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THE SENATE

TWELFTH PARLIAMENT



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02/08/19

REPORT OF MACHAKOS AND KAJIADO COUNTY VISITS OF  
THE SENATE SESSIONAL COMMITTEE ON DELEGATED  
LEGISLATION,

HELD FROM 21<sup>ST</sup> TO 23<sup>RD</sup> MARCH, 2019

| PAPERS LAID        |                       |
|--------------------|-----------------------|
| DATE               | 07/08/2019            |
| TABLED BY          | Chairperson           |
| COMMITTEE          | Delegated Legislation |
| CLERK AT THE TABLE | Lillian               |

③ Hon. Speaker  
You may approve  
for tabling.  
02/08/19

Clerk's Chamber  
The Senate  
Parliament Buildings  
**NAIROBI**

Approved  
AmSR  
6/8/2019

April, 2019

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## 1.0 ABBREVIATIONS AND ACRONYMS

|             |                             |
|-------------|-----------------------------|
| <b>AG</b>   | Attorney General            |
| <b>CECs</b> | County Executive Committee  |
| <b>RMA</b>  | Regulatory Making Authority |
| <b>S.O</b>  | Standing Order(s)           |
| <b>SI</b>   | Statutory Instruments       |
| <b>SIA</b>  | Statutory Instruments Act   |

## 2.0 PREFACE

*Mr. Speaker Sir,*

The Senate Sessional Committee on Delegated Legislation is established pursuant to Standing Order 215 of the Senate Standing Orders. The Committee is mandated to scrutinize statutory instruments laid before the House to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013. The Committee deals with subsidiary legislation generated by all Government Ministries and Departments

At its 3<sup>rd</sup> Sitting held on 27<sup>th</sup> February, 2019, the Sessional Committee on Delegated Legislation resolved to undertake a county visit to Kajiado and Machakos counties, between 21<sup>st</sup> and 23<sup>rd</sup> March, 2019.

The Committee held meetings with the Governor of Machakos County and the County Executive Committee Members as well the counterpart Committees of the County Assemblies of the Kajiado and Machakos.

As the Committee Chairperson, I take this opportunity to thank all the Members of the Committee for finding time to attend the activity and for their commitment to duty. The Committee is also grateful to the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

Finally, it is now my pleasant duty, on behalf of the Sessional Committee on Delegated Legislation, to present this report to the House pursuant to the provisions of Standing Orders of the Senate.

Signed.....

*Samuel Poghishio*

Date.....

*3/4/2019*

**SEN. SAMUEL POGHISIO, EGH**

**CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

### 3.0 INTRODUCTION AND BACKGROUND

The Senate Sessional Committee on Delegated Legislation is established pursuant to Standing Order 215 of the Senate Standing Orders. The Committee is mandated to scrutinize statutory instruments laid before the House to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013.

The Committee deals with subsidiary legislation generated by all Government Ministries and Departments

#### 3.1 Mandate of the Committee

The Committee is mandated to consider in respect of any statutory instrument, whether it: -

- (i) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- (ii) infringes on fundamental rights and freedoms of the public;
- (iii) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- (iv) contains imposition of taxation;
- (v) directly or indirectly bars the jurisdiction of the court;
- (vi) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
- (vii) it involves expenditure from the consolidated fund or other public revenues;
- (viii) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- (ix) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- (x) appears to have had unjustifiable delay in its publication or laying before Parliament;
- (xi) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- (xii) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (xiii) inappropriately delegates legislative powers;

- (xiv) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (xv) appears for any reason to infringe on the rule of law;
- (xvi) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,
- (xvii) accords to any other reason that the Committee considers fit to examine.

### 3.2 Committee Membership

The Committee on Delegated Legislation comprises of the following Members: -

- |                                   |                            |
|-----------------------------------|----------------------------|
| 1) <b>Sen. Samuel Poghio, EGH</b> | <b>- Chairperson</b>       |
| 2) <b>Sen. Farhiya Ali,</b>       | <b>- Vice- Chairperson</b> |
| 3) Sen. Okong'o Omogeni           | - Member                   |
| 4) Sen. Irungu Kangata            | - Member                   |
| 5) Sen. Judy Pareno               | - Member                   |
| 6) Sen. Victor Prengei            | - Member                   |
| 7) Sen. Mohammed Faki             | - Member                   |
| 8) Sen. Mutinda Kabaka            | - Member                   |
| 9) Sen. Millicent Omanga          | - Member                   |

### 3.3 Committee Secretariat

The secretariat comprised of the following members of staff;

- |                          |                                      |
|--------------------------|--------------------------------------|
| 1) Mr. Joseph Mwangi     | <b>Clerk Assistant</b>               |
| 2) Ms. Caro Kirorei      | <b>Clerk Assistant</b>               |
| 3) Mr. Mitchel Otoro     | <b>Legal Counsel</b>                 |
| 4) Mr. Donald K. Manyala | <b>Research &amp; Policy Analyst</b> |
| 5) Ms. Hawa Abdi         | <b>Serjeant-at-Arms</b>              |
| 6) Mr. Nimrod Ochieng    | <b>Audio Officer</b>                 |

### 3.4 Objectives of the County Visits

At the meeting with the Governor of Machakos County and the County Executive Members, the Committee sought the following information -

1. Whether or not the County Executive Committee is aware of the provisions of the Statutory Instruments Act, 2013;
2. The subsidiary legislations drafted by the County Government;
3. When and how public participation is done on the subsidiary legislations made by the County Government;
4. The process of publication of the subsidiary legislations; and
5. The number of subsidiary legislations transmitted to the County Assembly for scrutiny;

The purpose of the meeting with the counterpart Committees of the County Assemblies was to build capacity of Members of the County Assembly and receive submissions on achievements and challenges faced by the Committee in the execution of its mandate.

#### 4.0 MEETING WITH THE EXECUTIVE OF MACHAKOS COUNTY GOVERNMENT

During the meeting of the Committee with the Governor and his CECs, it was noted that the CECs should follow up immediately after the passage of Bills, within 6 months or latest 1 year develop regulations and submit them to the Assembly.

Among the **challenges** noted was capacity of counties to formulate and process regulations thus there is need for legal personnel to be deployed in the committee so as to enable it deliver on its mandate.

A common feature with the counties was lack of legal officers in the executive, and publishing of Bills by the government printer being a challenge which was also noted in Machakos County. However, the challenge had been addressed by institutionalizing desks at the county ministries with legal officers from the beginning of law making process. Personal relations and the COG have played a key role at the Government Printer to ensure county bills are published.

As way forward on formulation and processing of Statutory Instruments, the meeting noted that the County Statutory Bill was passed by the Senate, and is currently in the National Assembly, aimed at giving the counties a legal framework on matters statutory instruments. However, in the meantime Section 13 of the SIA sets out the criteria for scrutiny of subsidiary legislations, therefore there was need to conform to the requirements. There is also need for a record system that is easily accessible for perpetuity. Need for Bill Trackers and regulation trackers, need for regular training of lawyers as it is a technical field and need to contract experts to provide legal services were also noted.

The governor highlighted some achievements of his government by pointing out that he had decided to end hunger in Machakos. In doing so he had bought tractors for every ward, delivered free seeds for farmers, given farmers subsidized fertilizers and ensured every household has chicken. He further pointed out that as a result of massive water harvesting programme, every location has 2 to 3 dams, had drilled 420 boreholes powered with solar. His target is 1500 boreholes. Other efforts include distribution of one thousand 10,000 liter capacity tanks, making Machakos to be expunged from list of counties facing hunger. Simply put, from drought to food secure county.

The governor also pointed out efforts to improve healthcare which in borrowing from Thailand where doctors are bonded by the government, requested assistance in developing regulations for bonding of doctors, noting that Machakos had trained 27 doctors so far.

## **5.0 MEETING WITH THE DELEGATED COUNTY LEGISLATED COMMITTEE OF MACHAKOS COUNTY ASSEMBLY**

The Acting Chairperson welcomed the Committee to Machakos County Assembly. He noted that the role of the Senate was crucial for the Counties and appreciated the Senators for the work done in the protection of counties and their governments. The Assembly was happy to receive the Senate Committee and share their challenges and achievements in the execution of the mandate of their delegated legislation Committee.

The Chairperson of Delegated Legislation Committee of the Senate in his remarks noted that the Senate has embarked on outreach activities for counties to ensure linkages with the Counterpart Committees and build capacity. The purpose of the meeting was expresses as to share experiences and receive submissions on challenges faced by the counterpart committee in the execution of its mandate.

The Chairperson of Delegated Legislation Committee of the Senate informed the meeting that it made a courtesy call on the Governor and emphasized the role of the Subsidiary legislation and the need to draft regulations for the implementation of Acts passed by the County Assembly.

The Delegated Legislation Committee is perceived as not powerful but to the contrary this is the only committee anchored in an Act of Parliament i.e. the Statutory Instruments Act of 2013. There is therefore need for legal personnel to serve in the Committee owing to the technical nature of the mandate of the Committee.

The Chairperson of Machakos County Assembly Delegated Legislation Committee, which is established under S.O 190 of the Standing Orders of Machakos County Assembly, has 13 members. On **achievements** the County Assembly has considered the following regulations:

1. Legal Notice No. 1 of 2014 Machakos County {Bursary Fund} Regulations, 2014

2. Legal Notice No. 2 of 2014 Machakos County {Car Loan Scheme Fund} Regulations, 2014
3. Legal Notice No. 3 of 2014 Machakos County Assembly {Housing Scheme Fund} Regulations, 2014
4. Machakos County Social Welfare and Empowerment Fund Regulations, 2014
5. Legal Notice No. 1 of 2015 The Machakos County Executive Committee and Chief Officers Car Loan and Mortgage Scheme Regulations, 2015
6. Legal Notice No. 2 of 2015 The Machakos County Health Services Management Regulations, 2015
7. The Machakos County (Ward Development Fund) Regulations, 2015
8. The Machakos County Assembly (Car Loan Scheme Fund) (Amendment) Regulations, 2015
9. The Machakos County Assembly (Housing Scheme Fund) (Amendment) Regulations, 2015
10. Public Finance Management (Machakos County Assembly Car Loan Scheme Fund) (Amendment) Regulations, 2018
11. Public Finance Management (Machakos County Housing Scheme Fund) (Amendment) Regulations, 2018
12. County Assembly Service (Car Loan and Mortgage Scheme Fund) Regulations, 2018

The Assembly highlighted **challenges** to include:

- 1) Lack of regulations from the Executive, considering the Assembly has passed more than 40 pieces of legislations;
- 2) Inadequate capacity to draft regulations;
- 3) Lack of qualified personnel;
- 4) Inadequate support from Senate and other national bodies especially the Attorney General's Office and the Kenya Law Reform Commission;
- 5) Lack of enforcement by national institutions in undertaking devolved functions (controller of budget and auditor general's office); and
- 6) Lack of legal review and amendment of laws affecting counties

As a **way forward**, the Assembly submitted that: there's need to bring County Executive to account for failure to prepare and submit regulations; more collaboration and support on delegated legislations between the Assembly and the Senate and other national bodies needs to be enhanced; and there's need for review of county related legislation and amendment since start of devolution.

During the plenary deliberations, the meeting was informed that the Senate is sponsoring the County Statutory Instruments Bill currently at Committee of the Whole House stage, to provide a framework for the scrutiny of subsidiary legislations at the county level. County Assembly Members were urged to give their views on the bill in order to enrich it before it is passed by the Senate. They were also urged to lobby and pressure the National Assembly Members to pass the Bill once it's sent to the National Assembly for concurrence.

The meeting was informed that the Assembly Committee can summon all the CECs to explain the status of development of Regulations. The Senate team also urged the Committee to have a Bill Tracker and Regulation Tracker to keep track of legislations and ensure that a timeline is set in the Bill for the developments of regulations.

The Senate shall fast track the passage of the County Statutory Instruments a Bill aimed at providing a legal framework for scrutiny of subsidiary regulations at the county level.

The meeting noted that most of the Regulations passed deal with welfare of Members and the Executive, and not much touching on the welfare of the people.

The meeting was informed that the Assembly Members were welcome to visit the Senate and engage further with the Committee towards capacity building. It was also essential that the assembly works closely with the area Senator, who is well versed in legal matters and served as the county attorney of the County Government.

## **6.0 MEETING WITH DELEGATED COUNTY LEGISLATED COMMITTEE OF KAJIADO COUNTY ASSEMBLY**

The Deputy Clerk of Kajiado County Assembly welcomed the Committee to Kajiado County and reported that they were happy on the invitation from the senate and are eager to learn more on their mandate in order to serve the residents of Kajiado County.

The Senate Committee's Chairperson stated that the purpose of the meeting was to exchange ideas and build capacity as many do not understand the role of the Committee. He pointed out that Delegated Legislation is authority delegated to the executive to make regulations.

The Chairperson of Delegated Legislation Committee of the Senate noted that it is the only committee established through a statute, the Statutory Instruments Act as others are established under the standing orders. To further illustrate the importance attached to the committee, the Chairperson pointed out that out of the 9 members of the committee, 5 of them are lawyers.

The meeting noted that a major challenge was that the committee is viewed as inferior as Members do not understand the mandate of the committee. Another challenge was pointed out as poor relationship with the CECs of Kajiado County Government. The meeting noted that only 6 Regulations had been considered by the Committee since 2013 as no regulations were forthcoming from the executive.

As way forward, the meeting noted the need to revise the budget for committees to capacitate them adequately for their functions; to relook at gazettment procedures so as to avoid unnecessary delays in publication of laws, thus the County Printers Bill as passed by the Senate to be fast tracked in the National Assembly; and the Assembly was advised to invite the CECs to explain the status of publication of Regulations. There is need to revise standing orders of the Assembly in order to separate Justice and Legal Affairs with Delegated Legislation.

Other issues noted include operationalization of S.107 of the Public Finance Management Act to have a separate fund to run the county executive and the county assembly. Each Senate Committee has a Clerk, Researcher and a Legal Counsel need for this to be adopted in the County Assembly.

Finally an invitation to host Senators and staffers of the Senate to strengthen the capacity of the Committee was placed, with the Senate expressing its willingness to host the Assembly Committee in Nairobi any time. The meeting also welcomed requests for training and engagements for Members and staffers.

## **7.0 CONCLUSION**

From the two Counties of Machakos and Kajiado, it was noted that there was lack of capacity of the counties to formulate and process regulations, thus the Senate shall fast track the passage of the County Statutory Instruments Bill aimed at providing a legal framework for scrutiny of subsidiary regulations at the county level. Considering the lack of regulations from the Executive, there is therefore need to bring County Executive to account for failure to prepare and submit regulations as required.

## **8.0 RECOMMENDATION**

The Senate should ensure that the County Assemblies are well capacitated to ensure compliance of Statutory Instruments requirements. The Senate should also provide advice to the County Executives on the need to comply with the Statutory Instruments requirements whenever passing resolutions.

**MINUTES OF THE EIGHTH SITTING OF THE SESSIONAL COMMITTEE  
DELEGATED LEGISLATION HELD ON WEDNESDAY, 3<sup>RD</sup> APRIL, 2019  
THE CPA ROOM, MAIN PARLIAMENT BUILDING AT 9.00 A.M.**

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**PRESENT**

1. Sen. Samuel Poghisio, EGH, MP - **Chairperson**
2. Sen. (CPA) Farhiya Haji, MP - **Vice-Chairperson**
3. Sen. Judith Pareno, MP - Member
4. Sen. Millicent Omanga, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. Okong'o Omogeni, SC, MP - Member
2. Sen. Irungu Kang'ata, MP - Member
3. Sen. Mutinda Kabaka, MP - Member
4. Sen. Victor Prengei, MP - Member
5. Sen. Mohamed Faki, MP - Member

**IN ATTENDANCE**

1. Mr. Joseph Mwangi
2. Mr. Donald Manyala

**SENATE SECRETARIAT**

- Clerk Assistant  
- Research Officer

**MIN. NO. 51/2019      PRELIMINARIES**

The Chairperson called the meeting to order at 9.09 a.m. followed by a word prayer.

**MIN. NO. 52/2019      ADOPTION OF THE AGENDA**

Members adopted the agenda of the meeting after being proposed by S Judith Pareno, MP and seconded by Sen. Millicent Omanga, MP as follows;

1. Preliminaries
2. Adoption of agenda
3. Consideration of County Visits report-Kajiado and Machakos

4. Any Other Business
5. Date of Next Meeting
5. Adjournment

**N.NO. 53/2019      CONSIDERATION OF COUNTY VISITS REPORT-  
KAJIADO AND MACHAKOS**

Members considered the report for the county visits to Kajiado and Machakos and the same was adopted by Sen. Millicent Omanga, and seconded Sen. Farhiya Ali.

**N.NO. 54/2019      ANY OTHER BUSINESS**

1. The Members proposed the need to visit a bicameral parliament in other jurisdiction such as New Zealand, Australia, Canada and Nigeria.
2. The following Members had confirmed that they would visit Kirinyaga County Assembly on 5<sup>th</sup> April, 2019;
  - a) Sen. Samuel Poghisio- Chairperson
  - b) Sen. Farhiya Ali- Vice-Chairperson
  - c) Sen. Millicent Omanga
  - d) Sen. Okong'o Omogeni
3. The Members resolved to review the County Visits schedule and to include Nairobi County Assembly in one of the Committee's sittings in May, 2019.

**N.NO. 55/2019      DATE OF NEXT MEETING**

Members resolved to meet on Thursday 4<sup>th</sup> April, 2019 for the Kirinyaga County Assembly visit.

**N. NO. 56/2019      ADJOURNMENT**

There being no other business the meeting was adjourned at 9.39 a.m.

SIGNED: Sam B. Hines

(CHAIRPERSON)

DATE: 15/5/2019

**MINUTES OF THE EIGHTEENTH SITTING OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 11<sup>TH</sup> JULY, 2019 IN THE COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00 A.M.**

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**PRESENT**

- |                                 |                    |
|---------------------------------|--------------------|
| 1. Sen. Samuel Poghiso, EGH, MP | - Chairperson      |
| 2. Sen. (CPA) Farhiya Haji, MP  | - Vice-Chairperson |
| 3. Sen. Judith Pareno, MP       | - Member           |
| 4. Sen. Okong'o Omogeni, SC, MP | - Member           |
| 5. Sen. Mohamed Faki, MP        | - Member           |
| 6. Sen. Millicent Omanga, MP    | - Member           |

**ABSENT WITH APOLOGY**

- |                             |          |
|-----------------------------|----------|
| 1. Sen. Mutinda Kabaka, MP  | - Member |
| 2. Sen. Victor Prengei, MP  | - Member |
| 3. Sen. Irungu Kang'ata, MP | - Member |

**IN ATTENDANCE**

**SENATE SECRETARIAT**

- |                       |                    |
|-----------------------|--------------------|
| 1. Mr. Joseph Mwangi  | - Clerk Assistant  |
| 2. Mr. Donald Manyala | - Research Officer |
| 3. Ms. Lucy Radoli    | - Legal Counsel    |

**MIN. NO. 113/2019 PRAYER**

The Chairperson called the meeting to order at 11.04 a.m. followed by a word of prayer.

**MIN. NO. 114/2019 ADOPTION OF THE AGENDA**

Members adopted the agenda of the meeting after being proposed by Sen. Millicent Omanga, MP and seconded by Sen. Judith Pareno, MP as follows-

1. Preliminary
2. Adoption of agenda
3. **Confirmation of previous minutes-14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> sittings**

4. **Matters Arising**
5. **Adoption of Reports**
6. Any Other Business
7. Date of Next Meeting
8. Adjournment

**MIN.NO. 115/2019 -CONFIRMATION OF PREVIOUS MINUTES-14<sup>TH</sup>, 15<sup>TH</sup>  
16<sup>TH</sup> AND 17<sup>TH</sup> SITTINGS**

The Minutes of the previous sittings were confirmed as a true record of the proceedings and signed by the Chairperson as follows;

| <b>No.</b> | <b>Date of meeting</b>            | <b>Proposer</b>       | <b>Seconder</b>    |
|------------|-----------------------------------|-----------------------|--------------------|
| 1.         | 14 <sup>th</sup> Sitting 13/06/19 | Sen. Millicent Omanga | Sen. Farhiya Haji  |
| 2.         | 15 <sup>th</sup> Sitting 19/06/19 | Sen. Okongo Omogeni   | Sen. Judith Pareno |
| 3.         | 16 <sup>th</sup> Sitting 03/07/19 | Sen. Millicent Omanga | Sen. Judith Pareno |
| 4.         | 17 <sup>th</sup> Sitting 04/07/19 | Sen. Judith Pareno    | Sen. Farhiya Ali   |

**MIN.NO. 116/2019      MATTERS ARISING**

1. The members were taken through the Biashara fund initiative that clarified that the fund was not amalgamating the existing youth and women funds. Members were advised by the secretariat to wait for the fund's publication.
2. Concerning the costly air tickets for foreign travel, the Committee resolved to wait for feedback from the Liaison Committee.
3. The Members were given feedback that the proposed study visit to Canada was only feasible from the year 2020 as the country was approaching its electioneering period.
4. The Members proposed that the Secretariat sought engagement for Committee's study visit in the State legislatures of the United States of

America, United Arab Emirates, Israel, between July and November 2019.

**MIN.NO. 117/2019      ADOPTION OF REPORTS**

The Committee adopted the Study Visit report to the United Kingdom and it also adopted the County Visit report for Machakos and Kajiado.

The reports were adopted by Sen. Farhiya Ali and Seconded by Sen. Judith Pareno

**MIN.NO. 118/2019      ANY OTHER BUSINESS**

There was no other business

**MIN. NO. 119/2019      DATE OF NEXT MEETING**

The next meeting would be called by notice.

**MIN. NO. 120/2019      ADJOURNMENT**

There being no other business the Sitting was adjourned at 11.31 a.m.

**SIGNED:**

*Samuel R. Ghini*

(CHAIRPERSON)

**DATE:**

*24-07-2019*

