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THE SESSIONAL COMMITTEE

ON

DELEGATED LEGISLATION

REPORT ON THE COMMITTEE MEETINGS WITH COUNTERPART COMMITTEES
OF THE COUNTY ASSEMBLIES OF KWALE, SIAYA, ELGEYO MARAKWET,
TURKANA, WAJIR, WEST POKOT, NYAMIRA, VIHIGA, KILIFI, BUNGOMA,
EMBU, MERU AND THARAKA NITHI

ON

18TH JUNE, 2015, 22ND OCTOBER, 2015 AND 19TH NOVEMBER, 2015

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

NOVEMBER, 2015

*Paper laid on
the Table of the
Senate by Sen. Sang
on 03/12/2015
hps
03/12/15*



*Hon. Speaker
You may approve
for tabling
03/12/15*

*Approved
3/12/15*

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ABBREVIATIONS

CPST Center for Parliamentary Studies and Training

MCAs Members of County Assembly

SI Statutory Instruments

SO Standing Orders

SEN Senator

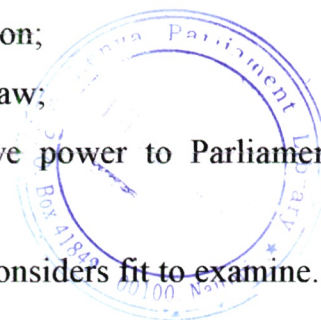
PREFACE

Hon. Speaker Sir,

The Sessional Committee on Delegated Legislation is established pursuant to the Senate Standing Order 214 which states:-

- 1) There shall be a select Committee to be known as the Committee on Delegated Legislation.
- 2) Whenever a statutory instrument is submitted to the Senate pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Senate by the Chair of the Senate Committee on Delegated Legislation and thereafter stand referred to the Committee.
- 3) The Committee shall consider in respect of any statutory instrument whether the statutory instrument:
 - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) directly or indirectly bars the jurisdiction of the courts;
 - e) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - f) involves expenditure from the Consolidated Fund or other public revenues;
 - g) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;
 - h) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - i) appears to have had unjustifiable delay in its publication or laying before Parliament;

- j) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- l) inappropriately delegates legislative powers;
- m) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- n) appears for any reason to infringe on the rule of law;
- o) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- p) accords to any other reason that the Committee considers fit to examine.



(4) 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, or part of a statutory instrument, the Committee may recommend to the Senate that the Senate resolves that all or any part of the statutory instrument, as the case may be, be annulled.

(5) If the Senate-

- a) fails to agree to the recommendation of the Committee under paragraph (4)(b), the statutory instrument shall be deemed to have been approved by Parliament;
- b) resolves to annul a statutory, or part of a statutory instrument, the resolution shall, within seven days of the passage of the resolution, be referred to the National Assembly for concurrence.

Membership of the Committee

The Membership of the Committee is as follows-

1. Sen. Stephen Sang - Chairperson
2. Sen. Judith Sijeny - Vice Chairperson
3. Sen. (Dr.) Boni Khalwale - Member
4. Sen. Emma Mbura - Member
5. Sen. Daniel Karaba - Member
6. Sen. Liza Chelule - Member
7. Sen. Godliver Omondi - Member
8. Sen. Joy Gwendu - Member
9. Sen. Boy Juma Boy - Member

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty to present to the House, a Report of the Sessional Committee on Delegated Legislation on the meeting with its Counterpart Committees of the County Assemblies of Kwale, Siaya, Elgeyo Marakwet, Turkana, West Pokot, Nyamira, Vihiga, Kilifi, Bungoma, Embu, Meru and Tharaka Nithi.

Signed.....

Date.....2/12/15

SEN. STEPHEN SANG,

CHAIRPERSON,

SESSIONAL COMMITTEE ON DELEGATED LEGISLATION.

EXECUTIVE SUMMARY

This report documents deliberations from the meetings of the Senate Committee on Delegated Legislation with its Counterpart Committees of the County Assemblies. The meetings were as follows:

1. Thursday, 18th June, 2015 – Meeting with Counterpart Committees of the County Assemblies of Kwale, Siaya and Elgeyo Marakwet;
2. Thursday, 22nd October, 2015 - Meeting with Counterpart Committees of the County Assemblies of Turkana, Wajir, West Pokot, Nyamira and Vihiga; and
3. Thursday, 19th November, 2015 - Meeting with Counterpart Committees of the County Assemblies of Kilifi, Bungoma, Meru, Siaya, Embu and Tharaka Nithi.

The respective Chairpersons of the Counterpart Committees of the County Assemblies gave submissions on the challenges faced and achievements made so far in the execution of their mandate from which the Committee made the following observations:

1. The existence of the Committee on Delegated Legislation is unknown to many and its mandate is not understood by the county governments.
2. The Members and staff of the County Assembly committees lack capacity to undertake their mandate and roles.
3. The counties lack a legal framework for the making and scrutiny of statutory instruments.
4. There are delays in the publication of legislations passed by the counties caused by backlogs at the government printer.
5. There is need for increased synergy and a coordinated engagement between the Senate Committee and its Counterpart Committees of the County Assemblies.
6. Other Observations, however, not based on the agenda of the meeting are:
 - i. There are no linkages with the counties in other areas of parliamentary work.

- ii. The county assemblies experience challenges in the exercise their oversight role on County Governments.
- iii. The County assemblies do not have mechanisms in place to follow up on the implementation of resolutions of the county Assemblies.
- iv. There is lack of consultation between the County Executive Members and Members of the County Assemblies on programmes initiated in the wards.
- v. Members of the County Assemblies are not sufficiently facilitated to enable them perform their roles effectively.
- vi. There are no offices for Committee activities.

The Senate Committee on Delegated Legislation made the following recommendations based on the observations above:

1. The County Assemblies to be proactive by sensitizing and bringing to the attention of the County Executive the provisions of the Statutory Instruments Act on development and transmission of statutory instruments to the County Assembly;
2. The Senate to work with the national government to address the issue of lack of Assembly offices and for standardization in construction;
3. The County assemblies should scrutinize Court Orders that may affect the working of the county;
4. The Senate to send samples of Regulations scrutinized to the County Assemblies in order to sensitize the County Executive Committee Members;
5. The County Assemblies should fight strongly against the “devolution of corruption” in their respective counties;
6. The Senate to fast track the County Printers Bill which will address delays in publication of county legislation;
7. The Senate to engage more with the counties through visits with the counties;
8. The Senate to intervene and address the late disbursement of funds to the County Assemblies which is affecting their operations;

9. The County Statutory Instruments Bill, 2014 currently in the Senate under 2nd Reading and sponsored by the Committee will give a framework for the scrutiny of subsidiary legislations in the counties; and
10. The County Assemblies should amend provisions of their Standing Orders which set stringent time limits for the scrutiny of statutory instruments. This will provide the Committee with ample time to adequately scrutinize subsidiary legislation and to report back to the House.

The Senate Committee on Delegated Legislation received a request for a meeting, from its counterpart Committee of the County Assemblies of Kakamega and Elgeyo Marakwet by letters dated 25th May, 2015 and 8th May, 2015 respectively. The Committee was of the opinion that such a meeting would be more meaningful if the Committee invited its counterpart Committees of other Counties as well so that they could also have an opportunity to share their experiences. In light of this, the Committee on Delegated Legislation resolved to hold a meeting with its counterpart committees of the County Assemblies of Kakamega, Elgeyo Marakwet, Siaya, Narok, Kwale and Kilifi on Thursday, 18th June, 2015 in the Mini Chamber, First Floor County Hall, Parliament Buildings in Nairobi.

The Committee later received a request for a meeting, from its counterpart Committee of the County Assemblies of Turkana and Wajir. The Committee resolved to also invite its counterpart Committee of the County Assemblies of West Pokot, Vihiga and Nyamira to the meeting on Thursday, 22nd October, 2015. Further, the Committee received a request for a meeting, from its counterpart Committee of the County Assemblies of Kilifi, Bungoma and Siaya. Further the Committee undertook County Visits to Embu, Meru and Tharaka Nithi Counties, where it received requests to visit the Senate for benchmarking purposes. The Committee therefore resolved to hold a meeting with its counterpart committees of the County Assemblies of Kilifi, Bungoma, Siaya, Embu, Meru and Tharaka Nithi on Thursday, 19th November, 2015.

These meetings were held as a result of a general Committee observation that, the counterpart committees faced common challenges in the execution of their mandate. In particular, Members of the counterpart committees of the county assemblies lacked capacity to undertake their mandate which was technical in nature.

The Committee on Delegated Legislation noted that its constitutional role under Article 96 of the Constitution to protect the interest of the counties and their governments

included building the capacity of Members of its counterpart Committees of the County Assemblies. The specific objective of the meetings was therefore to build capacity of the Members of the counterpart committees of the County Assemblies and to receive their submissions on the challenges faced and achievements made so far in the execution of their mandate.

CHAPTER TWO

MEETING WITH MEMBERS OF COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF SIAYA, KWALE AND ELGEYO MARAKWET

The presentations were preceded by an opening session where the Senior Deputy Clerk of the Senate Mrs. Consolata Munga and the Senate Committee Chairperson, Sen. Stephen Sang.

The second session was chaired by Sen. Liza Chelule. The first presentation on the topic “Mandate of the Committee on Delegated Legislation” was done by Sen. Stephen Sang, the Senate Committee Chairperson. This was followed by presentations from respective Chairpersons of counterpart committees of the county assemblies on the progress made so far in the execution of their mandate.

2.1 OPENING SESSION

The meeting began by a word of prayer at 10.20 a.m. followed by a self introduction of all the Members present.

Remarks of the Committee Chairperson

Sen. Sang welcomed the Members from the counties gave a background of the meeting stating that it was a result of the request received from the counterpart Committee of the County Assembly of Elgeyo Marakwet, and a repeat of the meeting that did not take off in November 2014, due to the sudden demise of Sen. Otieno Kajwang. He noted that due to challenges in terms of finances, the counterpart committees of Kilifi and Narok were unable to attend the meeting.

He stated that the Senate was the big brother to the counties and was available to mentor the County Assemblies. He observed that the Senate Sessional Committee on Delegated Legislation had had the greatest interaction with the county assemblies. Senate is new but has the advantage of benchmarking and history at the national assembly. He assured the delegations that the Committee would continue to make deliberate efforts to interact with counterpart

committees at the County Assemblies in the counties. He welcomed them to witness the House proceedings during the afternoon session. He noted that the capacity and resources available to the counties were not adequate and the Senate had received a number of petitions in this regard. Senate will ensure that the counties have adequate resources and capacity to carry out their overall role of oversight.

He stated that the mandate and Constitutional role of the Senate is to protect the interests of the counties and their governments. County Assemblies committees had to be empowered in order for devolution to succeed. He informed the meeting that the Senate was available to train staff from the County Assemblies. He concluded by urging Members of the Senate and the County Assemblies to protect and safeguard devolution against internal and external Challenges.

Remarks by the Senior Deputy Clerk of the Senate

On behalf of the Clerk of the Senate, Mrs. Munga welcomed the MCAs to the Senate and welcomed them to the House proceedings in the afternoon. She stated that the meeting provided a good opportunity to exchange and learn from each other's experiences. She stated that the Committee on Delegated Legislation began in 1979 when 7 general purpose committees were formed. The Committee on Justice and Legal Affairs was one of these committees and was mandated to deal with matters relating to delegated legislation. In 1997, there was an overhaul of Standing Orders of the National Assembly, where general purpose committees were renamed departmental committees. On 10th Dec 2008, Hon. Amina Abdalla moved the Motion to have the committee on Delegated Legislation formed.

She informed the meeting that Delegated Legislation is legislation passed in other way other than an Act of Parliament. They can be made by City Councils, Orders in Council, the Queen, a Minister and so on. Delegated legislation is pegged to a parent law which must give that individual the power to make that delegated legislation.

She informed the delegates that the Senate was ready to receive MCAs. She urged the counties to send officers to come for attachment opportunities in the Senate. She added that the Senate was ready and willing to facilitate the Counties and would like to help the counterpart Committees in the counties to become as vibrant as the committees in Parliament.

2.2 MANDATE OF THE SENATE COMMITTEE ON DELEGATED LEGISLATION

Sen. Sang informed the meeting that the Committee is guided by the Statutory Instruments Act. Article 94 of the Constitution gives Parliament the authority to make legislation. However, Parliament have donated or delegated some authority to make legislation to the Executive. Such laws made by the Executive are known as delegated legislation. Once power is delegated, they must be forwarded to Parliament for scrutiny, to ensure that the powers given were not overstepped by the Executive in the development of the subsidiary legislations. Among the issues the Committee looks into during scrutiny is to ensure that it does not contravene the Constitution or the parent Act.

He urged the counterpart committees to be proactive and enquire from their respective County Executives to forward Regulations on various laws passed by the County Assemblies. He urged the Committees to carry out an audit of the respective laws passed with a view to highlighting the relevant provisions on the development of Regulations. He informed the meeting that the Committee is sponsoring the County Statutory Instruments Bill, which will guide the counterpart committees in the counties in the scrutiny of subsidiary legislations.

2.3 SUBMISSIONS OF CHAIRPERSONS OF COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES

The Committee received submissions from Chairpersons of Counterpart Committees of the County Assemblies of:

1. Siaya;
2. Kwale; and
3. Elgeyo Marakwet.

2.3.1 SIAYA COUNTY

1. Lack of understanding of the mandate of the Committee both in the Assembly and the Executive. The Executive feel that the Assembly is stepping into their area.

2. Lack of capacity in the Assembly and Executive arm.
3. Delays in forwarding the laws to the Assembly by the executive.
4. Lack of qualified staff

2.3.2 KWALE COUNTY

- 23 Bills currently at the Government Printer awaiting publication.
- The committee is currently reviewing the Kwale County Sports Policy, 2015.
- The committee is currently working jointly with the Committee on Justice and Legal Affairs on The Access to Information Bill, 2014.

Challenges

1. Delays at the Government Printers
2. There is little business for the committee unlike other sectoral committees. The committee on Delegated County Legislation relies heavily on the house for its business
3. The statutory documents are few.
4. The Committee is not informed extensively on its mandate.
5. Most bills are lying idle at the county assembly due to lack of funds to facilitate enactment of legislations that would then lead to regulations for the committee to make considerations.

2.3.3 ELGEYO MARAKWET COUNTY

The Committee has scrutinized two Regulations.

Challenges

1. Financial constraints
2. The committee faced initial challenges of understanding the Mandate of the Committee but this improved after capacity building programmes were introduced for the Committee.
3. Lack of qualified staff
4. Lack of capacity of the County Executive. There is a lack of a clear understanding of delegated legislation.

CHAPTER THREE MEETING WITH MEMBERS OF COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF TURKANA, WEST POKOT, NYAMIRA AND VIHIGA

The presentations were preceded by an opening session where the Senior Deputy Clerk of the Senate Mrs. Consolata Munga, the Senate Committee Vice Chairperson, Sen. Judith Sijeny and Deputy Speaker of the Senate, Sen. Kembi Gitura made remarks.

The second session was chaired by Sen. Daniel Karaba. The first presentation on the topic “Mandate of the Committee on Delegated Legislation” was done by Sen. Judith Sijeny, the Senate Committee Vice Chairperson. This was followed by presentations from respective Chairpersons of counterpart committees of the county assemblies on the progress made so far in the execution of their mandate.

3.1 OPENING SESSION

The meeting began by a word of prayer at 9.45am followed by a self introduction of all the Members present.

Remarks of the Vice-Chairperson

Sen. Sijeny welcomed the Members from the counties. She noted that the meeting was aimed at learning from each other because they were united with one vision as delegated committees sharing experiences. She then welcomed the Senior Deputy Clerk of the Senate to make her remarks.

Remarks of the Senior Deputy Clerk of the Senate

On behalf of the Clerk of the Senate, who was out of the country on official duties, Mrs. Consolata Munga welcomed the MCAs to the Senate and to the meeting, stating that it was a pleasure to have MCAs meeting at the Senate for a common purpose.

She explained that the mandate of the Committee was initially under the Committee on Legal Affairs. However, due to the large number of bye-laws, guidelines, rules and

regulations, it was realized that it would be difficult for the Committee on Legal Affairs to handle the business. In 2008, therefore, the National Assembly overhauled its Standing Orders and formed the Committee on Delegated Legislation. The Interpretation Act had been earlier used to justify the mandate for the legal and delegated committees, but their differences had been cleared over time.

She urged Members to put their heads together, share experiences and challenges experienced and forge a way forward in the execution of the mandate of the Committee on Delegated Legislation both in the Senate and the County Assemblies.

Remarks of the Deputy Speaker

Sen. Kembi Gitura, the Deputy Speaker of the Senate welcomed the MCAs to the Senate, and stated that it was a pleasure to host and interact with them. He noted that the Senate Committee on Delegated had held many similar meetings to share experiences and build capacities of the counties. He noted that the purpose of the meeting was to learn the activities of the Senate and to synergize so as to make devolution as a concept and practically work. He stated that the devolution dream is so important and that we must all nurture it; noting that it was under great threat.

He noted that Article 96 of the Constitution gave the Senate the oversight role over counties, making the Senate the guardian angel over the counties. The interest of the Senate therefore is to see the counties working well towards the attainment of the goal of devolution, ensure equitable distribution of national wealth going to the counties; unlike in the past where districts were at the mercy of the “big man” at the helm of the presidency. He noted that times have since changed, and it does not matter who is at the helm, as how much goes to the counties is a function of the Constitution. He informed the meeting that the Senate held a retreat recently with the Commission on Revenue Allocation to discuss the revenue sharing formula to ensure resources reach the people. He noted that revenue sharing was a crucial component of devolution.

He noted that the County Assemblies are the most important pillar of devolution. Article 185 of the Constitution provides for the county assemblies' legislative and oversight authority of the counties. County Assemblies must work to make devolution work and ensure that the dream is not betrayed.

He noted the recent impeachment of the Governor of Murang'a by the County Assembly. He stated that it was now upon the Senate to determine the matter as mandated under the Constitution. The Senate would form a Committee to investigate the allegations leveled against the Governor, and the Senate would debate and vote on the matter. He therefore noted that the Senate and the County Assemblies had a symbiotic relationship that cannot be breached. In cases of impeachment, he requested the MCAs to look at the greater good as to the evidence they brought before the process.

He urged the MCAs to carry out their role on Delegated Legislation and other roles delegated by the Constitution without fear, favour or affection. He stated that if we all take the dream of devolution seriously it would work. He further noted that corruption was not one of the devolved functions under the Fourth Schedule of the Constitution and that it must be fought. He added that the county assemblies have been entrusted to ensure devolution works, and history would judge them if they would not work to realize the dream of devolution. He also informed the MCAs that corruption would bring death to devolution and that it was not a devolved function. He then wished the MCAs and the Senate Committee fruitful deliberations.

3.2 MANDATE OF THE SENATE COMMITTEE ON DELEGATED LEGISLATION - BY SEN. JUDITH SIJENY, VICE CHAIRPERSON, SENATE COMMITTEE ON DELEGATED LEGISLATION

Sen. Sijeny informed the meeting that the Senate Sessional Committee on Delegated Legislation is established pursuant to Standing Order 214 and is mandated to scrutinize statutory instruments to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013.

She noted that Parliament has donated or delegated some authority to make legislation to the Executive known as statutory instruments or delegated legislation. She stated that “statutory instrument” is defined by the Statutory Instruments Act, 2013 as any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.”

She explained that the Committee must scrutinize and look out for a number of issues that may be hidden within the Regulations. It is important to ensure that statutory instruments do not infringe on the Constitution and other existing laws. The criteria or relevant considerations during scrutiny are contained in the Statutory Instruments Act. However, she added that if Regulations are not transmitted to Parliament either the Senate or the National Assembly, they become null and void. She urged the County Assemblies to be proactive by informing the Executive of their role in making statutory instruments and transmitting them to the county Assemblies.

She noted that the Senate had gone through a period where Regulations were not being transmitted to the Senate. The Committee wrote to the relevant regulation making authorities bringing to their attention the provisions of the Statutory Instruments Act, and

Regulations are now transmitted to the Senate as well. She stressed on the importance of stakeholder consultations in the development of Regulations by the regulation making authority. Although, in some cases, some exemptions can be made particularly when Regulations come from a court of law and have undergone scrutiny.

She concluded by saying that legislation is the key mandate of the Members of Parliament and Members of County Assemblies and it was through the two parties that statutory instruments were to come into force.

3.3 SUBMISSIONS OF CHAIRPERSONS OF COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES

The Committee received submissions from Chairpersons of Counterpart Committees of the County Assemblies of:

- Turkana
- West Pokot
- Nyamira
- Vihiga

3.3.1 TURKANA COUNTY

The County Assembly of Turkana has passed the following Bills:

1. The Turkana County Assembly Service Board Act, 2013;
1. The Turkana County Flag, Emblems and Names Act, 2013;
2. The Turkana County Educational and Skills Development Fund Act, 2013;
3. The County Assembly Powers and Privileges Act, 2014;
4. The Turkana County Alcoholic Drink Control Act, 2014;
5. The Turkana County Order of Precedence Act, 2014;
6. The Turkana County Public Participation Act, 2014 among others.

Achievements

The Committee has scrutinized the Turkana County Youth and Women Regulations, 2014. The Committee scrutinized some of the Bills and tabled reports in the Assembly.

Challenges Experienced

1. Large size of the County and poor road network hampering Committee work;
2. Lack of capacity of MCAs and members of staff on legislation and legislative process;
3. The relationship between the Executive and Legislature is sometimes frosty affecting service delivery;
4. Delay in remittance of funds to the Assembly, making staff and Members' operation low and leads to low morale;
5. Public participation is a challenge due to the ignorant populace and the inability of the Executive to implement the provisions of the County Public participation Act.; and
6. Negative publicity by national and sometimes local press as it erodes public trust in the County Assembly and its membership.

3.3.2. WEST POKOT COUNTY

The County Assembly of West Pokot has passed more than 15 Bills including the Bursary Bill, County Public Service Bill, County Alcoholic Drinks Control Bill among others.

Challenges Experienced

1. Funds allocated to Committees are minimal, making it difficult for the Committee to carry out its mandate;
2. Lack of capacity of Members of the Committee and staff of the County Assembly;
3. Poor building housing the County Assembly as well as lack of Committee rooms.

3.3.3 NYAMIRA COUNTY

The County Assembly of Nyamira had passed the following Bills-

1. The Alcoholic Drinks Control Bill;
2. The Early Childhood Development Bill;
3. The Health Bill;
4. The Land and Physical Planning Bill;
5. The Public Administration Bill; and
6. The Education Bursary Bill.

Challenges Experienced;

1. Lack of technical skills in the drafting of Bills and other legislative documentation;
2. Inadequate finance to carry out capacity building for the Committee;
3. Assembly was not well prepared for the new dispensation and devolution;
4. Lack of clarity on the role of the Assembly *vis-a-vis* the role of the Senate in carrying out oversight;
5. Lack of capacity of the MCAs having come from various professional backgrounds;
6. The Chamber is very small and there is also a shortage of Committee rooms.

3.3.4 VIHIGA COUNTY

The County Assembly of Vihiga has passed a number of Bills including-

1. The Vihiga County Ward Development Fund Bill;
2. The Vihiga County County Service Board Bill;
3. The Vihiga County Education Fund Bill;
4. The Vihiga County Alcoholic Drinks Control Bill; and
5. The Vihiga County Flags and other symbols Bill.

The following Bills are currently under Second Reading-

1. The Vihiga County Food and Security Agricultural Bill;
2. The Vihiga County ECD and School Feeding Programme Bill;
3. The Vihiga County Natural Resources Exploitation and Community Empowerment draft Bill; and
4. The Vihiga County Water and Sewerage Bill.

Challenges Experienced

1. Money Bills are not committed to the committee for consideration;
2. Non-cooperation by the Executive;
3. Lack of qualified staff for drafting;
4. Lack of public participation;
5. Lack of county printers to fast track the printing of county legislations.

CHAPTER FOUR MEETING WITH MEMBERS OF COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF KILIFI, BUNGOMA, SIAYA, EMBU, MERU AND THARAKA NITHI

The presentations were preceded by an opening session where the Sen. Boy Juma Boy and the Senate Committee Vice-Chairperson, Sen. Judith Sijeny.

The second session was chaired by Sen. Godliver Omondi. The first presentation on the topic “Mandate of the Committee on Delegated Legislation” was done by Sen. Judith Sijeny, the Senate Committee Vice-Chairperson. This was followed by presentations from respective Chairpersons of counterpart committees of the county assemblies on the progress made so far in the execution of their mandate.

4.1 OPENING SESSION

The meeting began by a word of prayer at 9.50 a.m. followed by a self introduction of all the Members present.

Remarks of the Committee Vice-Chairperson

Sen. Sijeny welcomed the Members from the County Assemblies of Kilifi, Bungoma, Siaya, Embu, Meru and Tharaka Nithi to the meeting. She noted that the meeting was aimed at sharing experiences and learning from each other’s challenges in the execution of the mandate of the Committee on Delegated Legislation.

4.2 MANDATE OF THE SENATE COMMITTEE ON DELEGATED LEGISLATION - BY SEN. JUDITH SIJENY, VICE CHAIRPERSON, SENATE COMMITTEE ON DELEGATED LEGISLATION

Sen. Sijeny informed the meeting that the Senate Sessional Committee on Delegated Legislation is established pursuant to Standing Order 214 and is mandated to scrutinize statutory instruments to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013. She emphasized that the Statutory Instruments Act, 2013 guides the

scrutiny of statutory instruments by providing for the procedure as well as the parameters for scrutiny of statutory instruments.

She noted that Regulations are aimed at the better implementation of a parent Act. However, in some instances, the Executive may use statutory instruments as a short cut to introduce provisions not provided for under the parent Act. It is for this reason that the Committee on Delegated Legislation must be kept during the consideration and scrutiny of statutory instruments.

She gave the definition of a “statutory instrument” as provided for under Section 2 of the Statutory Instruments Act, 2013 as “any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which a statutory instrument or subsidiary legislation is expressly authorized to be issued.” The Cabinet Secretary responsible for a regulation-making authority transmits the statutory instrument together with an explanatory memorandum to the responsible Clerk of Parliament within seven (7) sitting days of its publication. The Chairperson lays the statutory instrument before the Senate and it then stands referred to the Committee on Delegated Legislation for scrutiny. She urged the counterpart committees to carry out an audit of all Bills passed by their respective County Assemblies, and query the responsible regulation-making authority (the CECs) on the progress of development of statutory instruments for the implementation of the Act.

She further informed the meeting that the Committee then scrutinizes the Regulations to ensure that the Regulations are consistent with the provisions of Section 13 of the Statutory Instruments Act, 2013. The Committee in scrutiny shall confer with the regulation-making authority in so far as is practically possible for information and modification where necessary. The Committee may thereafter accede to or annul part or the whole Regulations. She gave an example of the Tobacco Control Regulations, 2015 which the Committee considered. The Committee noted that inadequate stakeholder consultations with the stakeholders in the industry had been carried out by the Ministry of Health, and the Ministry

had not carried out an impact assessment of the Regulations. The Committee proceeded to annul a number of Regulations contained therein.

4.3 SUBMISSIONS OF CHAIRPERSONS OF COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES

The Committee received submissions from Chairpersons of Counterpart Committees of the County Assemblies of:

- Bungoma;
- Kilifi;
- Tharaka Nithi;
- Siaya;
- Meru; and
- Embu.

4.3.1 BUNGOMA COUNTY

Achievements

1. The Committee has approved the following Regulations-
 - a) The Bungoma County Trade Loans Regulations, 2014;
 - b) The Bungoma County Education Promotion Bursary Regulations, 2014;
 - c) The Bungoma County Wards Development Fund Regulations, 2014;
 - d) The Bungoma County Youth and Women Empowerment Fund Regulations, 2014;
 - e) The Bungoma County Persons with Disabilities Empowerment Fund Regulations, 2014; and
 - f) The Bungoma County Community Empowerment Fund Regulations, 2015.
2. The Committee carried out public participation on the Bungoma County Names, Flags and Emblems Bill, 2014 which was approved and assented to by H.E. the Governor;

3. The Committee undertook a benchmarking visit to Kakamega County Assembly where the Committee learned of its operations in so far as Regulations are concerned;
4. The Committee is currently scrutinizing several Regulations committed to it.

Challenges faced

1. Lack of clarity on the mandate of the Committee, the Committee has been forced to fight for its space;
2. Inadequate budget allocations have curtailed the Committee's execution of its mandate e.g. benchmarking with other counties and abroad;
3. Lack of capacity in matters of legislation and the mandate of the Committee

4.3.2. KILIFI COUNTY

Achievements

1. The Kilifi County Emblems, Symbols and Order of Protocol Bill, 2014 was committed to the Committee by the Speaker. The Committee carried out public hearings on the Bill and it is now an Act of the County Assembly;
2. The Committee is currently scrutinizing the Public Finance management (Kilifi County Assembly Staff Mortgage Scheme Fund) Regulations, 2015.

Challenges

1. Inadequate of capacity of Members and staff of the Committee;
2. Failure of the County Executive to submit statutory instruments to the County Assembly;
3. Inadequate funds for the Assembly Committees due to the ceilings imposed by the Commission on Revenue Allocation.

4.3.3. THARAKA NITHI COUNTY

The executive had not submitted any statutory instrument to the Assembly. The Assembly has passed more than 15 Bills, however to date, no Regulations have been developed.

4.3.4 SIAYA COUNTY

Achievements

The Committee has been instrumental in the processing of Bills introduced in the Assembly.

Challenges

1. Lack of capacity and skills on legislative drafting, Bill processing and legal research. There is also a lack of sufficient legal background among Members.
2. There have been challenges in publication of Bills as a County Printer for County Gazette is Lacking, and the Government Printer is slow in publishing Bills;
3. Lack of the Office of the County Attorney;
4. Delay in fast-tracking of policies, legislative proposals/ Bills from the Executive, making the Committee inactive;
5. Financial constraints – the Committee lacks adequate funding to necessitate fast tracking of the Bills/Regulations and benchmarking;
6. Poor consultation between the CECs and the Committee on issues of legislation and the processing of Bills;
7. Executive coming up with Regulations or implementing policies in disregard of the legal provisions;
8. Lack of public participation;
9. Lack of county printers to fast track the printing of county legislations.

4.3.5 MERU COUNTY

The Assembly has passed thirteen (13) Bills but has not received any Regulations from the County Assembly.

4.3.6 EMBU COUNTY

The County Assembly has passed eleven (11) Bills and three (3) Regulations have been transmitted to the County Assembly for scrutiny. These include-

1. The Embu County Alcoholic Drinks Control Regulations, 2014;
2. The Embu County Youth Trust Fund Regulations, 2015; and
3. The Embu County Education Support Fund Regulations, 2015.

However, the Committee was unable to complete its scrutiny of the above Regulations due to the time limit of 20 days provided under the Standing Orders.

4.1 OBSERVATIONS

The Committee on Delegated Legislation made the following general observations following its meetings with the counterpart committees of the County Assemblies:

1. The existence of the Committee on Delegated Legislation is unknown to many and its mandate is not understood by the county governments;
2. The Members and Staff of the County Assembly committees lack capacity to undertake their mandate and roles;
3. The Counties lack a legal framework for the making and scrutiny of statutory instruments;
4. There are delays in the publication of legislations passed by the counties caused by backlogs at the government printer;
5. The County Assemblies do not have track of legislations pending before the Senate hence they are not able to fully give their input to Bills affecting Counties;
6. There is need for increased synergy and a coordinated engagement between the Senate Committee and its Counterpart Committees of the County Assemblies;
7. The Counties do not adequately engage with stakeholders in the legislation process;
8. Other Observations, however, not based on the agenda of the meeting are-
 - i. There are no linkages with the counties in other areas of parliamentary work.
 - ii. The county assemblies experience challenges in the exercise their oversight role on County Governments.
 - iii. The County assemblies do not have mechanisms in place to follow up on the implementation of resolutions of the county Assemblies.
 - iv. There is lack of consultation between the County Executive Members and Members of the County Assemblies on programmes initiated in the wards.

- v. Members of the County Assemblies are not sufficiently facilitated to enable them perform their roles effectively.
- vi. There are no offices for Committee activities.

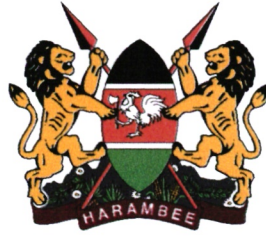
4.2 RECOMMENDATIONS

Based on the observations above, the Committee on Delegated Legislation made the following recommendations:-

1. The County Assemblies to be proactive by sensitizing and bringing to the attention of the County Executive the provisions of the Statutory Instruments Act on development and transmission of statutory instruments to the County Assembly;
2. The Senate to work with the national government to address the issue of lack of Assembly offices and for standardization in construction;
3. The County assemblies should scrutinize Court Orders that may affect the working of the county;
4. The Senate to send samples of Regulations scrutinized to the County Assemblies in order to sensitize the County Executive Committee Members;
5. The County Assemblies should fight strongly against the “devolution of corruption” in their respective counties;
6. The Senate to fast track the County Printers Bill which will address delays in publication of county legislation;
7. The Senate to engage more with the counties through visits with the counties;
8. The Senate to intervene and address the late disbursement of funds to the County Assemblies which is affecting their operations;
9. The County Statutory Instruments Bill, 2014 currently in the Senate under 2nd Reading and sponsored by the Committee will give a framework for the scrutiny of subsidiary legislations in the counties; and
10. County Assemblies should amend provisions of their Standing Orders which set stringent time limits for the scrutiny of statutory instruments. This will provide the Committee with ample time to adequately scrutinize subsidiary legislation and to report back to the House.

APPENDICES

REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

MEETING OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
WITH ITS COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF
TURKANA, WAJIR, WEST POKOT, NYAMIRA AND VIHIGA.

THURSDAY 22ND OCTOBER, 2015

PROGRAMME

The Clerk's Chambers,
Parliament Buildings,
Nairobi, Kenya

OCTOBER, 2015

SESSION 1: OPENING SESSION
SESSION CHAIR: SEN. JUDITH SIJENY, VICE-CHAIRPERSON

- 9.30 -9.40a.m. Remarks by the Clerk of the Senate, Mr. Jeremiah Nyegenye, CBS
- 9.40-9.50a.m. Remarks by the Committee Chairperson, Sen. Stephen Sang
- 9.50- 10.00a.m. Remarks by the Deputy Speaker of the Senate, Sen. Kembi Gitura, MGH, MP
- 10.00-10.15am Health break and photo session

SESSION 2: PRESENTATIONS
SESSION CHAIR: SEN. DANIEL KARABA

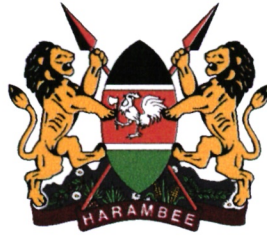
- 10.15 -10.45am Mandate of the Senate Committee on Delegated Legislation- by Sen. Stephen Sang
Panel of discussants: Sen. Dr. Boni Khalwale
Sen. Emma Mbura
- 10.45-11.40am Reflecting on progress made on the execution of the Mandate of the counterpart committees to date: Achievements and challenges- by respective Committee Chairpersons.
1. Turkana County
 2. Wajir County
 3. West Pokot County
 4. Nyamira County
 5. Vihiga County
- 11.40 – 12.15pm Plenary
Sen. Boy Juma Boy
Sen. Liza Chelule
Sen. Godliver Omondi
Sen. Joy Gwendo
- 12.15- 12.30pm Way forward by Vice- Chairperson, Senate Committee on Delegated Legislation- Sen. Judith Sijeny
- 12.30-12.45pm Closing remarks by Chairperson, Senate Committee on Delegated Legislation- Sen. Stephen Sang

LUNCH BREAK

- 2.30-3.30 pm Plenary Session with technical officers/ Witnessing Senate Proceedings
END OF PROGRAMME

Programme Coordinator
Ms. Carol Kirorei - Committee Clerk – 0717488917

REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

MEETING OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
WITH ITS COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF
KILIFI, BUNGOMA, MERU, SIAYA, EMBU AND THARAKA NITHI.

THURSDAY 19TH NOVEMBER, 2015
VENUE: MINI CHAMBER, COUNTY HALL

PROGRAMME

The Clerk's Chambers,
Parliament Buildings,
Nairobi, Kenya

NOVEMBER, 2015

**SESSION 1:
SESSION CHAIR:**

**OPENING SESSION
SEN. JUDITH SIJENY, VICE-CHAIRPERSON**

9.30 -9.40a.m.	Remarks by the Clerk of the Senate, Mr. Jeremiah Nyegenye, CBS
9.40-9.50a.m.	Remarks by the Committee Chairperson, Sen. Stephen Sang
9.50- 10.00a.m.	Remarks by the Deputy Speaker of the Senate, Sen. Kembi Gitura, MGH, MP
10.00-10.15am	Health break and photo session

**SESSION 2: PRESENTATIONS
SESSION CHAIR: SEN. BOY JUMA BOY**

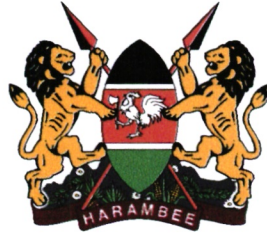
10.15 -10.45am	Mandate of the Senate Committee on Delegated Legislation- by Sen. Stephen Sang Panel of discussants: Sen. Dr. Boni Khalwale Sen. Godliver Omondi
10.45-11.40am	Reflecting on progress made on the execution of the Mandate of the counterpart committees to date: Achievements and challenges- by respective Committee Chairpersons. 1. Kilifi County 2. Bungoma County 3. Meru County 4. Siaya County 5. Tharaka Nithi County 6. Embu County
11.40 – 12.15pm	Plenary Sen. Dr. Boni Khalwale Sen. Liza Chelule Sen. Emma Mbura Sen. Joy Gwendu
12.15- 12.30pm	Way forward by Vice- Chairperson, Senate Committee on Delegated Legislation- Sen. Judith Sijeny
12.30-12.45pm	Closing remarks by Chairperson, Senate Committee on Delegated Legislation- Sen. Stephen Sang

LUNCH BREAK

2.30-3.30 pm	Plenary Session with technical officers/ Witnessing Senate Proceedings END OF PROGRAMME
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Programme Coordinator
Ms. Carol Kirorei - Committee Clerk – 0717488917

REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

MEETING OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
WITH ITS COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF
KAKAMEGA, SIAYA, KWALE AND ELGEYO MARAKWET COUNTIES.

THURSDAY 18th JUNE, 2015

PROGRAMME

The Clerk's Chambers,
Parliament Buildings,
Nairobi, Kenya

JUNE, 2015

SESSION 1: OPENING SESSION
SESSION CHAIR: SEN. JUDITH SIJENY, VICE-CHAIRPERSON

- 9.30 -9.40a.m. Remarks by the Clerk of the Senate, Mr. Jeremiah Nyegenye, CBS
- 9.40-9.50a.m. Remarks by the Committee Chairperson, Sen. Stephen Sang
- 9.50- 10.00a.m. Remarks by the Deputy Speaker of the Senate, Sen. Kembi Gitura, MGH, MP
- 10.00-10.15am Health break and photo session

SESSION 2: PRESENTATIONS
SESSION CHAIR: SEN. DANIEL KARABA

- 10.15 -10.45am Mandate of the Senate Committee on Delegated Legislation- by Ms. Josephine Kusinyi, Legal Counsel.
- Panel of discussants: Sen. Dr. Boni Khalwale
Sen. Boy Juma Boy
Sen. Emma Mbura
- 10.45-11.40am Reflecting on progress made on the execution of the Mandate of the counterpart committees to date: Achievements and challenges- by respective Committee chairpersons.
1. Kakamega County
 2. Siaya County
 3. Kwale County
 4. Elgeyo Marakwet County
- 11.40 – 12.15pm Plenary
- Sen. Stephen Sang
Sen. Liza Chelule
Sen. Godliver Omondi
Sen. Joy Gwendo
- 12.15- 12.30pm Way forward by Vice- Chairperson, Senate Committee on Delegated Legislation- Sen. Judith Sijeny
- 12.30-12.45pm Closing remarks by Chairperson, Senate Committee on Delegated Legislation- Sen. Stephen Sang

END OF PROGRAMME

Programme Coordinator
Ms. Carol Kirorei - Committee Clerk – 0717488917

MINUTES OF THE 30TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 25TH NOVEMBER, 2015 AT 12.00 NOON IN THE 2ND FLOOR BOARDROOM, KICC

PRESENT

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. Godliver Omondi
3. Sen. Boy Juma Boy
4. Sen. Liza Chelule
5. Sen. Joy Gwendu

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
2. Sen. Daniel Karaba
3. Sen. Emma Mbura
4. Sen. (Dr.) Boni Khalwale

IN ATTENDANCE

SENATE

1. Ms. Josephine Kusinyi - Legal Counsel
2. Ms. Carol Kirorei - Committee Clerk

MIN. NO. 200/2015 - PRELIMINARIES

The Vice-Chairperson called the meeting to order at 12.15 p.m. followed by a word of prayer.

MIN. NO. 201/2015 - ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Daniel Godliver Omondi and seconded by Sen. Judith Sijeny.

MIN. NO. 202/2015 - CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 28th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Boy Juma Boy and seconded by Sen. Judith Sijeny.
- ii. The minutes of the 29th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Godliver Omondi and seconded by Sen. Judith Sijeny.

MIN. NO. 203/2015 - CONSIDERATION AND ADOPTION OF REPORTS

Members were taken through the following Reports-

1. Report on County Visits to Embu, Meru and Tharaka Nithi Counties; and
2. Report on Meetings with Counterpart Committees of the County Assemblies of Kwale, Siaya, Elgeyo Marakwet, Turkana, Wajir, West Pokot, Nyamira, Vihiga, Kilifi, Bungoma, Embu, Meru and Tharaka Nithi.

Members adopted the Reports as presented.

MIN. NO. 204/2015 -ADJOURNMENT

The meeting was adjourned at 12.50 p.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

2nd/12/2015
.....

MINUTES OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF KILIFI, BUNGOMA, SIAYA, EMBU, MERU AND THARAKA NITHI COUNTIES HELD ON 19TH NOVEMBER, 2015 AT 9.30 A.M. IN THE MINI CHAMBER, FIRST FLOOR, COUNTY HALL

PRESENT

- | | | |
|-------------------------|---|------------------|
| 1. Sen. Judith Sijeny | - | Vice-Chairperson |
| 2. Sen. Liza Chelule | - | Member |
| 3. Sen. Boy Juma Boy | - | Member |
| 4. Sen. Godliver Omondi | - | Member |

ABSENT WITH APOLOGY

- | | | |
|-----------------------------|---|-------------|
| 1. Sen. Stephen Sang | - | Chairperson |
| 2. Sen. (Dr.) Boni Khalwale | - | Member |
| 3. Sen. Emma Mbura | - | Member |
| 4. Sen. Joy Gwendu | - | Member |
| 5. Sen. Daniel Karaba | - | Member |

IN ATTENDANCE

Annexed to the Minutes

MEMBERS OF THE COUNTY ASSEMBLIES

IN ATTENDANCE

- | | | |
|----------------------|---|------------------|
| 1. Ms. Carol Kirorei | - | Clerk Assistant |
| 2. Mr. John Pere | - | Serjeant-At-Arms |
| 3. Mr. Caleb Yupe | - | Intern |

SENATE

MIN. NO. 196/2015

PRELIMINARIES

Sen. Boy Juma Boy called the meeting to order at 9.50 a.m. followed by a word of prayer. He welcomed the delegations from the County Assemblies of Kilifi, Bungoma, Siaya, Embu, Meru and Tharaka Nithi to the Senate. He conveyed the apologies of the Chairperson of the Committee who was out of the country. He then led in a self-introductory session of Members present.

Remarks of the Committee Vice-Chairperson

Sen. Sijeny welcomed the Members from the County Assemblies of Kilifi, Bungoma, Siaya, Embu, Meru and Tharaka Nithi to the meeting. She noted that the meeting was aimed at sharing experiences and learning from each other's challenges in the execution of the mandate of the Committee on Delegated Legislation.

Mandate of the Committee on Delegated Legislation

Sen. Sijeny informed the meeting that the Senate Sessional Committee on Delegated Legislation is established pursuant to Standing Order 214 and is mandated to scrutinize statutory instruments to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013. She emphasized that the Statutory Instruments Act, 2013 guides the scrutiny of statutory instruments by providing for the procedure as well as the parameters for scrutiny of statutory instruments.

She noted that Regulations are aimed at the better implementation of a parent Act. However, in some instances, the Executive may use statutory instruments as a short cut to introduce provisions not provided for under the parent Act. It is for this reason that the Committee on Delegated Legislation must be keen during the consideration and scrutiny of statutory instruments.

She gave the definition of a "statutory instrument" as provided for under Section 2 of the Statutory Instruments Act, 2013 as "any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which a statutory instrument or subsidiary legislation is expressly authorized to be issued." The Cabinet Secretary responsible for a regulation-making authority transmits the statutory instrument together with an explanatory memorandum to the responsible Clerk of Parliament within seven (7) sitting days of its publication. The Chairperson lays the statutory instrument before the Senate and it then stands referred to the Committee on Delegated Legislation for scrutiny. She urged the counterpart committees to carry out an audit of all Bills passed by their respective County Assemblies, and query the responsible regulation-making authority (the CECs) on the progress of development of statutory instruments for the implementation of the Act.

3. The Committee undertook a benchmarking visit to Kakamega County Assembly where the Committee learned of its operations in so far as Regulations are concerned;
4. The Committee is currently scrutinizing several Regulations committed to it.

Challenges:

1. Lack of clarity on the mandate of the Committee, the Committee has been forced to fight for its space;
2. Inadequate budget allocations have curtailed the Committee's execution of its mandate e.g. benchmarking with other counties and abroad;
3. Lack of capacity in matters of legislation and the mandate of the Committee

Hon. Kipkut concluded by urging the Senate to visit the County Assembly of Bungoma with a view of exchanging ideas on the mandate of the Committee and also addressing the County Assembly. He informed the meeting that the Senate Committee on Information and Technology had visited Bungoma, and the Assembly has since understood clearly the mandate of the Committee.

II. KILIFI COUNTY

Hon. Theophilus Fondo informed the meeting that the Committee on Delegated County Legislation was constituted on 23rd April, 2013 and was later reconstituted following the successful revision of the County Assembly of Kilifi Standing Orders on 31st July, 2014. It comprises of nine (9) Members.

Achievements:

1. The Kilifi County Emblems, Symbols and Order of Protocol Bill, 2014 was committed to the Committee by the Speaker. The Committee carried out public hearings on the Bill and it is now an Act of the County Assembly;
2. The Committee is currently scrutinizing the Public Finance management (Kilifi County Assembly Staff Mortgage Scheme Fund) Regulations, 2015.

Challenges:

- Inadequate of capacity of Members and staff of the Committee;
- Failure of the County Executive to submit statutory instruments to the County Assembly;
- Inadequate funds for the Assembly Committees due to the ceilings imposed by the Commission on Revenue Allocation.

III. THARAKA NITHI COUNTY

Hon. Agostino Ngako on behalf of the Committee Chairperson Hon. Erastus Kinyua thanked the Committee for the invitation to the Senate. He informed the meeting that the Committee comprised of seven (7) Members. He noted that the Committee had faced challenges in the execution of its mandate as the executive had not submitted any statutory instrument to the Assembly. The Assembly has passed more than 15 Bills, however to date, no Regulations have been developed.

He thanked the Senate Committee on Delegated Legislation for recently visiting the County Assembly of Tharaka Nithi. The engagement enlightened Members of the counterpart Committee on the mandate of the Committee on Delegated Legislation.

IV. SIAYA COUNTY

Hon. Sylvester Madialo informed the meeting that the Committee on Delegated Legislation, Justice and Legal Affairs of Siaya County comprises of ten (10) Members.

Achievements:

The Committee has been instrumental in the processing of Bills introduced in the Assembly.

Challenges:

1. Lack of capacity and skills on legislative drafting, Bill processing and legal research. There is also a lack of sufficient legal background among Members.
2. There have been challenges in publication of Bills as a County Printer for County Gazette is Lacking, and the Government Printer is slow in publishing Bills;
3. Lack of the Office of the County Attorney;

4. Delay in fast-tracking of policies, legislative proposals/ Bills from the Executive, making the Committee inactive;
5. Financial constraints – the Committee lacks adequate funding to necessitate fast tracking of the Bills/Regulations and benchmarking;
6. Poor consultation between the CECs and the Committee on issues of legislation and the processing of Bills;
7. Executive coming up with Regulations or implementing policies in disregard of the legal provisions.
8. Lack of public participation;
9. Lack of county printers to fast track the printing of county legislations.

V. MERU COUNTY

Hon. Samson Thurania informed the meeting that the Committee on Delegated Legislation had faced a number of challenges, to extent that Members made proposals for its removal. The Committee has had exchanges with its counterpart Committee of the County Assembly, which has assisted in understanding the mandate of the Committee.

The Assembly has passed thirteen (13) Bills but has not received any Regulations from the County Assembly. He thanked the Senate Committee on Delegated Legislation for visiting the County Assembly of Tharaka Nithi, noting that the exchanges shed light on the mandate of the Committee. He further thanked the Committee for honoring the request made for an invitation to the Senate.

VI. EMBU COUNTY

Hon. Kanjogu Mugo gave the apologies of the Chairperson who was indisposed. He stated that the Committee comprised of seven (7) Members. The County Assembly has passed eleven (11) Bills and three (3) Regulations have been transmitted to the County Assembly for scrutiny. These include-

1. The Embu County Alcoholic Drinks Control Regulations, 2014;
2. The Embu County Youth Trust Fund Regulations, 2015; and
3. The Embu County Education Support Fund Regulations, 2015.

However, the Committee was unable to complete its scrutiny of the above Regulations due to the time limit of 20 days provided under the Standing Orders. The Committee has visited the County Assemblies of Nakuru, Nyandarua, Laikipia and Kericho for benchmarking.

Challenges:

1. The Assembly has passed 11 Bills however the Regulations from the Executive have not been forthcoming;
2. There has been resistance to hand over Regulations to the Committee on delegated Legislation. There has been competition with sectoral committees of the Assembly to scrutinize Regulations.

Following the deliberations with the counterpart committees of the County Assemblies, it was resolved as follows-

1. The Committee on Delegated Legislation is mandated to scrutinize statutory instruments and as such should not consider Bills;
2. The Committee on Delegated Legislation with the approval of the Speaker may hold a joint sitting with a sectoral committee to consider a statutory instrument and may report jointly to the House;
3. The County Assembly Committees on Delegated Legislation to write to the CECs bringing to their attention the provisions of the law and the requirement for development of Regulations and subsequent transmission to the County Assembly for scrutiny;
4. The Senate to fast track the County Printers Bill which will address delays in publication of county legislation;
5. The Senate to engage more with the counties through visits with the counties, and also sensitize the Executive on their role in developing subsidiary legislations;
6. The Senate to intervene in matters of impeachment of CECs as was in the “Bungoma Case” to allow for the County Assemblies to impeach a CEC;

7. County Statutory Instruments Bill currently in the Senate, under the Second Reading, and sponsored by the Committee will give a framework for the scrutiny of subsidiary legislations in the counties.

MIN. NO. 199/ /2015

ADJOURNMENT

There being no other business, the meeting was adjourned at 12.45 p.m.

SIGNED.....

(CHAIRPERSON)

DATE.....25/11/2015.....



SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF KILIFI, BUNGOMA, SIAYA, MERU, EMBU, THARAKA NITHI

ON 19TH NOVEMBER, 2015

REGISTRATION FORM

NO.	NAME	COUNTY	EMAIL ADDRESS	SIGNATURE
	TIMOTHY TORO IJICIT	ELGEYO/ MARAKWET	timothy_toro_ijicit @ yahoo.com	
	KANJOGU N. MUGO	Embu	kanjogu@gmail.com	
	DUNCAN KIRANGUMU	MERU	duncan.kirangumu @kepsa.com	
	NATHAN KIRIMI	MERU	kirimimath@gmail.com	
	AGOSTINO NGAKU GACHU	THARAKA NITHI	agostino.ngaku@gmail.com	
	HON ERASIMUS KINYUA	THARAKA NITHI	Erastus Kinyua @gmail.com	
	HON JAMES MURICHONGO	BUNGOMA	iamamurichongo@gmail.com	
	HON CAROLINE WACHU	BUNGOMA	cwachu@gmail.com	
















SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF KILIFI, BUNGOMA, SIAYA, MERU, EMBU, THARAKA NITHI

ON 19TH NOVEMBER, 2015

REGISTRATION FORM

NO.	NAME	COUNTY	EMAIL ADDRESS	SIGNATURE
1	John Githungo Kahari	Muranga	kaharijohn@yahoo.com	
2	Monica N. Ndungu	Tharaka Nithi	tharakainithi-countyassembly@gmail.com	
3	Hon. Stephania Giorato	T/MITHI	stephanie.giorato@gmail.com	
4	Hon. Naomi Kavira	T/MITHI	nkayubus6@gmail.com	
5	HON HERBERT MATANUS	KILIFI	hmatanus1@gmail.com	
6	Hon Duncan Kainiga	Kilifi	duncan.kainiga@gmail.com	
7	HON TERESA A. OSORE	SIAYA	teresa.osore@gmail.com	
	HILDA. A. OTIENO	SIAYA		

NO.	NAME	COUNTY	EMAIL ADDRESS	SIGNATURE
9	Hon. Jared Akase	KILIFI	ibarusakeli@assembly.go.ke	
10	Hon. Frederick Mwangome	KILIFI		
11	Stanley Tsuna	KILIFI	tsunastanley@gmail.com	
12	Gertraud N. Mawidi	Burgoma	mawidi2003@gmail.com	
13	Hon. Dorice N. Nardonga	Burgoma	doricenardonga@gmail.com	
14	Hon. Saeio Kimani	EMBU	kimanisaeio@gmail.com	
15	Kadera Stephen	Siaya	kaderas@yahoo.com	
16	Mulwa Peter	Soga	wajonja@yahoo.com	
17	Yu Josephine Mutisi	Meru	Murehlaupon@yahoo.com	
18	Martin O Musere	Bungoma	MusereM@yahoo.com	
19	Dorcas Muchiri Gilbert	Tharaka Nithi	rygedmuchiri@gmail.com	
20	Hon. Samuel Thumana	Wajir County	Saurensamuel@gmail.com	
21	Hon. Michael Njau	Buru County	Michael.kitumwa@gmail.com	









SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF KILIFI, BUNGOMA, SIAYA, MERU, EMBU, THARAKA NITHI

ON 19TH NOVEMBER, 2015

REGISTRATION FORM

NO.	NAME	COUNTY	EMAIL ADDRESS	SIGNATURE
1	Hon Charles Muramira	Bungoma	charlesmuramira@gmail.com	
2	Hon Proscopus Wabwira	Bungoma	proscopusw@gmail.com	
3	Hon Julius W Barasa	Bungoma	Juliusw@labasa.com	
4	Hon. Christopher Mulati	BUNGOMA	mulatiwabwira@gmail.com	
5	OSCAR SIFUMA	BUNGOMA	osifuma@gmail.com	
6	B. M. IRERI	EMBU	bonniemuthoni@gmail.com	

NO.	NAME	COUNTY	EMA ADDRESS	SIGNATURE
1.	Baptist Numbi	Nyeri	Khangari Egungu	
2.	Hon Peter Njiru	EMBU	Mwaki Egungu	
3.	Dennis Njiru Mugo	EMBU	Kisumu Egungu	
4.	Hon Julius Kabira	MERU	Julius Kabira Egungu	
5.	Hon Eunice KAKEMA	MERU	Dundakani Egungu	
6.	Hon MABLE NIGORE	MERU	Marengue Egungu	



SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF KILIFI, BUNGOMA, SIAYA, MERU, EMBU, THARAKANITHI

ON 19TH NOVEMBER, 2015

REGISTRATION FORM

NO.	NAME	COUNTY	EMAIL ADDRESS	SIGNATURE
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3	HON. SAMMY N CHEMWEY	BUNGOMA	Sammychemwey@gmail.com	
4	HON REGINALDA WANYONYI	BUNGOMA	reginald70@gmail.com	
5	Hon Evelynne Mutembu	BUNGOMA	evelynne@gmail.com	
6	HON JAMES MUTEMBEI AUGUSTINO	THARAKA NITHI	Mutembei'91@gmail.com	
7	Stephen Wambua Nzioka	Embu County	nziokajoy@yahoo.com	
8	NEKE SA RAGEL KITHSA	BUNGOMA	klusarael@fihoo.com	



SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF KILIFI, BUNGOMA, SIAYA, MERU, EMBU, THARAKA NITHI

ON 19TH NOVEMBER, 2015

REGISTRATION FORM

NO.	NAME	COUNTY	EMAIL ADDRESS	SIGNATURE
1	HON. THEOPHILUS FONDO	KILIFI	0722767641	
2	HON. BANARI AZI MWNYI	KILIFI	0720912796	
3	Mr. Sammie Akoojirac	KILIFI	0723 986 20	
4	HON. PAMELA MIDUMBI	SIAYA	midum4pamela@gmail.com	
5	WALTER OKELLO	SIAYA	walterokello@gmail.com	
6	ERIC OGENGA	SIAYA	ogenga2011@gmail.com	
7	CHARLES OCHIENG	SIAYA	ochieng.co@gmail.com	
8	NICOLAS MAGHAR	BUNGOMA	nikmaghar@gmail.com	

**MINUTES OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION WITH
COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF TURKANA,
WAJIR, WEST POKOT, NYAMIRA AND VIHIGA COUNTIES HELD ON 22ND OCTOBER,
2015 AT 9.30 A.M. IN THE MINI CHAMBER, FIRST FLOOR, COUNTY HALL**

PRESENT

- | | | |
|-------------------------|---|------------------|
| 1. Sen. Stephen Sang | - | Chairperson |
| 2. Sen. Judith Sijeny | - | Vice-Chairperson |
| 3. Sen. Liza Chelule | - | Member |
| 4. Sen. Boy Juma Boy | - | Member |
| 5. Sen. Godliver Omondi | - | Member |
| 6. Sen. Joy Gwendu | - | Member |
| 7. Sen. Daniel Karaba | - | Member |

ABSENT WITH APOLOGY

- | | | |
|-----------------------------|---|--------|
| 1. Sen. (Dr.) Boni Khalwale | - | Member |
| 2. Sen. Emma Mbura | - | Member |

IN ATTENDANCE

Annexed to the Minutes

MEMBERS OF THE COUNTY ASSEMBLIES

IN ATTENDANCE

- | | | |
|-------------------------|---|------------------------------|
| 1. Mrs. Consolata Munga | - | Senior Deputy Clerk |
| 2. Mr. Njenga Njuguna | - | Director, Committee Services |
| 3. Ms. Carol Kirorei | - | Clerk Assistant |
| 4. Ms. Grace Wahu | - | Research Officer |
| 5. Mr. Charles Musera | - | Serjeant-At-Arms |
| 6. Mr. Frank Mutulu | - | Media Relations Officer |

SENATE

MIN. NO. 168/2014

PRELIMINARIES

The Chairman called the meeting to order at 9.45 a.m. followed by a word of prayer. He welcomed Members of the Counterpart Committees on Delegated Legislation from the County Assemblies of

Turkana, West Pokot, Nyamira and Vihiga to the Senate. He noted that the County Assembly of Wajir was absent. He then led in a self-introductory session of Members present.

MIN. NO. 169/2014

OPENING REMARKS

Remarks of the Committee Vice-Chairperson

Sen. Sijeny welcomed the Members from the counties. She noted that the meeting was aimed at sharing experiences and learning from each other. She then welcomed the Senior Deputy Clerk of the Senate to make her remarks.

Remarks by the Senior Deputy Clerk of the Senate

On behalf of the Clerk of the Senate, who was out of the country on official duties, Mrs. Consolata Munga welcomed the MCAs to the Senate and to the meeting, stating that it was a pleasure to have MCAs meeting at the Senate for a common purpose.

She explained that the mandate of the Committee was initially under the Committee on Legal Affairs. However, due to the large number of bye-laws, guidelines, rules and regulations, it was realized that it would be difficult for the Committee on Legal Affairs to handle the business. In 2008, therefore, the National Assembly overhauled its Standing Orders and formed the Committee on Delegated Legislation. She urged Members to put their heads together, share experiences and challenges experienced and forge a way forward in the execution of the mandate of the Committee on Delegated Legislation both in the Senate and the County Assemblies.

Remarks by the Deputy Speaker of the Senate

Sen. Kembi Gitura, the Deputy Speaker of the Senate welcomed the MCAs to the Senate, and stated that it was a pleasure to host and interact with them. He noted that the Senate Committee on Delegated had held many similar meetings to share experiences and build capacities of the counties. He noted that the purpose of the meeting was to learn the activities of the Senate and to synergize so as to make devolution as a concept and practically work. He stated that the devolution dream is so important and that we must all nurture it; noting that it was under great threat.

He noted that Article 96 of the Constitution gave the Senate the oversight role over counties, making the Senate the guardian angel over the counties. The interest of the Senate therefore is to see the counties working well towards the attainment of the goal of devolution, ensure equitable

distribution of national wealth going to the counties; unlike in the past where districts were at the mercy of the “big man” at the helm of the presidency. He noted that times have since changed, and it does not matter who is at the helm, as how much goes to the counties is a function of the Constitution. He informed the meeting that the Senate held a retreat recently with the Commission on Revenue Allocation to discuss the revenue sharing formula to ensure resources reach the people. He noted that revenue sharing was a crucial component of devolution.

He noted that the County Assemblies are the most important pillar of devolution. Article 185 of the Constitution provides for the county assemblies’ legislative and oversight authority of the counties. County Assemblies must work to make devolution work and ensure that the dream is not betrayed.

He noted the recent impeachment of the Governor of Murang’a by the County Assembly. He stated that it was now upon the Senate to determine the matter as mandated under the Constitution. The Senate would form a Committee to investigate the allegations leveled against the Governor, and the Senate would debate and vote on the matter. He therefore noted that the Senate and the County Assemblies had a symbiotic relationship that cannot be breached. \

He urged the MCAs to carry out their role on Delegated Legislation and other roles delegated by the Constitution without fear, favour or affection. He stated that if we all take the dream of devolution seriously it would work. He further noted that corruption was not one of the devolved functions under the Fourth Schedule of the Constitution and that it must be fought. He added that the county assemblies have been entrusted to ensure devolution works, and history would judge them if they would not work to realize the dream of devolution.

He then wished the MCAs and the Senate Committee fruitful deliberations.

Mandate of the Committee on Delegated Legislation

Sen. Sijeny informed the meeting that the Senate Sessional Committee on Delegated Legislation is established pursuant to Standing Order 214 and is mandated to scrutinize statutory instruments to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013. She noted that Parliament have donated or delegated some authority to make legislation to the Executive known as statutory instruments or delegated legislation. She stated that “statutory

3. The Turkana County Educational and Skills Development Fund Act, 2013;
4. The County Assembly Powers and Privileges Act, 2014;
5. The Turkana County Alcoholic Drink Control Act, 2014;
6. The Turkana County Order of Precedence Act, 2014;
7. The Turkana County Public Participation Act, 2014 among others.

Achievements:

The Committee has scrutinized the Turkana County Youth and Women Regulations, 2014. The Committee scrutinized some of the Bills and tabled reports in the Assembly.

Challenges:

- Large size of the County and poor road network hampering Committee work;
- Lack of capacity of MCAs and members of staff on legislation and legislative process;
- The relationship between the Executive and Legislature is sometimes frosty affecting service delivery;
- Delay in remittance of funds to the Assembly, making staff and Members' operation low and leads to low morale;
- Public participation is a challenge due to the ignorant populace and the inability of the Executive to implement the provisions of the County Public participation Act.; and
- Negative publicity by national and sometimes local press as it erodes public trust in the County Assembly and its membership.

Sen. Sijeny pointed out that the Committee on Delegated Legislation is not mandated to scrutinize Bills and is only mandated to scrutinize subsidiary legislation.

II. WEST POKOT COUNTY

Hon. Tarakamoi Wilson noted the following-

- The County Assembly of West Pokot has passed more than 15 Bills including the Bursary Bill, County Public Service Bill, County Alcoholic Drinks Control Bill among others.

Challenges:

- Funds allocated to Committees are minimal, making it difficult for the Committee to carry out its mandate;
- Lack of capacity of Members of the Committee and staff of the County Assembly;
- Poor building housing the County Assembly as well as lack of Committee rooms.

III. NYAMIRA COUNTY

The Committee Vice-Chair Rebecca Matara informed the meeting that the County Assembly of Nyamira had passed the following Bills-

1. The Alcoholic Drinks Control Bill;
2. The Early Childhood Development Bill;
3. The Health Bill;
4. The Land and Physical Planning Bill;
5. The Public Administration Bill; and
6. The Education Bursary Bill.

Challenges:

- Lack of technical skills in the drafting of Bills and other legislative documentation;
- Inadequate finance to carry out capacity building for the Committee;
- Assembly was not well prepared for the new dispensation and devolution;
- Lack of clarity on the role of the Assembly *vis-a-vis* the role of the Senate in carrying out oversight;
- Lack of capacity of the MCAs having come from various professional backgrounds;
- The Chamber is very small and there is also a shortage of Committee rooms.

IV. VIHIGA COUNTY

Hon. Reuben Ombima informed the meeting that Vihiga County has 5 constituencies and 25 wards. 25 elected MCAs and 14 nominated MCAs. The Committee on County Delegated Legislation is established pursuant to Standing Order 190. He highlighted the Bills passed by the Assembly including-

1. The Ward Development Fund Bill;

2. The County Service Board Bill;
3. The Education Fund Bill;
4. The Alcoholic Drinks Control Bill;
5. The Flags and other symbols Bill.

The following Bills are currently under Second Reading-

1. The Food and Security Agricultural Bill;
2. The ECD and School Feeding Programme Bill;
3. The Natural Resources Exploitation and Community Empowerment draft Bill;
4. The Water and Sewerage Bill.

Challenges:

1. Money Bills are not committed to the committee for consideration;
2. Non-cooperation by the Executive;
3. Lack of qualified staff for drafting;
4. Lack of public participation;
5. Lack of county printers to fast track the printing of county legislations.

Sen. Sijeny clarified that the Committee on Delegated legislation is not mandated to consider Bills, but is only mandated to scrutinize statutory instruments.

Following the deliberations with the counterpart committees of the county Assemblies, it was resolved as follows:-

1. County Assemblies to be proactive by sensitizing and bringing to the attention of the County Executive the provisions of the Statutory Instruments Act on development and transmission of statutory instruments to the County Assembly;
2. The Senate to work with the national government to address the issue of lack of Assembly offices and for standardization in construction.
3. The County assemblies should scrutinize Court Orders that may affect the working of the county;
4. The Senate to send samples of Regulations scrutinized to the County Assemblies in order to sensitize the County Executive Committee Members;

5. The County Assemblies should fight strongly against the “devolution of corruption” in their respective counties;
6. The Senate to fast track the County Printers Bill which will address delays in publication of county legislation;
7. The Senate to engage more with the counties through visits with the counties.
8. The Senate to intervene and address the late disbursement of funds to the County Assemblies which is affecting their operations.
9. County Statutory Instruments Act currently in the Senate and sponsored by the Committee will give a framework for the scrutiny of subsidiary legislations in the counties.

MIN. NO. 171/ /2014

ADJOURNMENT

There being no other business, the meeting was adjourned at 1.00 p.m.

SIGNED.....

(CHAIRPERSON)

DATE.....5/11/2015



SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF TURKANA, WAJIR, WEST POKOT, VIHIGA AND NYAMIRA

ON 22ND OCTOBER, 2015

REGISTRATION FORM

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3.	Jamos Kuya Ebei	TURKANA	Kuyaebe@bhar.com	
4.	MELDINA EKUMWA	TURKANA	mel.ekumwa87@gmail	
5.	FRANCIS MARIKO	TURKANA	franzmaric09@gmail.com	
6.	Hassan Abubakari	Manchara county staff	habubakari84@yahoo	
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SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF TURKANA, WAJIR, WEST POKOT, VIHIGA AND NYAMIRA

ON 22ND OCTOBER, 2015

REGISTRATION FORM

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3	Hon. Reuben Ondima	Vihiga	reubenondima@gmail.com	
4	Hon. ROSAH OMBUKI	Vihiga	rosahombuki@gmail.com	
5	NAOMI N. ONDIEKI	NYAMIRA	naomi.ondieki@nyamira.go.ke	
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SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF TURKANA, WAJIR, WEST POKOT, VIHIGA AND NYAMIRA

ON 22ND OCTOBER, 2015

REGISTRATION FORM

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4	PATRICK LOSUPU	Turkana	esehonpatrick@gmail.com	Patrick Losupu
5	HONI ELIZABETH KORIKEL	TURKANA		KORIKEL
6	ASDISIMBUZ DAKWAZI	NAWARA COUNTY ASSEMBLY STAFF	asdisimbuzdakwazi@gmail.com	
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8	Fred Mungu	Nyamira	fredmungu20@yahoo.com	



SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

MEETING WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF TURKANA, WAJIR, WEST POKOT, VIHIGA AND NYAMIRA

ON 22ND OCTOBER, 2015

REGISTRATION FORM

NO.	NAME	COUNTY	EMAIL ADDRESS	SIGNATURE
01-	Hon. WERCO MUTHITAS BWOI	TURKANA	werco@fca.co.ke	
2	Hon. JACOB MUKOIA	TURKANA	emueljacobs@yahoo.com	
3.	Hon. MARGARET LOBUK	TURKANA	Margaretlobuk@yahoo.com	
4.	LAEH NACHERE	TURKANA	—	
5.	Hon. LOMOREKAI EMMANUEL	TURKANA	alomarekai@fca.co.ke	
6.	VICTOR CHADUA	VICTOR	VICTORCHADUA@VICA	
7.	Hon. JAMES MATINGA	Nyamira	j.matinga.jm@qu.co	

**MINUTES OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
WITH COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES OF KWALE,
SIAYA AND ELGEYO MARAKWET COUNTIES HELD ON 18TH JUNE, 2015 AT 9.30AM
IN THE OLD CHAMBER, FIRST FLOOR, COUNTY HALL**

PRESENT

1. Sen. Stephen Sang - Chairperson
2. Sen. Liza Chelule - Member
3. Sen. Boy Juma Boy - Member

ABSENT WITH APOLOGY

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. (Dr.) Boni Khalwale - Member
3. Sen. Godliver Omondi - Member
4. Sen. Joy Gwendo - Member
5. Sen. Daniel Karaba - Member
6. Sen. Emma Mbura - Member

IN ATTENDANCE

1. Ms. Consolata Munga - Senior Deputy Clerk
2. Ms. Carol Kirorei - Clerk Assistant
3. Mr. Said Osman - Research Officer
4. Mr. Charles Musera - Serjeant-At-Arms

SENATE

MIN NO.115/2014

PRELIMINARIES

The Chairman called the meeting to order at 10.20a.m and welcomed Members of the Counterpart Committees on Delegated Legislation from Kwale, Siaya and Elgeyo Maarakwet Counties. This was followed by an introductory session of Members present.

MIN. NO.116/2014

OPENING REMARKS

Remarks of the Committee Chairperson

Sen. Sang welcomed the Members from the counties gave a background of the meeting stating that it was a result of the request received from the counterpart Committee of the County Assembly of Elgeyo Marakwet, and a repeat of the meeting that did not take off in November 2014, due to the sudden demise of Sen. Otieno Kajwang. He noted that due to challenges in terms of finances, the counterpart committees of Kilifi and Narok were unable to attend the meeting.

He stated that the Senate was the big brother to the counties and was available to mentor the County Assemblies. He observed that the Senate Sessional Committee on Delegated Legislation had had the greatest interaction with the county assemblies. Senate is new but has the advantage of benchmarking and history at the national assembly. He assured the delegations that the Committee would continue to make deliberate efforts to interact with counterpart committees at the County Assemblies in the counties. He welcomed them to witness the House proceedings during the afternoon session. He noted that the capacity and resources available to the counties were not adequate and the Senate had received a number of petitions in this regard. Senate will ensure that the counties have adequate resources and capacity to carry out their overall role of oversight.

He stated that the mandate and Constitutional role of the Senate is to protect the interests of the counties and their governments. County Assemblies committees had to be empowered in order for devolution to succeed. He informed the meeting that the Senate was available to train staff from the County Assemblies. He concluded by urging Members of the Senate and the County Assemblies to protect and safeguard devolution against internal and external Challenges.

Remarks by the Senior Deputy Clerk of the Senate

On behalf of the Clerk of the Senate, Mrs. Munga welcomed the MCAs to the Senate and welcomed them to the House proceedings in the afternoon. She stated that the meeting provided a good opportunity to exchange and learn from each other's experiences. She stated that the Committee on Delegated Legislation began in 1979 when 7 general purpose committees were formed. The Committee on Justice and Legal Affairs was one of these committees and was mandated to deal with matters relating to delegated legislation. In 1997, there was an overhaul of Standing Orders of the National Assembly, where general purpose committees were renamed departmental committees. On 10th Dec 2008, Hon. Amina Abdalla moved the Motion to have the committee on Delegated Legislation formed.

She informed the meeting that Delegated Legislation is legislation passed in other way other than an Act of Parliament. They can be made by City Councils, Orders in Council, the Queen, a Minister and so on. Delegated legislation is pegged to a parent law which must give that individual the power to make that delegated legislation.

She informed the delegates that the Senate was ready to receive MCAs. She urged the counties to send officers to come for attachment opportunities in the Senate. She added that the Senate was ready and willing to facilitate the Counties and would like to help the counterpart Committees in the counties to become as vibrant as the committees in Parliament.

Mandate of the Committee on Delegated Legislation

Sen. Sang informed the meeting that the Committee is guided by the Statutory Instruments Act. Article 94 of the Constitution gives Parliament the authority to make legislation. However, Parliament have donated or delegated some authority to make legislation to the Executive. Such laws made by the Executive are known as delegated legislation. Once power is delegated, they must be forwarded to Parliament for scrutiny, to ensure that the powers given were not overstepped by the Executive in the development of the subsidiary legislations. Among the issues the Committee looks into during scrutiny is to ensure that it does not contravene the Constitution or the parent Act.

He urged the counterpart committees to be proactive and enquire from their respective County Executives to forward Regulations on various laws passed by the County Assemblies. He urged the Committees to carry out an audit of the respective laws passed with a view to highlighting the relevant provisions on the development of Regulations. He informed the meeting that the Committee is sponsoring the County Statutory Instruments Bill, which will guide the counterpart committees in the counties in the scrutiny of subsidiary legislations.

MIN. NO. 117/2014

SUBMISSIONS OF CHAIRPERSONS OF COUNTERPART COMMITTEES OF THE COUNTY ASSEMBLIES

Sen. Chelule invited the respective Chairperson's of the Counterpart Committee's to present their progress and challenges. They made presentations as follows:

I. SIAYA COUNTY

Challenges:

- Lack of understanding of the mandate of the Committee both in the Assembly and the Executive. The Executive feel that the Assembly is stepping into their area.
- Lack of capacity in the Assembly and Executive arm.
- Delays in forwarding the laws to the Assembly by the executive.
- Lack of qualified staff

II. KWALE COUNTY

- 23 Bills currently at the Government Printer awaiting publication.
- The committee is currently reviewing the Kwale County Sports Policy, 2015.
- The committee is currently working jointly with the Committee on Justice and Legal Affairs on The Access to Information Bill, 2014.

Challenges

- Delays at the Government Printers
- There is little business for the committee unlike other sectoral committees. The committee on Delegated County Legislation relies heavily on the house for its business
- The statutory documents are few.
- The Committee is not informed extensively on its mandate.
- Most bills are lying idle at the county assembly due to lack of funds to facilitate enactment of legislations that would then lead to regulations for the committee to make considerations.

III. ELGEYO MARAKWET COUNTY

The Committee has scrutinized two Regulations.

Challenges

- Financial constraints

- The committee faced initial challenges of understanding the Mandate of the Committee but this improved after capacity building programmes were introduced for the Committee.
- Lack of qualified staff
- Lack of capacity of the County Executive. There is a lack of a clear understanding of delegated legislation.


Following the deliberations with the counterpart committees of the county Assemblies, it was resolved as follows:-

1. Senate to enhance capacities of Members of County Assemblies through attachment of staff, training workshops of Members of county assemblies, CPST (Centre for parliamentary studies in Karen) etc.
2. The Senate to undertake county visits to build the capacities of MCAs in the County Assemblies
3. Senate to fight for adequate resources to be allocated to the Counties.
4. MCAs to request to meet with counterpart committees in the Senate and form networks with Members for closer interactions and enhanced capacities to the county.
5. Committees in the County Assemblies to be proactive and write to the CEC pointing out the relevant provisions of laws passed requiring the development of Regulations. Legal Counsels in the County Assemblies to carry out an audit of all laws passed with provisions on the development of Regulations.
6. County Statutory Instruments Act currently in the Senate and sponsored by the Committee will give a framework for the scrutiny of subsidiary legislations in the counties.

MIN. NO.118/ /2014

ADJOURNMENT

There being no other business, the meeting was adjourned at 12.45 p.m. The date of the next meeting would be on notice.

SIGNED.....

(CHAIRPERSON)

DATE..... 7/7/2015