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Paper Laid
By the chair;
Delegated committee
Hon. William Cheptoo
on Thursday, 17/12/15
L&J

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - THIRD SESSION (2015)

THE SELECT COMMITTEE ON DELEGATED LEGISLATION

REPORT

ON THE KISUMU NATIONAL POLYTECHNIC ORDER, 2014

**Clerk's Chambers,
Parliament Buildings,
NAIROBI**

DECEMBER, 2015

1.0 PREFACE

Mr. Speaker Sir,

On behalf of the Members of the Select Committee on Delegated Legislation, and pursuant to Standing Order No.199, it is my pleasure and duty to present to the House the Committee's Report on the Kisumu National Polytechnic Order, 2014.

1.1 Committee Membership

The Committee on Delegated Legislation was constituted by the House on 21st May, 2013 and is comprised of the following Members;

Hon. William Cheptumo, MP – **Co-Chairperson**

Hon. Joseph Gitari, MP – **Vice Chairperson**

Hon. Richard Onyonka, MP

Hon. Alfred Keter, MP

Hon. Hassan Aden Osman, MP

Hon. Timothy W. Wetangula, MP

Hon. George Theuri, MP

Hon. Elisha K. Busienei, MP

Hon. Eng. Shadrack Manga, MP

Hon. Yusuf Hassan Abdi, MP

Hon. Michael Kisoi, MP

Hon. Mohamed Adan Huka, MP

Hon. John M. Waiganjo, MP

Hon. Paul K. Bii, MP

Hon. Charles Gimose, MP

Hon. T. J. Kajwang, MP

Hon. Simba Arati, MP

Hon. Rachael A. Amolo, MP

Hon. Vincent Musau, MP

Hon. William Kisang, MP

Hon. Neto Agostinho, MP

Hon. Paul Koinange, MP

Hon. Ibrahim Abdi Saney, MP

Hon. Eusilah Ngeny, MP

Hon. Nicholas Ngi'kor Nixon, MP

Hon. Benard Shinali, MP

Hon. Kabando wa Kabando, MP

Hon. Marcus Mutua Muluvi, MP

1.2 Mandate of the Committee

The Committee on Delegated Legislation is a Select Committee established pursuant to provisions of Standing Order No. 210 whose mandate is to consider in respect of any statutory instrument whether it:-

- a. Is in accordance with the provision 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. 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.

Standing Order No. 210(4) provides that if the Committee-

- a. Resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument.
- b. Does not accede to the statutory instrument, the Committee may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled.
- c. The Clerk shall submit the resolution under paragraph 4(b) above to the relevant state department or the authority that published the statutory instrument.

1.3 The Kisumu National Polytechnic Order, 2014.

Pursuant to the Technical and Vocational Education Training Act (No.29 of 2013) the Cabinet Secretary for Education, Science and Technology on 7th November, 2014, submitted to the Clerk of the National Assembly, the Kisumu National Polytechnic Order.

The Order was tabled on 11th November, 2014 and thereafter was referred to the Select Committee on Delegated Legislation, by the Hon. Speaker for review and scrutiny pursuant to section 12(1) of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly.

1.4 Committee Meetings

The Committee held two sittings and scrutinized the Order pursuant to the Provisions of Section 13 of the Statutory Instruments Act, 2013 and Standing Order No. 210.

1.5 Committee's Observations and Recommendations

The Committee observed that save for paragraphs 19 and 20; the Order as published complies with the requirements of section 13 and other enabling provisions of the Statutory Instruments Act and Standing Orders of the National Assembly. Paragraphs 19 and 20

contravene section 13 (m) of the Statutory Instruments Act, 2013 and protection of the institutions name has no basis in the Parent Act.

In view of the foregoing and pursuant to provisions of section 13 of the Statutory Instruments Act and Standing Order 210 (4) (b), the Committee recommends to the House that paragraphs 19 and 20 of the Kisumu National Polytechnic Order be annulled.


1.6 Acknowledgement

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate;

I take this opportunity to thank all the Members of the Committee for their useful and immense contribution in scrutinizing the Kisumu National Polytechnic Order, 2014.

The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

Finally, it is now my pleasant duty, on behalf of the Committee, to recommend this Report to the House pursuant to the provisions of Standing Orders of the National Assembly for adoption and passage.

Signed..........Date.....16.12.15.....

**Hon. William Cheptumo, MP
(Chairperson)**

Select Committee on Delegated Legislation

2.0 COMMITTEE'S CONSIDERATION OF THE KISUMU NATIONAL POLYTECHNIC ORDER, 2014

The Order is made pursuant to section 26(2) of the Technical and Vocational Education and Training Act which mandates the Cabinet Secretary to make Orders to establish the various categories of technical institutions.

The Order establishes the Kisumu National Polytechnic as a body corporate and specifies its objects and functions. It further provides for the management council of the college and various offices to administer the College and related purposes.

2.1 Committee Observations

The Committee on Delegated Legislation scrutinized the Kisumu National Polytechnic Order, 2014, and observed as follows;

- a. The Parent Act under section 58 allows for the extension of all existing orders in respect to Technical Institutions provided that they seek accreditation from the Technical and Vocational Education and Training Board established under section 8 of the Act within two years of establishment.
- b. The Order was accompanied by an Explanatory Memorandum which provides for its purpose and the Legislative context, and traces the policy background of the Order to Sessional Paper No.14 of 2012 which provided for the governance, management, development among others of the Technical and Vocational Education and Training of the accords to the requirements of section 11 of the Statutory Instruments Act, 2013
- c. The Explanatory memorandum provides the extent of public participation and the outcome thereof, the guidance on establishment of the institution, its impact on public and private sector, its impact on fundamental rights and freedoms as enshrined under Articles 43(1)(f) and 55(a) of the Constitution.
- d. Order 19 seeks to delegate to the Council the authority to make Regulations. A delegatee may not delegate further the powers conferred on them and the Order inappropriately delegates legislative powers contrary to section 13 (m) of the Statutory Instruments Act, 2013. To this end this provision amounts to abuse of delegated authority.

- e. Paragraph 20 seeks to provide for the protection of the name of the institution under a Statutory Instrument. This is regulated by the laws regulating patents and Registration of business names and Companies and should therefore not be in the Order.

The Committee found that except for paragraphs 19 and 20, the Order conforms to the Constitution, relevant considerations under the provisions of section 13 of the Statutory Instruments Act, 2013 and the parent Act being the Technical and Vocational Education and Training Act (No.29 of 2013).

3.0 Committee Recommendation

In view of the Committee's considerations, observations and findings under 2.0 and 2.1 above and pursuant to the provisions of section 13 and other relevant provisions of the Statutory Instruments Act (No.23 of 2013) and Standing Order No.210 and other relevant legislations, **the Committee hereby recommends to the House that paragraphs 19 and 20 of the Kisumu National Polytechnic Order 2014 be annulled.**

.....**END**.....

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

ATTENDANCE REGISTER FOR MEMBERS

DATE...30/07/2015

ADOPTION OF REPORTS

	NAME	SIGNATURE
1	Hon. Joseph Gitari	Joseph Gitari (Chairman)
2	Hon. Paul K. Bui	Paul K. Bui
3	Hon. G. Themi	G. Themi
4	Hon. Hassan Osman	Hassan Osman
5	Hon. Ibrahim A. Sanyal	Ibrahim A. Sanyal
6	Hon. William Kiseung	William Kiseung
7	Hon. Tim Wanyonyi	Tim Wanyonyi
8	Hon. Nixon Ngũgĩ	Nixon Ngũgĩ
9	Hon. Richard Ombasa	Richard Ombasa
10	T. J. Kajwang	T. J. Kajwang
11	Hon. HUKA	HUKA
12	II SIMBA ABATI	SIMBA ABATI
13	Hon. W. Chepturo	W. Chepturo - CHAIRMAN
14	Hon. Rachana Amoo	Rachana Amoo
15	EUSILA NGONYI	EUSILA NGONYI
16	Hon. KABAMBA wa KABAMBA	KABAMBA wa KABAMBA
17	John M. Wanyonyi	John M. Wanyonyi



For: CLERK OF THE NATIONAL ASSEMBLY

**MINUTES OF THE 24TH SITTING OF THE SELECT COMMITTEE ON
DELEGATED LEGISLATION HELD ON THURSDAY 30TH JULY, 2015 IN THE
MEMBERS NEW LOUNGE, PARLIAMENT BUILDINGS AT 10.00 A.M**

PRESENT

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. Joseph Gitari, M.P. - **Vice Chairperson**
3. Hon. John Waiganjo, M.P.
4. Hon. Mohamed Aden Huka, M.P
5. Hon. William Kisang, M.P..
6. Hon. George Theuri, M.P.
7. Hon. Simba Arati, M.P.
8. Hon. Kabando wa Kabando, M.P.
9. Hon. Hassan Aden, M.P.
10. Hon. T. J. Kajwang, M.P.
11. Hon. Richard Onyonka, M.P.
12. Hon. Paul Bii, M.P
13. Hon. Saney Abdi Ibrahim, M.P.
14. Hon. Wetangula Timothy Wanyonyi, M.P
15. Hon. Nicholas Nixon, M.P.
16. Hon. Eusilah Jepkosgei, M.P
17. Hon. Rachael Ameso, M.P.

ABSENT WITH APOLOGIES

1. Hon. Marcus Mutua Muluvi, M.P.
2. Hon. Vincent Musau, M.P.
3. Hon. Yusuf Hassan, M.P.
4. Hon. Shadrack Manga, M.P.
5. Hon. Paul Koinange, M.P
6. Hon. Charles Gimose, M.P
7. Hon. Michael Kiso Manthi, M.P.
8. Hon. Elisha Busienei, M.P.
9. Hon. Benard Shinali, M.P.
10. Hon. Alfred Keter, M.P.
11. Hon. Neto Agostinho, M.P.

IN ATTENDANCE

The National Assembly

A.M Wasike -First Clerk Assistant

MIN.DL.112/2015PRELIMINARIES

The meeting was called to order at 10.55 a.m after a word of prayer by Hon. Paul Bii.

The vice-Chairperson informed members that the secretariat has filed draft reports on Kaimosi Friends University College, Human Resource Professionals Management (Registration and Training) Regulations, 2015 Kisumu, Eldoret and Kenya Technical Trainers for adoption by the Committee.

MIN.DL.113/2015 ADOPTION OF COMMITTEE REPORTS

a. Report on the Human Resource Management Professionals (Registration and Training) Regulations, 2015

The Hon.T.J Kajwang, MP proposed adoption of the Report and was seconded by Hon. Paul Bii, MP

Members of the Committee present unanimously adopted the Report by recommending that all of the Human Resource Management Professionals (Registration and Training) Regulations, 2015 be annulled.

b. Report on the Eldoret National Polytechnic Order, 2014

The Hon. William Kisang, MP proposed adoption of the Report and was seconded by Hon.George Theuri, MP

Members of the Committee present unanimously adopted the Report by recommending that Order 20 and 21 of the Eldoret National Polytechnic Order, 2014 be annulled.

c. Report on the Kisumu National Polytechnic Order, 2014

The Hon. Rachael Ameso, MP proposed adoption of the Report and was seconded by Hon. Nixon Ngikor Nicholas, MP

Members of the Committee present unanimously adopted the Report by recommending that Order 19 and 20 of the Kisumu National Polytechnic Order, 2014 be annulled.

d. Report on the Kenya Technical Trainers Order, 2014

The Hon. TJ Kajwang, MP proposed adoption of the Report and was seconded by Hon. Joseph Gitari, MP

Members of the Committee present unanimously adopted the Report by recommending that Order 19 and 20 of the Kenya Technical Trainers Order, 2014 be annulled.

e. Report on the Kaimosi Friends University College Order, 2015

The Hon. Hassan Osman, MP proposed adoption of the Report and was seconded by Hon. Rachael Ameso, MP


Members of the Committee present unanimously adopted the Report by recommending that paragraph 24 of the Kaimosi Friends University College Order, 2015 be annulled.

MIN.DL.114/2015 ANY OTHER BUSINESS

There being no other business, the meeting was adjourned at 11.50 a.m.

MIN.DL.115/2014 DATE OF NEXT MEETING

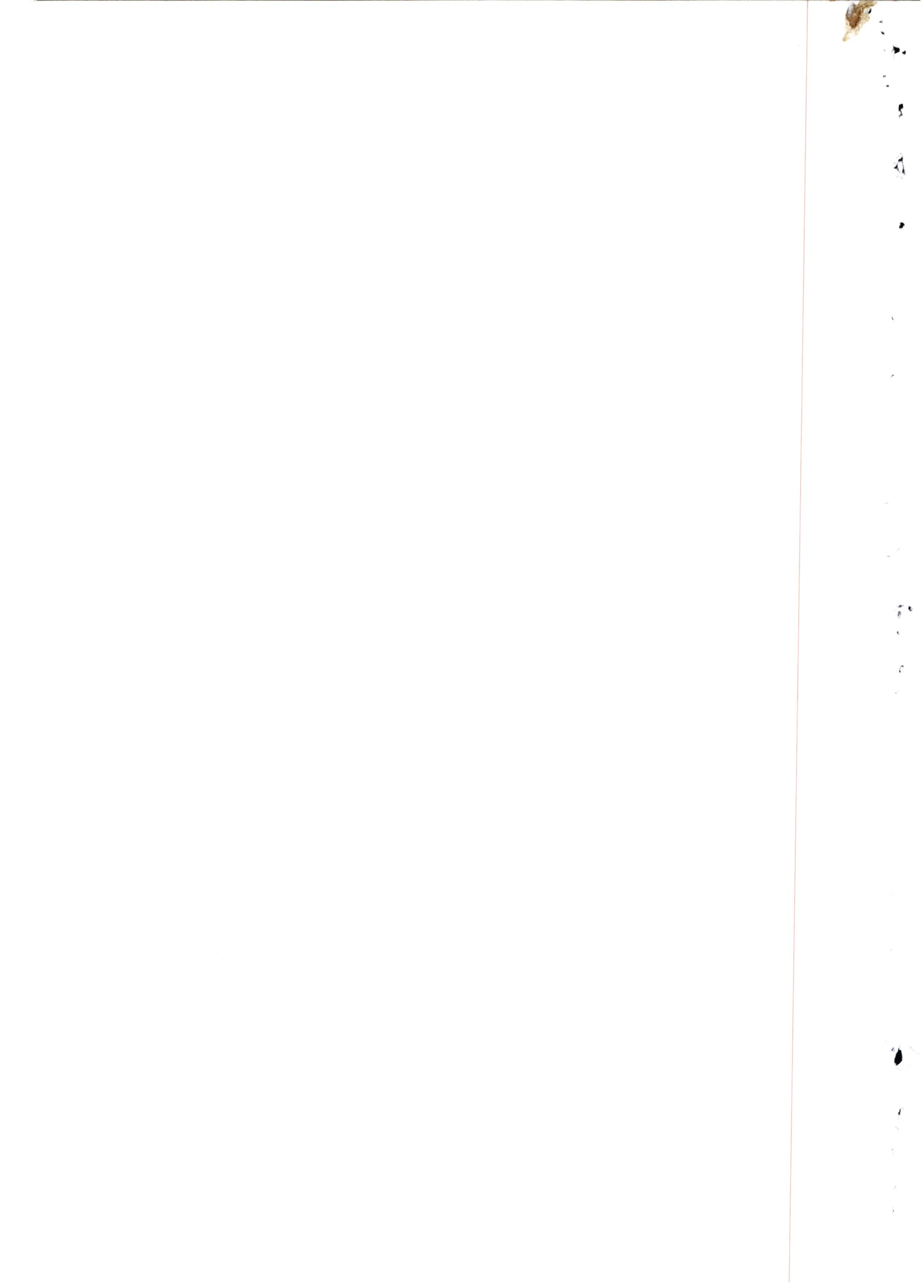
The next meeting will be held on Tuesday 4th August 2015..

Signed.....

Hon. William Cheptumo

(Chairperson)

Date.....



**MINUTES OF THE 21ST SITTING OF THE SELECT COMMITTEE ON
DELEGATED LEGISLATION HELD ON TUESDAY 23RD JUNE, 2015 IN THE
RESTAURANT, CONTINENTAL HOUSE, 7TH FLOOR, AT 10.00 A.M**

PRESENT

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. Joseph Gitari, M.P. - **Vice Chairperson**
3. Hon. William Kisang, M.P..
4. Hon. George Theuri, M.P.
5. Hon. Kabando wa Kabando, M.P.
6. Hon. Hassan Aden, M.P.
7. Hon. T. J. Kajwang, M.P.
8. Hon. Eusilah Jepkosgei, M.P
9. Hon. Rachael Ameso, M.P.
10. Hon. Michael Kisoi Manthi, M.P.
11. Hon. Elisha Busienei, M.P.
12. Hon. Benard Shinali, M.P.
13. Hon. Charles Gimose, M.P
14. Hon. Vincent Musau, M.P.

ABSENT WITH APOLOGIES

1. Hon. Marcus Mutua Muluvi, M.P.
2. Hon. Yusuf Hassan, M.P.
3. Hon. Shadrack Manga, M.P.
4. Hon. Paul Koinange, M.P
5. Hon. Alfred Keter, M.P.
6. Hon. Neto Agostinho, M.P.
7. Hon. Richard Onyonka, M.P.
8. Hon. Paul Bii, M.P
9. Hon. Saney Abdi Ibrahim, M.P.
10. Hon. Wetangula Timothy Wanyonyi, M.P
11. Hon. Nicholas Nixon, M.P.
12. Hon. John Waiganjo, M.P.
13. Hon. Mohamed Aden Huka, M.P
14. Hon. Simba Arati, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

A.M Wasike -First Clerk Assistant
Wilson Dima -Senior Legal Counsel

Catherine Wangui -Sergeant at arms

MIN.DL.96/2015

PRELIMINARIES

The meeting was called to order at 10.55 a.m after a word of prayer by Hon.Hassan Osman. The Chairperson thanked members for attending the Mombasa retreat on 18th to 21st June 2015.He appreciated members' efforts for the progress made in Mombasa.

The Chairperson reminded members that the agenda of the meeting is as agreed in Mombasa and that is to review reports on Technical education regulations on Eldoret and Kisumu National Polytechnics Orders and the Kenya Technical Teachers Trainers Order.

MIN.DL.97/2015 CONSIDERATION OF VOCATIONAL EDUCATION REGULATIONS

The Kisumu National Polytechnic Order, 2014

The Committee on Delegated Legislation scrutinized the Kisumu National Polytechnic Order, 2014, and finds as follows;

- a. The Order conforms to the Constitution and the requirements of the relevant statutes and is in consonance with section 58 of the Technical and Vocational Education and Training Act, which allows for the extension of all existing orders in respect to Technical Institutions provided that they seek accreditation from the Technical and Vocational Education and Training Board established under section 8 of the Act within two years of establishment.
- b. The Order was accompanied by an Explanatory Memorandum which provides for its purpose and the Legislative context, and traces the policy background of the Order sessional paper No.14 of 2012 which provided for the governance,management,development among others of the Technical and Vocational Education and Training of the accords to the requirements of section 11 of the Statutory Instruments Act,2013
- c. The Explanatory memorandum provides the extent of public participation and the outcome thereof, the guidance on establishment of the institution, its impact on public and private sector, its impact on fundamental rights and freedoms as enshrined under Articles 43(1)(f) and 55(a) of the Constitution.
- d. Order 19 seeks to delegate to the Council the authority to make Regulations. A delegate may not delegate further the powers conferred on

them and the Order inappropriately delegates legislative powers contrary to section 13 (m) of the Statutory Instruments Act, 2013.

- e. Order 20 seeks to provide for the protection of the name of the institution under a Statutory Instrument. This is regulated by the laws regulating patents and Registration of business names and Companies and should therefore not be in the Order.
- f. Except for Orders 19 and 20, the Order as published accords with the provisions of the Constitution, the Act Pursuant to which it is made, the Statutory Instruments Act, 2013 ,Standing Orders 210 (3) and other relevant written laws.

Committee Recommendation/Resolution

In view of the Committee's considerations, observations and findings above and pursuant to the provisions of section 13 and other relevant provisions of the Statutory Instruments Act (No.23 of 2013) and Standing Order No.210 and other relevant legislations, the Committee resolved that Orders 19 and 20 of the Kisumu National Polytechnic Order 2014 be annulled.

The Eldoret National Polytechnic Order, 2014

The Committee on Delegated Legislation scrutinized the Eldoret National Polytechnic Order, 2014, and finds as follows;

- a. The Order conforms to the Constitution and the requirements of the relevant statutes and is in consonance with section 58 of the Technical and Vocational Education and Training Act, which allows for the extension of all existing orders in respect to Technical Institutions provided that they seek accreditation from the Technical and Vocational Education and Training Board established under section 8 of the Act within two years of establishment.
- b. The Order was accompanied by an Explanatory Memorandum which provides for its purpose and the Legislative context, and traces the policy background of the Order sessional paper No.14 of 2012 which provided for the governance,management,development among others of the Technical and Vocational Education and Training of the accords to the requirements of section 11 of the Statutory Instruments Act,2013
- c. The Explanatory memorandum provides the extent of public participation and the outcome thereof, the guidance on establishment of the institution, its impact on public and private sector, its impact on

fundamental rights and freedoms as enshrined under Articles 43(1)(f) and 55(a) of the Constitution.

- d. Order 20 seeks to delegate to the Council the authority to make Regulations. A delegate may not delegate further the powers conferred on them and the Order inappropriately delegates legislative powers contrary to section 13 (m) of the Statutory Instruments Act, 2013.
- e. Order 21 seeks to provide for the protection of the name of the institution under a Statutory Instrument. This is regulated by the laws regulating patents and Registration of business names and Companies and should therefore not be in the Order.
- f. Except for Orders 20 and 21, the Order as published accords with the provisions of the Constitution, the Act Pursuant to which it is made, the Statutory Instruments Act, 2013 ,Standing Orders 210 (3) and other relevant written laws.

Committee Recommendation/Resolution

In view of the Committee's considerations, observations and findings above and pursuant to the provisions of section 13 and other relevant provisions of the Statutory Instruments Act (No.23 of 2013) and Standing Order No.210 and other relevant legislations, the Committee resolved that Orders 20 and 21 of the Eldoret National Polytechnic Order 2014 be annulled.

The Kenya Technical Trainers Order, 2014

The Committee on Delegated Legislation scrutinized the Kenya Technical Trainers Order, 2014, and observed as follows;

- a. The Order conforms to the Constitution and the requirements of the relevant statutes.
- b. The Order was accompanied by an Explanatory Memorandum which provides for its purpose and the Legislative context, and traces the policy background of the Order sessional paper No.14 of 2012 which provided for the governance, management, development among others of the Technical and Vocational Education and Training of the accords to the requirements of section 11 of the Statutory Instruments Act, 2013
- c. The Explanatory memorandum provides the extent of public participation and the outcome thereof, the guidance on establishment of the institution, its impact on public and private sector, its impact on fundamental rights and freedoms as enshrined under Articles 43(1)(f) and 55(a) of the Constitution.

- d. Order 19 seeks to delegate to the Council the authority to make Regulations. A delegate may not delegate further the powers conferred on them and the Order inappropriately delegates legislative powers contrary to section 13 (m) of the Statutory Instruments Act, 2013.
- e. Order 20 seeks to provide for the protection of the name of the institution under a Statutory Instrument. This is regulated by the laws regulating patents and Registration of business names and Companies and should therefore not be in the Order.
- f. Except for Orders 19 and 20, the Order as published accords with the provisions of the Constitution, the Act Pursuant to which it is made, the Statutory Instruments Act, 2013 ,Standing Orders 210 (3) and other relevant written laws.

Committee Recommendation/Resolution

In view of the Committee’s considerations, observations and findings above and pursuant to the provisions of section 13 and other relevant provisions of the Statutory Instruments Act (No.23 of 2013) and Standing Order No.210 and other relevant legislations, the Committee resolves that Orders 19 and 20 of the Kenya Technical Trainers Order 2014 be annulled.

The Committee resolved to table a report to the House on annulment of specific provisions of the three sets of Regulations.

MIN.DL.98/2015

ANY OTHER BUSINESS

Members agreed to invite CS, Education, Science and Technology, TSC and KNUT for a meeting on Basic Education Regulations 2015 on 2nd July 2015.

MIN.DL.99/2015

ADJOURNEMENT

The meeting was adjourned at 12.20 p.m.

MIN.DL.100/2014

DATE OF NEXT MEETING

The next meeting will be held on 30th July, 2015.

Signed... *X*

Hon. William Cheptumo

(Chairperson)

Date *30th July 2015*

