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19/02/19  
THE SENATE  
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TWELFTH PARLIAMENT  
SECOND SESSION  
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PAPERS LAID	
DATE	20/02/19
TABLED BY	Chairperson
COMMITTEE	Legal Affairs
CLERK AT THE TABLE	Lilian

THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

.....  
A REPORT ON PUBLIC PARTICIPATION ON THE COUNTY STATUTORY INSTRUMENTS BILL  
(SEN. BILL NO. 21 OF 2018)  
.....

Approved  
*[Signature]*  
26/2/2019

~~Rt. Hon. Speaker~~  
You may approve  
for tabling.  
19/02/19

Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
NAIROBI.

February, 2019

## TABLE OF CONTENTS

<b>ABBREVIATIONS AND ACRONYMS</b> .....	ii
<b>PREFACE</b> .....	iii
Establishment of the Committee .....	iii
Membership of the Committee .....	iii
Acknowledgement .....	iv
<b>CHAPTER ONE</b> .....	1
<b>INTRODUCTION</b> .....	1
1.0 Background .....	1
1.1 The Object of the Bill .....	1
1.2 Legal Framework .....	2
1.3 Overview of the Bill .....	3
<b>CHAPTER TWO</b> .....	8
<b>PUBLIC PARTICIPATION</b> .....	8
2.0 Attendance by Stakeholders.....	8
2.1 Submissions from Stakeholders .....	8
<b>CHAPTER THREE</b> .....	11
<b>COMMITTEE OBSERVATIONS AND RECOMMENDATIONS</b> .....	11
3.0 General Observations .....	11
3.1 Observations and Recommendations on the Clauses of the Bill.....	11

## ABBREVIATIONS AND ACRONYMS

COG	Council of Governors
KNCHR	Kenya National Commission on Human Rights
MP	Member of Parliament
SEN	Senator

## PREFACE

Mr. Speaker,

### Establishment of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 212 and mandated to *consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

### Membership of the Committee

The Committee is comprised of the following members:-

1. Sen. Samson Cherarkey, MP - **Chairperson**
2. Sen. Mithika Linturi, MP - **Vice-Chairperson**
3. Sen. James Orengo, MP
4. Sen. Fatuma Dullo, MP
5. Sen. Amos Sitswila Wako, MP
6. Sen. Kilonzo Mutula Jnr., MP
7. Sen. Susan Wakarura Kihika, MP
8. Sen. Irungu Kang'ata, MP
9. Sen. Faki Mohamed, MP

Mr. Speaker,

The promulgation of the Constitution in 2010 ushered in a new governance system and greatly expanded the democratic space in the country. County Assemblies, under Article 185 of the Constitution have the express mandate to carry out the functions of law making, representation, and oversight over the County Executive Committees and other executive organs.



The County Statutory Instruments Bill, 2018 makes provision for the procedure of consideration of Statutory Instruments by County Assemblies. Subsidiary legislation is key in the running of County Governments as it would allow County Governments to enact regulations that would guide implementation of devolved functions under the Fourth Schedule of the Constitution. The Bill seeks to provide a legal mechanism by which County Assemblies will scrutinize statutory instruments.

The Committee considered the Bill at length, conducted public participation and deliberated on the submissions received. Based on the deliberations and public participation, the Committee will present amendments with the view of strengthening the provisions of the Bill for consideration by this House.

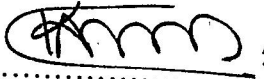
**Acknowledgement**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat comprised of Ms. Kavata Musyoka, Ms. Josephine Kusinyi, Ms. Clare Kidombo and Mr. James Kimiti for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further it wishes to thank stakeholders who made submissions such as the Kenya National Commission on Human Rights (KNCHR) and the Council of Governors (COG).

**Mr. Speaker,**

It is now my pleasant duty, pursuant to Standing Order 137, to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the County Statutory Instruments Bill, 2018.

Signed.....

Date.....13/2/2019.....

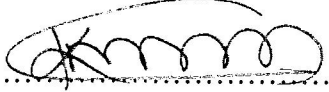
**SEN. SAMSON CHERARKEY, MP**

**CHAIRPERSON**

**JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE**

**ADOPTION OF THE REPORT OF THE JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE OF THE SENATE**

**We, the undersigned Members of the Justice, Legal Affairs and Human Rights Committee of the Senate, do hereby append our signatures to adopt the Report-**

Sen. Samson Cherarkey, MP	Chairperson	
Sen. Mithika Linturi, MP	Vice-Chairperson	.....
Sen. Fatuma Dullo, MP	Member	
Sen. James Orengo, MP	Member	
Sen. Amos Sitswila Wako, MP	Member	.....
Sen. Kilonzo Mutula Jnr., MP	Member	.....
Sen. Irungu Kang'ata, MP	Member	
Sen. Susan Wakarura Kihika, MP	Member	.....
Sen. Faki Mohamed, MP	Member	

## CHAPTER ONE

### INTRODUCTION

#### **1.0 Background**

The County Statutory Instruments Bill (Sen. Bill No. 21 of 2018) was sponsored by Sen. Samuel Poghiso, Chairperson of the Delegated Legislation Committee. The principal object of this Bill is to make provision for the procedure of consideration of Statutory Instruments by County Assemblies. Subsidiary legislation is key in the running of County Governments as it would allow County Governments to enact regulations that would guide implementation of devolved functions under the Fourth Schedule of the Constitution. The Bill seeks to provide a legal mechanism by which County Assemblies will scrutinize statutory instruments.

The Bill was published on 10<sup>th</sup> August, 2018 and was read a First Time on 13<sup>th</sup> September, 2018. Following the First Reading in the Senate, it stood committed, pursuant to Standing Order 134(1), to the Standing Committee on Legal Affairs and Human Rights for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 140 (5), invited submissions from members of the public on the Bill via an advertisement on “The Standard” Newspaper and the “Daily Nation” Newspapers.

#### **1.1 The Object of the Bill**

Statutory Instruments are a form of legislation which allow the provisions of an Act of Parliament to be subsequently brought into force or altered without Parliament having to pass a new Act. They are also referred to as secondary, subsidiary, delegated or subordinate legislation.

Acts of Parliament often confer powers on Ministers to make more detailed orders, rules or regulations by means of statutory instruments. The scope of these powers may vary from powers to stipulate fines or penalties for offences to much wider powers such as filling out the broad provisions in Acts. It is noteworthy that often, Acts of Parliament only contain a broad framework. Statutory Instruments are therefore used to provide the necessary detail that would

be considered too complex to include in the body of an Act. Secondary legislation can also be used to amend, update or enforce existing primary legislation<sup>1</sup>.

The main object of the County Statutory Instruments Bill (Sen. Bill No. 21 of 2018) is to make provision for the procedure of consideration of Statutory Instruments by County Assemblies. The Bill seeks to provide a legal mechanism by which County Assemblies will scrutinize statutory instruments. The Bill will provide a comprehensive framework for the making, scrutiny, publication and operation of statutory instruments by requiring regulation-making authorities to undertake appropriate consultations before making statutory instruments.

The Bill also seeks to promote high standards in the drafting of statutory instruments to ensure their legal effectiveness, clarity and intelligibility to anticipated users. It will also enhance public participation in the making of statutory instruments; establish a mechanism for scrutiny of statutory instruments by County Assemblies; and establish a mechanism for the periodic review of statutory instruments.

## 1.2 Legal Framework

### *Constitution of Kenya (2010)*

The devolved system of government created two levels of government, the national Government and County Governments, each with distinctive mandates. Article 176 of the Constitution establishes the County Assembly. Article 185 of the Constitution provides for the have the express mandate of County Assemblies to carry out the functions of law making, representation, and oversight over the County Executive Committees and other executive organs. It provides as follows-

*185. (1) The legislative authority of a county is vested in, and exercised by, its county assembly.*

*(2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.*

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<sup>1</sup> House of Commons Information Office , Statutory Instruments <https://www.parliament.uk/documents/commons-information-office/i07.pdf> Retrieved 25.11.2018

(3) *A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.*

(4) *A county assembly may receive and approve plans and policies for—*

*(a) the management and exploitation of the county's resources; and*

*(b) the development and management of its infrastructure and institutions.*

Section 8 of the County Governments Act set out the role of the county assembly which includes to perform the roles set out under Article 185 of the Constitution; and to perform any other role as may be set out under the Constitution or legislation.

County Assemblies have the constitutional mandate of law-making and can enact legislation on devolved functions set out under the Fourth Schedule of the Constitution. Statutory Instruments are necessary to operationalize legislation passed by County Assemblies and guide implementation of devolved functions under the Fourth Schedule of the Constitution by the County Executives. The Bill seeks to provide a legal mechanism by which County Assemblies will scrutinize statutory instruments tabled before Assemblies. The Bill will ensure that statutory instruments formulated by County Executives have been subjected to public participation and an impact assessment.

### **1.3 Overview of the Bill**

The Bill provides as follows-

#### **Part I—Preliminary**

##### ***Short title***

Clause 1 of the Bill sets out the short title as the County Statutory Instruments Act, 2018.

##### ***Interpretation***

Clause 2 of the Bill sets out the interpretation of terms used in the Bill. The Bill defines a 'statutory instrument' to mean , "*any rule, order, regulation, direction, form, tariff of costs or fees, letters, patent, commission, warrant, proclamation, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of a County Assembly under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.*"

### *Application*

Clause 3 of the Bill provides that the Act apply to every statutory instrument made directly or indirectly under any Act of a county assembly.

### *Object of the Act*

Clause 4 of the Bill sets out the object of the Act which is to provide a comprehensive framework for the making, scrutiny, publication and operation of statutory instruments by requiring regulation-making authorities to undertake appropriate consultations before making statutory instruments. The Bill also seeks to promoting high standards in the drafting of statutory instruments, enhancing public participation, establishing a mechanism for scrutiny of statutory instruments and establishing a mechanism for the periodic review of statutory instruments by County Assemblies.

## **Part II—Consultations before Making Statutory Instruments**

### *Consultation before making statutory instruments*

Clause 5 of the Bill requires consultation before a regulation-making authority makes a statutory instrument, and in particular where the proposed instruments are likely to have a direct, or a substantial indirect effect on business; or restrict competition. Clause 5 (2) further sets out a threshold for determine the extent of the consultation.

## **Part III— Regulatory Impact Statements**

### *Regulatory impact statement*

Clause 6 of the Bill provides the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement regarding the instrument where a proposed statutory instrument is likely to impose significant costs on the community or a part of the community

### *Contents of regulatory impact statements*

Clause 7 of the Bill sets out the contents of the regulatory impact statement to be prepared seeks regulation-making authority which will include a statement of the objectives of the proposed statutory instrument and the reasons for its proposed enactment and an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives. Clause 7 (2) of the Bill provides that the assessment of the costs and benefits shall include an assessment of the economic, environmental and social impact and the likely



administrative and compliance costs including resource allocation costs. Clause 7(4) and 7 (5) further requires the County Executive Committee member to issue regulatory impact statement and the compliance certificate which will then be forwarded to the Clerk of the Assembly for tabling.

#### *Notification of regulatory impact statements*

Clause 8 of the Bill provides for the notification of regulatory impact assessments. It requires that a regulation making authority that intends to prepare a regulatory impact statement shall notify the residents of the county, of the intended preparations, by notice in the Gazette, County Gazette and in a newspaper of wide circulation within the county. Clause 8 (2) sets out the requirements of the notice the proposed statutory instrument is likely to have a significant impact on a particular group of people ensure members of the group understand the purpose and content of the notice.

#### *Where regulatory impact statements may be unnecessary*

Clause 9 of the Bill sets out circumstances where preparation of a regulatory impact statement is not necessary for instance a matter that is not of a legislative character, including, a matter of a machinery, administrative, drafting or formal nature.

#### **Part IV— Scrutiny of Statutory Instruments by A County Assembly**

##### *Laying of statutory instruments before a County Assembly*

Clause 10 of the Bill provides for the procedure for laying of statutory instruments before a County Assembly. Clause 8 (1) that every regulation-making authority shall within **seven sitting days** after the publication of a statutory instrument, transmit a copy of the statutory instrument to the clerk of the county assembly for tabling before the county assembly. Clause 10(2) requires that regulation-making authority submits the statutory instrument together with an explanatory memorandum.

##### *Referral to the Committee*

Clause 11 of the Bill requires that once a statutory instrument is tabled in the count assembly, it shall be referred to the relevant Committee with the mandate to review and scrutinize statutory instruments.

### *Relevant considerations*

Clause 12 of the Bill will require County Assemblies to put into account the principles of good governance and the rule of law while considering statutory instruments. These include ensuring that the statutory instrument is aligned with the provisions of the Constitution, the Act or other written law; whether it infringes on fundamental rights and freedoms of the public or imposes taxes among other considerations.

### *Exemptions*

Clause 13 of the Bill allows the committee to exempt certain statutory instruments or class of statutory instruments from scrutiny if the committee upon consulting the relevant regulation-making authority.

### *Report to the County Assembly*

Clause 14 of the Bill provides that the Committee considering the statutory instrument shall table a report before the county assembly and set out the required contents of the report.

### *Notice to the regulation-making authority*

Clause 15 provides that the Committee will ensure that it confers with the regulation-making authority before tabling its report on the statutory instrument.

### *Resolution of county assembly*

Clause 16 provides that where the County Assembly passes a resolution that the statutory instrument is void, it shall stand revoked.

### *Revocation*

Clause 17 gives direction on revocation of a statutory instrument by the County Assembly. Where the County Assembly adopts a report or a resolution that a statutory instrument is void, under section 16, the instrument shall stand revoked and the regulation making authority shall publish the revocation within **fourteen days**.

## **Part V— General Provisions**

### *Automatic revocation of statutory instruments*

Clause 18 sets out the circumstances in which a statutory instrument is automatically revoked. It provides that a statutory instrument shall by virtue of this section stand revoked on the day which is **ten years** after the making of the statutory instrument unless it is sooner repealed or expires; or a regulation is made exempting it from expiry.

### *Publication of instruments*

Clause 19 provides that every statutory instrument shall be published in the Kenya Gazette and County Gazette and shall be assigned a serial number as of the year in which it is made which shall be printed on the face of the statutory instrument. Clause 19(2) further provides that if a question arises as to whether statutory instruments under any provision of an enactment are statutory instruments, the county executive member for the time being responsible for legal affairs may, by certificate in writing, decide the matter.

### *Commencement of statutory instrument*

Clause 20 of the Bill is on the commencement of statutory instrument. Clause 20 (1) provides that a statutory instrument shall come into operation on the date specified in the statutory instrument or if a date is not specified, then, the statutory instrument shall come into operation on the date of its publication in the Gazette subject to annulment where applicable.

### *Exercise of powers*

Clause 21 is on the exercise of powers under the Act. Clause 21(2) provides that a statutory instrument shall not be inconsistent with the provisions of the enabling legislation, or of any Act, and the statutory instrument is void to the extent of the inconsistency. Clause 21 (5) further provides that a regulation-making authority can include a penalty in the statutory instrument where it may consider fit.

### *Fees and charges*

Clause 22 sets guidelines where a statutory instrument may provide for the imposition of fees and charges.

### *Forms*

Clause 23 set out guideline on the use of prescribed forms under the a statutory instrument

### *Transition*

Clause 24 is on transition and saving on existing regulations.

### *Schedule*

The Schedule sets out the form of the Statutory Instrument and the Explanatory Memoranda

## CHAPTER TWO

### PUBLIC PARTICIPATION

#### 2.0 Attendance by Stakeholders

The Committee, pursuant to Article 118 of the Constitution and Standing Order 134 (1), invited submissions from members of the public on the Bill via an advertisement on the Daily Nation Newspaper and Standard Newspapers at Kenyatta International Convention Centre, Taifa Hall, Nairobi at 10am on 17<sup>th</sup> October, 2018. The Committee received written submissions from the Kenya National Commission on Human Rights (KNCHR) and the Council of Governors (COG).

#### 2.1 Submissions from Stakeholders

The Committee took into consideration general recommendations and proposals on specific Clauses of the Bill, as follows-

##### *General submissions from the Kenya National Commission on Human Rights*

The Kenya National Commission on Human Rights submitted to the Committee that devolution of power from the national government to the county government has yielded successes and challenges. Even though devolution brought government functions and resources closer to the people, there was a leadership challenge. Kenya National Commission on Human Rights was of the view that power to make decisions in all aspects of governance had more often than not been abused by leadership. Arbitrary declarations especially on overlapping roles, imposition of taxes that were unreasonable and punitive to the poor and vulnerable were common. Kenya National Commission on Human Rights held the view that was as a result of lack of guidelines or procedures or consideration, scrutiny by county assemblies and general public participation on statutory instruments.

From the foregoing, the Kenya National Commission on Human Rights submitted that it welcomed the Bill because it would cure the challenges raised by emphasizing on *inter alia* public participation and regulatory impact assessments to ensure that statutory instruments at the county level are reasonable and people centred. In addition, the Bill calls for accountability and

transparency on the county leadership whenever statutory instruments are enacted by the County Government. This is also in tandem with the County Assemblies constitutional mandate to ensure public participation in their affairs.

***Submissions from the Council of Governors (COG)***

The Council of Governors (COG) submitted to the Committee that it supported the Bill as it intends to regularize the process of tabling of all County Governments statutory instruments before the respective County Assemblies. It also seeks to provide a legal mechanism by which County Assemblies will scrutinize statutory instruments thus ensuring that the County Governments undertake their mandate under the Fourth Schedule of the Constitution effectively and efficiently. The Council of Governors however proposed the following amendments-

***Consultation before making statutory instruments- Clause 5 (1) (b)***

The Council of Governors proposed to amend Clause 5 (1) (b) which provided that before a regulation-making authority makes a statutory instrument, and in particular where the proposed instruments are likely restrict competition, the regulation-making authority shall consult with persons who are likely to be affected by the proposed instrument and shall invite members of the public to give their views on the instrument within a prescribed period and in a manner to be determined by the Committee.

The Council of Governors was of the view that there is need for clarity on the prescribed period upon which the regulation-making authority should undertake public participation and in their opinion, that thirty (30) days is adequate.

***Clause 5 (3) (a)***

The Council of Governors proposed to amend Clause 5 (3) (a) which provides that without limiting by implication the form that consultation referred to in 5(1) might take, the consultation shall involve notification, either directly or by advertisement, of bodies that, or of organizations representative of persons who, are likely to be affected by the proposed instrument.

The Council of Governors was of the opinion that there is need to expand the scope of the advertisement to ensure that more member of the public are engaged within the county. As such,

all forms of advertisements should be expanded to include; newspapers, notice boards, radio and any other means of communication within the County.

*Contents of regulatory impact statements- Clause 7(3)*

Clause 7 (3) of the Bill provides that the regulation-making authority shall, in preparing a regulatory impact statement, obtain independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact statement in accordance with the guidelines.

The Council of Governors noted that the Clause was too vague for purposed of implementation and proposed that there is was need to clarify on where the independent advice would be sought from. The Council of Governors recommended that the same be a legal body or institution.

*Notification of regulatory impact statements- Clause 8(5)*

Clause 8(5) of the Bill provides that a copy of the regulatory impact statement may be available for inspection free of charge, or a copy may be availed upon payment of a reasonable fee, at the place, or each of the places, specified in the notice.

The Council of Governors was of the opinion that there is need for certainty as to what amounts to the reasonable fee as stipulated in the Clause and proposed a fee of not more than Kshs.500.



## CHAPTER THREE

### COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

#### **3.0 General Observations**

Article 1 of the constitution of Kenya provides for the sovereignty of the people and therefore the exercise of power and authority by government officials is through delegated responsibility. The Committee observed County Statutory Instruments Bill, 2018 is essential to ensure that statutory instruments at the county level are reasonable and people-centred. The Bill will ensure that there is accountability and transparency in the county leadership in the formulation and enactment of statutory instruments the County Government.

The Bill will provide a legal mechanism by which County Assemblies will scrutinize statutory instruments. The Bill will provide a comprehensive framework for the making, scrutiny, publication and operation of statutory instruments by requiring regulation-making authorities to undertake appropriate public participation before making statutory instruments.

#### **3.1 Observations and Recommendations on the Clauses of the Bill**

The Committee on Justice, Legal Affairs and Human Rights made the following observations and recommendations based on the deliberations of the Bill based on submissions from the public and stakeholders as follows-

##### **(1) Consultation before making statutory instruments- Clause 5 (1) (b) of the Bill**

The Committee observed that Clause 5 (1) (b) provides the regulation-making authority shall consult with persons who are likely to be affected by the proposed instrument and shall invite members of the public to give their views on the instrument within a prescribed period and in a manner to be determined by the Committee. The Committee noted that the 'prescribed period' was not defined in the Bill.

The Committee agreed with stakeholders that there is need for clarity on the prescribed period upon which the regulation-making authority should undertake public participation. The Committee observed that thirty (30) days is adequate for public participation.

**Recommendation(s)**

The Committee therefore recommends that Clause 5 (1) (b) be amended as follows-

“...(b) restrict competition, the regulation-making authority shall consult with persons who are likely to be affected by the proposed instrument and shall invite members of the public to give their views on the instrument within a period of 30 days and in a manner to be determined by the Committee

**(2) Consultation before making statutory instruments-Clause 5 (3) (a) of the Bill**

The Committee observed that Clause 5 (3) (a) provides that the consultation before making statutory instruments shall involve notification, either directly or by advertisement, of bodies that, or of organizations representative of persons who, are likely to be affected by the proposed instrument. The Committee observed that there Bill does not provide a wide scope of forms of advertisements for the notification for public participation before making statutory instruments.

The Committee noted proposals by stakeholders on the need to expand the scope of the advertisement to ensure that there is wider public participation in the consideration statutory instruments within the County. As such, forms of advertisements for public participation should be expanded to include; newspapers, notice boards, radio and any other means of communication within the County.

**Recommendation(s)**

The Committee therefore recommends that Clause 5 (3) (a) be amended as follows-

“ (3) Without limiting by implication the form that consultation referred to in subsection (1) might take , the consultation shall involve notification,

(a) either or by advertisement, of bodies that , or of organisations representative of persons who are likely to be affected by the proposed instrument, newspapers of wide circulation, County public notice boards,

local radio stations or any other means of communication available in the County; ”

**(3) Contents of regulatory impact statements- Clause 7(3) of the Bill**

The Committee observed that Clause 7 (3) of the Bill provides that the regulation-making authority shall, in preparing a regulatory impact statement, obtain independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact statement in accordance with the guidelines. The Committee observed that the Bill is not clear as to who is eligible to provide independent advice to the regulation-making authority while preparing a regulatory impact statement.

The Committee concurred with stakeholder submissions that the Clause was too vague for purposed of implementation and proposed that there is was need to clarify on where the independent advice would be sought from. The Committee observed that advice should be sought from a legal body or government institution.

**Recommendation(s)**

The Committee therefore recommends that Clause 7(3) be amended to provide clarity on entities that would provide independent advice to the regulation-making authority while preparing a regulatory impact statement and names of such government institutions or bodies should be highlighted in the Bill.

**(4) Notification of regulatory impact statements- Clause 8(5) of the Bill**

The Committee observed that Clause 8(5) of the Bill provides that a copy of the regulatory impact statement may be available for inspection free of charge, or a copy may be availed upon payment of a reasonable fee, at the place, or each of the places, specified in the notice. The Committee observed that the Clause did not specify what a ‘reasonable fee’ entails.

The Committee observed that as pointed out by stakeholders, there was need for certainty as to what amounts to a reasonable fee as stipulated in the Clause. The Committee agreed that a proposed a fee of not more than One Thousand Shillings (Kshs. 1,000) was a reasonable amount.

**Recommendation(s)**

The Committee therefore recommends that Clause 8 (5) be amended as follows-

“ 8(5). A copy of the regulatory impact assessment may be available for inspection free of charge, or a copy may be availed upon payment of a fee not exceeding One Thousand Shillings (Kshs. 1,000), at the place, or each of the places specified in the notice.”

**(5) Adoption of the Report**

The Committee recommends that the Senate adopts this Report.

**MINUTES OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 13<sup>TH</sup> FEBRUARY 2019 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AT 10.18 AM.**

**PRESENT**

1. Sen. Samson Cherarkey -Chairperson
2. Sen. James Orengo -Member
3. Sen. Fatuma Dullo -Member
4. Sen. Mohamed Faki -Member
5. Sen. Irungu Kang'ata -Member

**ABSENT WITH APOLOGY**

1. Sen. Mithika Linturi -Vice Chairperson
2. Sen. Amos Wako -Member
3. Sen. Mutula Kilonzo Jr. -Member
4. Sen. Susan Kihika -Member

**IN-ATTENDANCE**

1. Ms. Kavata Musyoka
2. Mr. Malcolm Ngugi
3. Ms. Clare Jerotich

**SENATE SECRETARIAT**

- Clerk Assistant
- Legal Counsel
- Research Officer

**MIN/JLAHR/2019:**

The Chairperson called the meeting to order at 10.18 a.m. and commenced the meeting with a word of prayer.

**PRELIMINARIES**

**MIN/JLAHR /2019:**

The agenda of the meeting was adopted as presented having been proposed by Sen. Orengo and seconded by Sen. Faki.

**ADOPTION OF THE AGENDA.**

**MIN/JLAHR /2019:**

**CONSIDERATION OF REPORTS PENDING BEFORE THE COMMITTEE**

The Committee adopted the following reports for tabling by consensus.

- i) Report on Public Participation on the Statutory Instruments (Amendment) Bill (Sen. Bills No. 24 of 2018)
- ii) Report on the Petition on the Conferment of Municipal Status of Mararal Town by the County Government of Samburu
- iii) Report on Public Participation on the County Statutory Instruments Bill (Sen. Bill No. 21 of 2018)
- iv) Report on Public Participation on the Petition to County Assemblies Bill (Sen. Bill No. 22 of 2018)
- v) Report on the Visit to Eldoret G.K. Prisons and Remand
- vi) Report on the Fifth Global Summit on Open Governance Partnership in Tbilisi, Georgia, 17<sup>th</sup> to 19<sup>th</sup> July, 2018

MIN/JLAHR /2019:

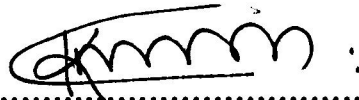
There was no other business

ANY OTHER BUSINESS

MIN/JLAHR /2019:

DATE OF THE NEXT MEETING AND  
ADJOURNMENT

The meeting was adjourned at 12.36 pm. Date of the next meeting will be communicated through a notice.



Signed .....

SEN. SAMSON CHERARKEY (CHAIRPERSON)

13/2/2019

Date: .....



**MINUTES OF THE 45<sup>TH</sup> SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 14<sup>TH</sup> NOVEMBER, 2018 IN COMMITTEE ROOM 10, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AT 10.54 AM.**

**PRESENT**

1. Sen. Fatuma Dullo -Member
2. Sen. Mutula Junior -Member
3. Sen. James Orengo -Member

**ABSENT WITH APOLOGY**

1. Sen. Samson Cherarkey -Chairperson
2. Sen. Mithika Linturi -Vice Chairperson
3. Sen. Susan Kihika -Member
4. Sen. Mohamed Faki -Member
5. Sen. Amos Wako -Member
6. Sen. Irungu Kang'ata -Member

**IN-ATTENDANCE**

1. Ms. Kavata Musyoka
2. Ms. Josephine Kusinyi

**SENATE SECRETARIAT**

- Clerk Assistant
- Legal Counsel

**MIN. NO.259/2018**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.54 am and commenced the meeting with a word of prayer.

**MIN. NO.260/2018**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as presented after being proposed by Sen. Mutula and seconded by Sen. Orengo.

**MIN. NO. 261/2018**

**CONSIDERATION OF THE SUBMISSIONS BY THE PUBLIC ON THE-**

*i) The County Statutory Instruments Bill (Senate Bills No. 21 of 2018)*

There were no submissions by the public to this bill.

*ii) The Petition to County Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018)*

The public and other stakeholders made the following proposals for amendment-

- Kenya law reform and Kenya human rights commission submitted that Clause 5(1) & (2) are the same hence they should be amended.
- TISA submitted that the Bill did not take into consideration public participation. Further the Committee proposed that the word "shall" be included in Clause 5(4)(b) .



- The Committee proposed that Clause 5(4) (a) should be since as it is currently drafted it did not clearly communicate.

iii) ***The Treaty Making and Ratification (Amendment) Bill (Senate Bills No. 23 of 2018)***

- This matter was deferred to be discussed at the next meeting.

iv) ***The Statutory Instruments (Amendment) Bill (Senate Bills No. 24 of 2018)***

- The Kenya Law Reform Commission proposed an amendment to the principal Act to include a process on how the two houses will consider statutory instruments. The Committee adopted the proposal.

**MIN. NO. 262/2018**

**REVIEW OF ELECTIONS AND RELATED LAWS**

Sen. Mutula reminded Members present that during the induction retreat of the Committee it had been noted that amendments to elections was always done at the last minute and that amendments are piecemeal. The Committee thus resolved to have one of its areas of focus as review electoral and related laws. The Committee is receiving support to engage a consultant who is Wachira Maina and through Electoral Law and Governance Institute for Africa (ELGIA) it will hold a couple of planning and consultation meetings with various stakeholders.

It was important that the first such consultative meeting be held with the Senate Leadership. The proposed date for the meeting was Thursday, 22<sup>nd</sup> November, at 7.30 am at the Intercontinental Hotel.

Members took note and advised as follows-

- That the Committee be briefed by Wachira Maina first on the issues. A meeting was scheduled to take place on 20<sup>th</sup> November, 2018 at 9.00 am.
- The matter to be forwarded to the Senate Business Committee for consideration.

**MIN. NO.263/2018**

**ANY OTHER BUSINESS**

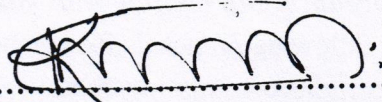
None

**MIN. NO.264/2018**

**DATE OF THE NEXT MEETING AND ADJOURNMENT**

The next meeting would be the following day. There being no other business, the meeting was adjourned at 1.17 pm.

Signed .....

  
SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date: ..... 13/2/2018



**MINUTES OF THE 42<sup>nd</sup> SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 17<sup>TH</sup> OCTOBER, 2018 IN THE MARA ROOM, KICC AT 11.19 AM.**

**PRESENT**

- |                          |              |
|--------------------------|--------------|
| 1. Sen. Samson Cherarkey | -Chairperson |
| 2. Sen. Fatuma Dullo     | -Member      |
| 3. Sen. Mutula Junior    | -Member      |
| 4. Sen. Mohamed Faki     | -Member      |

**ABSENT WITH APOLOGY**

- |                         |                   |
|-------------------------|-------------------|
| 1. Sen. Mithika Linturi | -Vice Chairperson |
| 2. Sen. Amos Wako       | -Member           |
| 3. Sen. James Orengo    | -Member           |
| 4. Sen. Susan Kihika    | -Member           |
| 5. Sen. Irungu Kang'ata | -Member           |

**IN-ATTENDANCE**

Sen. Aaron Cheruiyot, MP

**IN-ATTENDANCE**

1. Ms. Kavata Musyoka
2. Ms. Lucy Radoli

**SENATE SECRETARIAT**

- Clerk Assistant
- Legal Counsel

**MIN. NO.242/2018**

The Chairperson called the meeting to order at 11.19 am and commenced the meeting with a word of prayer.

**PRELIMINARIES**

**MIN. NO.243/2018**

The agenda of the meeting was adopted as presented after being proposed by Sen. Dullo and seconded by Sen. Faki.

**ADOPTION OF THE AGENDA**

**MIN. NO. 244/2018**

**PUBLIC HEARING ON THE COUNTY STATUTORY INSTRUMENTS BILL (SENATE BILLS NO. 21 OF 2018), PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILLS NO. 22 OF 2018), TREATY MAKING AND RATIFICATION (AMENDMENT) BILL (SENATE BILLS NO. 23 OF 2018) AND THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (SENATE BILLS NO. 24 OF 2018)**

No Member of the public appeared for the public hearing. In spite of this the Committee waited for the duration of the public hearing for the public. Some stakeholders submitted written memoranda.

**MIN. NO.245/2018**

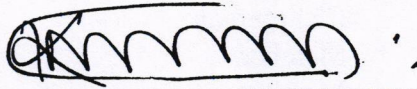
None

**ANY OTHER BUSINESS**

MIN. NO.246/2018

DATE OF THE NEXT MEETING AND  
ADJOURNMENT

The next meeting would be the following day. There being no other business, the meeting was adjourned at 12.13 pm.



Signed .....

SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date: ..... 13/2/2019 .....



**MINUTES OF THE 30<sup>TH</sup> SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 30<sup>TH</sup> JULY, 2018 IN COMMITTEE ROOM 4, FIRST FLOOR, PARLIAMENT BUILDINGS AT 11.25 AM.**

**PRESENT**

- |                          |              |
|--------------------------|--------------|
| 1. Sen. Samson Cherarkey | -Chairperson |
| 2. Sen. Fatuma Dullo     | -Member      |
| 3. Sen. Mutula Junior    | -Member      |
| 4. Sen. Irungu Kang'ata  | -Member      |

**ABSENT WITH APOLOGY**

- |                         |                   |
|-------------------------|-------------------|
| 1. Sen. Mithika Linturi | -Vice Chairperson |
| 2. Sen. Amos Wako       | -Member           |
| 3. Sen. James Orengo    | -Member           |
| 4. Sen. Mohamed Faki    | -Member           |
| 5. Sen. Susan Kihika    | -Member           |

**IN-ATTENDANCE**

1. Sen. Halakhe Abshiro
2. Sen. Judith Pareno

**IN-ATTENDANCE**

1. Gov. Kivutha Kibwana

**COUNCIL OF GOVERNORS**

- Chairperson, Legal Committee

**IN-ATTENDANCE**

2. Ms. Kavata Musyoka
3. Ms. Lucy Radoli
4. Ms. Clare Jerotich

**SENATE SECRETARIAT**

- Clerk Assistant  
- Legal Counsel  
- Research Officer

**MIN. NO.186/2018**

The Chairperson called the meeting to order at 11.25 am and commenced the meeting with a word of prayer.

**PRELIMINARIES**

**MIN. NO.187/2018**

The agenda of the meeting was adopted as presented through consensus.

**ADOPTION OF THE AGENDA**

**MIN. NO. 188/2018**

**PRE-PUBLICATION SCRUTINY OF THE**

**i) Treaty Making and Ratification (Amendment) Bill, 2018**

Members present were taken through the legislative proposal. Members noted as follows-

- Treaties should be published and publicized;
- Whether Kenya needs to review treaties that Kenya was a signatory to before the promulgation of the Constitution; and
- That Senate must play a role in monitoring and evaluation of treaties. That section 15 (1) of the Act be amended.

Members adopted the legislative proposal to be published subject to include the bulleted issues above.



**ii) Petition to County Assemblies Procedure Bill, 2018**

Members were taken through the legislative proposal and took note. They adopted the legislative proposal to be published.

**iii) Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2018**

Members present were taken through the legislative proposal. Members noted as follows-

- That schedule two of the Bill be synchronized with the current revenue sharing formulae
- Part V of the Bill be deleted.

Members adopted the legislative proposal to be published subject to include the bulleted issues above.

**MIN. NO. 189/2018**

**CONCEPT NOTE AND PROGRAMME ON THE PROPOSED CONFERENCE ON FULFILLMENT OF ECONOMIC AND SOCIAL RIGHTS**

The Secretariat took Members through the draft concept note and programme. Members took note, approved the concept note and programme and recommended that both documents be presented before the Senate Business Committee for concurrence.

**MIN. NO.190/2018**

**ANY OTHER BUSINESS**

1. A Member noted that a Petition on a municipal established in Samburu had been referred to the Committee. The Committee should expedite and plan to travel to Mararal that Friday.
2. The Legal Committee of the Council of Governors attended the meeting and made submissions on the Impeachment Procedure Bill as follows-
  - Amend clause 14 (6) (b) to give more time for the public to submit the written memoranda within 30 days.
  - Add clause 14 (7) to provide for flexibility of the hearing date for both parties.
  - Include clause 17 (2) (a) to provide for flexibility of the hearing date for both parties.
  - Amend clause 21 to provide for once in five years;
  - The threshold for removal of governors must apply both in the senate and the national assembly;
3. There is need to hold a meeting between Senators and Governors to audit devolved functions, audit the impact of public participation

**MIN. NO.191/2018**

**DATE OF THE NEXT MEETING AND ADJOURNMENT**

The next meeting would be the following day. There being no other business, the meeting was adjourned at 1.55 pm.

Signed .....  
**SEN. SAMSON CHERARKEY (CHAIRPERSON)**

Date: ..... 13/2/2019 .....