union**

Mr. Isaac GM Andabwa - National General Secretary

## **Kenya Private Sector Alliance**

1. Silvanus Sewe - Chairperson, Security Sector
2. Ms. Magdalene Kariuki - Legislative Officer
3. Mr. Cosmas Mbavu

## **Institute of Professional Security Studies**

Lt. Col.(Rtd) Julius Githiri - Executive Director

## **MIN.NO. /NA/CDL/2019/333 PRAYER AND PRELIMINARIES**

The meeting commenced at 10.15 a.m. with the Prayer by Hon. Sammy Seroney, MP.

## **MIN.NO. /NA/CDL/2019/334 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of Minutes of the previous sitting was deferred to the next sitting.

## **MIN.NO. /NA/CDL/2019/335 MEETING WITH VARIOUS STAKEHOLDERS TO CONSIDER THE PRIVATE SECURITY (GENERAL) REGULATIONS, 2019**

The Chairperson welcomed the various stakeholders represented in the meeting and conducted a round of self-introductions.

### Submission by the Joint Private Security Industry Associations

The Ministry of Interior and Coordination of National Government has gazetted the Private Security (General) Regulations, 2019. The Regulations have been prepared with input from various stakeholders, including the Private Security Regulatory Authority (PSRA). The key stakeholders and actors in the private security industry lauded the government for the move, recognizing the order and efficiency that implementation of the Regulations will bring to the industry.

The private security industry supplements the security services offered by the public service organizations. The industry provides a source of livelihood to approximately 500,000 Kenyans who are direct employees attached to an estimated 2,500 security firms.

They raised the following key issues –

#### Submissions by the Joint Security Industry Association

1. The Joint Security Industry Association appeared before the Committee on 29<sup>th</sup> October, 2019 led by Mr. Enock Makanga and Mr. Cosmas Mutava. The Association brings together three security industry associations namely the Kenya Security Industry Association (KSIA), the Protective Security Industry Association (PSIA), the Protective & Safety Association of Kenya (PROSAK).
2. The Joint Security Industry Association reiterated that the private security sector from their industry data employs approximately 500,000 security officers who offer security services to industrial, residential and commercial properties both in public and private institutions. Hence, the significance of this sector to the economy cannot not be overstated.
3. The Association applauded the Ministry of Interior and National Coordination for operationalising the Private Security Regulations Act, 2016 by gazetting the Regulations. The Association however took issue with some of the provisions in the Regulations.
4. The **eight key issues** raised by the Association are as follows –
  - i. the **six (6) months compliance period under Regulation 17 is too short** to comply with the stipulated requirements. The Association proposes a minimum of five years transition period to be able to fully comply with the Act.
  - ii. **Regulation 19** provides for the mandatory training of security officers, managers and directors prior to issuance of individual and corporate licences to operate. The Association posits that there is no accredited institution, trainers, assessment criteria and approved curriculum by the PSRA, 2016. It is therefore not feasible to train 500,000 people in 6 months.
  - iii. **inadequate public participation:** The Association alleged that the regulation making authority did not adequately conduct participation in the 47 Counties and in particular with the private security providers.

**Regulation 16(e) requires proof of compliance with the set minimum wages.** The Association proposes harmonisation of legislation governing labour matters particularly in private security. If the Regulations are effected in the current form, companies would need to pay a salary of Kshs 27,993 for a night guard and Kshs 25,641 for a day guard. A client would therefore be required to charge clients a minimum Kshs 51,000, less administrative costs and other related charges. The Association therefore found the **costs unsustainable in an already burdened**

**economic environment.** The Association also submitted that even government agencies are yet to comply with minimum wage owing to the unsustainability of the Order.

- iv. **Underrepresentation in the Private Security Authority Board:** The Association opines that the two slots provided in Section 11(1)(vii) of the PSRA, 2016 are not adequate to represent their interests in the 11-member Board.
- v. On the **Private Security Fidelity Fund established by Section 61 of the PSRA, 2016** whose Board of Trustees is the established in **Regulation 27**, the Association observed that it needs more positions on the Board and that the use of the funds be clearly defined in accordance with the relevant legislations.
- vi. On the **Licences and Fees stipulated in the Second Schedule of the Regulations**, the Associations found the licences and fees very punitive and restrictive given the unfavourable economic conditions currently prevailing and the fact that the businesses pay many other licences e.g. County Licences, NEMA among others.
- vii. Section 53(a) and (b) of the PSRA, 2016 prohibits the use of firearms by private security service provider. **Regulation 25(5) implies that private security service providers may be armed when exercising the powers of a police officer.** The Association proposes more stakeholder engagement and public participation in view of the fact that private security service providers are the first casualties in case of attack.

#### **Submissions by the National Industrial Training Authority**

The National Industrial Training Authority (NITA) informed the Committee that it has been involved in the development of the curricula for private security providers. The Authority also informed the Committee that it is not ready with all the requisite training modules for training of security guards at various levels.

#### **Submissions by the Kenya National Private Security Worker's Union**

- (i) The Kenya National Private Security Worker's Union (KNPSWU) led by Mr. Isaac Andabwa, the Union's National General Secretary, informed the Committee that it supports the Regulations as published. The Union is the lead agency which represents the legitimate voice of the guards, formerly known as watchmen.
- (ii) The Union protested the **five-year transition period requested by the private security providers as it would hurt members of the Union** (guards) owing to the low wages and poor working conditions currently being experienced.
- (iii) The Union accused the private security providers of wanting to delay the implementation of the Regulations for their own economic benefit in as far as remuneration of the guards is concerned to benefit the Companies at the expense of the guards' wellbeing. The Union claimed that the subsidiaries of the foreign security providers, namely G4S, Wells Fargo, KK, Ultimate Security and Fidelity Security had already complied with the Regulations in as far as the minimum wage and statutory deductions is concerned. Hence the local companies should follow suit.
- (iv) He further informed the Committee that private security officers are not compensated in case of death in the line of duty.



- (v) The Union emphasized the training of guards to handle detective and deterrent gadgets in different forms of assignments. Guns are not required in all the assignments.

### **Submission by the Executive Director of the Institute of Professional Security Studies**

Lt. Col. (Rtd) Julius Githiri an interested member of the public who is also the Founder and Executive Director of the Institute of Professional Security Studies appeared before the Committee on 29<sup>th</sup> October, 2019 to present his views. Lt. Col. Githiri reiterated that the Regulations were necessary for the security sector and the process of drafting them has eluded the sector for many years hence welcomed the move by the Ministry to gazette the Regulations.

### **Committee Observations**

The Committee observed THAT –

- 1) On mandatory service training, the Committee was informed that the current curriculum is not adequate to meet the requirements for compliance with the Regulations as published. NITA has currently developed the training manuals for level one and two only.
- 2) On compliance period, the Committee observed that the timeline provided for in the Regulations for full compliance is too short and needs further consultations. If not reviewed, it may lead to unemployment of thousands of private security officers since if companies fail to comply, they risk deregistration and loss of licensing. The Regulations will also have the following impact –
  - (i) Loss of public confidence in the national security structure;
  - (ii) vulnerability to radicalization and violent extremism of affected security workers in case of loss of jobs;
  - (iii) creation of corruption networks in private security as players actively seek and find shortcuts to comply; and
  - (iv) possible loss of tourism across Kenya's hospitality industry.
- 3) On public participation, the Committee was informed that only one stakeholder forum was held at the Kenya School of Government in Nairobi and the public participation conducted therefore was inadequate.
- 4) On matters of labour relations, the Committee observed that the private security officers (guards) are indeed under remunerated.

### **Submission by Lt. Col. (Rtd) Julius Githiri - Institute of Professional Security Studies (IPSS),**

Lt. Col. (Rtd) Julius Githiri an interested member of the public who is also the Founder and Executive Director of the Institute of Professional Security Studies informed the Committee that that the Regulations are necessary for the security sector and the process of drafting them has eluded the sector for many years hence welcomed the move by the Ministry to gazette the Regulations.

The industry is expected to witness robust growth driven by the existing and potential security threats and business security risk perception, in a dynamic security environment. As an independent security training organization, IPSS has the objective of meeting the ever-increasing demand for security certification, standards, education and recognition of those professionals employed in the private security industry. It aims at providing a structured career growth for all those employed in the industry.

IPSS's scope in security certification is broad and includes all persons working in the private security industry within and outside Kenya.

The scope is extended to technology providers, door supervisors, CCTV operators, associations and other non-security professionals/persons external to the private security industry who feel the qualifications available may benefit their employment or personal professional development. The major difficulty being that private security organisations are not publicly accountable and are not subject to the same kind of government and public scrutiny that police forces are subject to.

The employment situation in private security guarding companies is characterized by low pay, long working hours without overtime and annual leave, lack of insurance and social benefits and poor and hazardous working conditions.

**Challenges experienced by the private security sector industry –**

- (i) Pricing of guarding services due to operational overheads i.e. labour, taxes e.g. VAT, fuel, excise duty etc;
- (ii) Frequent staff turnover;
- (iii) Unstructured training standards, skills and competences;
- (iv) Service Delivery - client expectations not met;
- (v) Cost of recruitment, vetting and background checks;
- (vi) Security Risk Assessment/ Analysis not aligned with service delivery;
- (vii) Cost associated with contract management, supervision and monitoring

He concluded by emphasizing the need for licensing of individuals and corporates providing security related services. It also means that licensing and training courses must be established not only for employees, but also for the management, in-order to develop leadership, governance, compliance and effective management.

**MIN.NO. /NA/CDL/2019/336**

**MEETING WITH PRINCIPAL SECRETARY FOR  
INTERIOR TO CONSIDER THE PRIVATE  
SECURITY REGULATIONS, 2019**

Dr. (Eng.) Karanja Kibicho, the Principal Secretary, State Department for Interior appeared before the Committee accompanied by Mr. Fazul Mohammed, Chief Executive Officer of the Private Security Regulation Authority and other officials.

The Principal Secretary informed the Committee that the Private Security (General) Regulations, 2019 were published by the Cabinet Secretary for Ministry of Interior and Coordination of National Government pursuant section 70 of the Private Security Regulations, Act, 2016.

The purpose of the Regulations is to provide the procedure for appointment of members of the Private Security Regulatory Board and provide the procedures, requirements and forms for registration as an individual private security provider.

The Regulations also seek to –

- (i) uphold national security principles by private security providers as stated in the Constitution;
- (ii) ensure that private security is pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms;

- (iii) ensure that the private security industry comes under regulation within reasonable time and of essence is the registration and licensing of all providers within the stipulated timeline; and
- (iv) raise the professional standards of workforce and their welfare within reasonable time.

The Principal Secretary further noted that the Regulations provide for a comprehensive framework for the registration of all private security providers and the regulation of the industry. The development of the Regulations was guided by the values and principals of enshrined in the Constitution.

He informed the Committee that the Ministry in coming up with the Regulations tried as much as possible to incorporate views from all concerned stakeholders and that the Ministry has since the enactment of the Act in March 2016 been setting up the infrastructure and framework for Regulations stipulated under the law.

Stakeholders consulted included the: Private Security Regulatory Authority as stipulated in Section 70 of the PSRA, 2016, The National Security Advisory Council, Industry Employers' Association, The Kenya National Private Security Workers' Union, Corporate Private Security Providers, Individual Private Security Providers, Private Security Services Consumers, Civil Society Organisations and the general public.

The public engagements were conducted by the County Commissioners who are the National Government representatives in the Security and Intelligence Committees. A meeting was also conducted at the Kenya School of Government which, he observed, was inclusive and comprehensive. The PS further stated that the ministry conducted public consultations with key stakeholders such as the Private Security Regulatory Authority, the National Security Advisory Council, industry employers' associations, the Kenya National Private Security Workers Union, corporate private security providers, individual private security providers, private security service consumers, Civil Society Organisations and the general public among others.

The Principal Secretary reiterated that the 6 months compliance timeframe provided in the Regulations can be negotiated with the stakeholders.

Dr. Kibicho also pleaded with the Committee to consider approving the Regulations which will among others, improve the welfare of the approximately 500, 000 guards whose working conditions and remuneration need improving.

The Ministry and the Authority shall monitor the application of the Regulations and submit a quarterly report on its implementation for review.

### **Committee Observations**

The Committee observed THAT –

#### **1. Statutory Timelines**

The Regulations were submitted to the National Assembly within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act (hereinafter referred to as the Act) having been published on the 5<sup>th</sup> of July, 2019 received by the Clerk of the National Assembly on 11<sup>th</sup> July, 2019 and tabled on the 2019 within the statutory timeline.

#### **2. Consultation / Public participation**

Articles 10 and 118 of the Constitution, section 5, 5A and the Schedule to the Act and Standing Order 210 require the regulation –making authority to conduct public participation and sufficient



consultation with the stakeholders and persons likely to be affected by the regulations and evidence to that effect was available. The Committee raised concern regarding the adequacy of public participation.

### **3. Compliance period**

The six months transition period provided for compliance is too short and needs further consultations with various stakeholders.

### **4. Minimum wage concerns**

The requirement for compliance with the minimum wage ought to be further discussed as it is apparent that not even government agencies that have procured private security services are yet to comply with the Minimum Wages Order.

### **5. Nomination of Members to the Private Security Authority Board**

Members were concerned about the delay in appointing Members to the Board and the skewed representation of the private security service providers.

### **Way forward**


The Committee requested the Ministry of Interior and Coordination of National Government to submit the Regulatory Impact Assessment for consideration not later than Thursday, 31<sup>st</sup> October, 2019.

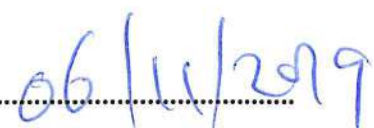
**MIN.NO. /NA/CDL/2019/337      ANY OTHER BUSINESS**

No other matter arose.

**MIN.NO. /NA/CDL/2019/338      ADJOURNMENT**

There being no other business, the meeting was adjourned at 1.15 p.m.

Signed:  .....

Date:  .....

**HON. GLADYS BOSS SHOLLEI CBS MP**

**(CHAIRPERSON)**