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THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

REPORT ON COUNTY VISITS TO

LAMU AND KILIFI COUNTIES (1ST - 4TH JUNE, 2015)

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

Hon. Speaker
You may approve for tabling.
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Approved
3/12/15
M. M. M. M. M.

NOVEMBER, 2015

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PREFACE

Establishment of the Committee on Delegated Legislation

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 on Delegated Legislation

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 |

Delegation's composition

The delegation of the visit to Lamu and Kilifi Counties comprised of the following Members:

- | | | |
|-----------------------------|---|--------|
| 1. Sen. (Dr.) Boni Khalwale | - | Member |
| 2. Sen. Daniel Karaba | - | Member |
| 3. Sen. Joy Gwendu | - | Member |
| 4. Sen. Godliver Omondi | - | Member |

Acknowledgement

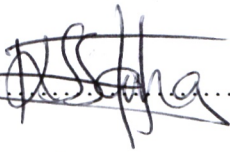
The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate in facilitating visits to Lamu and Kilifi Counties by the Sessional Committee on Delegated Legislation.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 214, to present the Report of the Sessional Committee on Delegated Legislation on County Visits to Lamu and Kilifi Counties.

Signed.....

Date.....



2/12/15

SEN. STEPHEN SANG,

CHAIRPERSON

SESSIONAL COMMITTEE ON DELEGATED LEGISLATION.

EXECUTIVE SUMMARY

This report documents the visit by the Senate Sessional Committee on Delegated Legislation to Lamu and Kilifi Counties between 1st and 4th June, 2015.

Chapter one of this report gives a background to the visits which was as a result of a resolution of the Senate Sessional Committee on Delegated Legislation at its 7th Sitting held on 5th May, 2015. The visits were undertaken in fulfillment of the Constitutional role of the Senate under Article 96 of the Constitution and in accordance with the Committee's annual work plan 2014/2015 which includes monitoring of counties, among other activities.

Chapter two documents activities undertaken by the Committee during the visit to Lamu County. The Committee held meetings with the Governor of Lamu and County Executive Committee Members of Lamu County. The Committee also met Members of its counterpart committee of the County Assembly of Lamu.

Chapter three documents activities undertaken by the Committee during the visit to Kilifi County. The Committee also held a meeting with the County Executive Members and members of its counterpart Committee of the County Assembly of Kilifi County.

Chapter four contains observations and recommendations made by the Committee as follows:

Observations:

1. Inadequate resource allocation to Counties

The Committee observed that despite the terrain and historical marginalization, Lamu County is allocated least amount of resources.

2. Lack of a legal basis for scrutiny of statutory instruments

There is no legal basis for the scrutiny of statutory instruments in the counties

3. Delays in publication of legislation

The committee was informed that the slow legislation process at the Counties is as result of delay of Bills at the Attorney Generals chamber. The counties also experience delays in the publication of legislations passed caused by the backlog at the National Government Printers.

4. Lack of structured public participation

Public participation in the legislative process at the county level is not well structured and costed. The committee was informed that public participation is very expensive exercise and to undertake it requires enough resources.

5. Lack of capacity

Members of the counterpart Committees of the County Assembly lacked the capacity to understand the technical mandate of the Committee. Further, the counties face capacity problems with regard to legislative drafting and informed the committee that due to the ceiling they are unable to recruit enough technical staff.

6. Lack of commitment

There is a failure of the Executive to develop or submit policy guidelines/statutory instruments to the County Assembly and more specifically to the relevant committees.

7. Welfare of Nominated Members

The Committee observed that nominated members of County Assemblies are not paid mileage allowance.

Recommendations

The Committee makes the following recommendations based on observations made during its visit to Lamu and Kilifi Counties:

1. The Senate to engage more with the Counties for capacity building.
2. The Counties to have a legal department with well trained personnel who have the prerequisite competence to handle technical aspects of legislation.

3. The Senate to fast-track legislation that will allow the creation of either two Government Attorneys for the two levels or County Attorneys.
4. The Senate to fast-track the legislation on County Government Printers to enable counties to publish their Bills. This will address the issue of backlog at the Government Printer.
5. The Commission on Revenue Allocation to make only recommendation so that the Senate while exercising its mandate will set the budget ceiling for the counties.
6. Welfare of members of County Assemblies improved especially that of Nominated Members who should also be paid mileage allowance.

CHAPTER ONE INTRODUCTION

The Senate Sessional Committee on Delegated Legislation is established pursuant to Standing Order 214 of the Senate Standing Orders and 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.

In the exercise of this mandate and in fulfilment of the Constitutional role of the Senate as provided for under Article 96 of the Constitution, the Committee in its Annual Work Plan 2015/2016 committed to undertake visits to various counties.

At its 7th Sitting held on 5th May, 2015, the Committee resolved to undertake county visits to Lamu and Kilifi counties between 1st and 4th June, 2015. The specific objectives of the meetings with Governors were to establish the following:

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

The specific objective of the meetings with the counterpart committees was to build the capacity of the Committee Members and to receive their submissions on the challenges faced and achievements made so far in the execution of their mandate.

CHAPTER TWO VISIT TO LAMU COUNTY

2.1 Meeting with Hon. Issa Timamy, Governor, County Government of Lamu

The meeting began with a round of introductions. The Governor then welcomed the Senate delegation to Lamu County. He informed the Committee that Lamu County received the least amount of resources as compared to other counties, for example Isiolo, whose governance structure was similar to that of Lamu. He further informed the Committee that one of the biggest challenges to service delivery was the terrain of the county. He observed that if the Governor wished to visit one of the far flung areas he may be precluded from doing so as the only available mode of transport are speed boats that have high fuel consumption.

He further observed that Lamu did not have any administrative infrastructure to support the devolved system of government and this had adversely affected the Executive's work. Indeed the Governor's office was to be found in his residence as he did not as yet have an office from which he could conduct official business. He also informed the Committee that there was no electricity supply in Lamu County except in Lamu town. Further, while information communication and technology enables the discharge of functions such as health, communication and revenue collection, Lamu does not have the northpick cable while other counties are implementing phase 2.

Lamu County had inherited a lot of staff from the defunct local authority and while the wage bill was staggering the county's revenue streams were limited as-

- (a) the tourism, fisheries and agriculture sector had been adversely affected by the Mpeketoni attacks. The curfew imposed after the attack had an adverse effect on the economy of Lamu and 2000 jobs were lost in the tourism sector alone;
- (b) there was no single industry operating in the county;
- (c) the only area that subject to the payment of rates was Lamu town.

The Governor, however, informed the Committee that despite the challenges the County Government of Lamu continues to strive to discharge its functions and in this regard he outlined the following-

- (1) During the 2014/2015 financial year the after the payment of salaries and recurring expenditure Lamu County only had 600 million shillings earmarked for development projects. He remarked that the county executive's relationship with the county assembly had various challenges in the first year of devolution. The county government's first budget was passed three months before the end of the respective financial year. The relationship has become better and subsequent budgets are likely to be passed in a timely manner;
- (2) Lamu county government had employed fifty (50) early childhood education teachers up from seven (7) teachers. He however noted that optimal number of ECD teachers would be three hundred (300). In this regard a member of the Senate Committee observed that with the passing of the County Early Childhood Education Bill, 2014 and the resolution of the pending court matter on the recruitment of ECD teachers, the matter of recruitment would be resolved. He further informed the Committee that the number of students who had attained 350 points and above in the Kenya Certificate of Primary Education had increased. Further students eligible for admission into university has increased to 90. This could be contrasted with the situation previously where for instance no student from Lamu East had ever qualified to be admitted to university. The impetus for this marked improvement in the education sector had been common exams funded by the county which had led to increased positive competition, training of teachers, provision of syllabi to schools that had none, the establishment of one-month achievers academies and extra classes to spur academic excellence. The County Government had also supplied books to the twenty-four (24) high schools in the county and established a reward system for best performing schools,

teachers and students. The county government was also supporting extra-curricular activities such as sports;

- (3) While Lamu County only had three (3) hospitals and other small dispensaries, the county government had nevertheless employed eighty (80) medical personnel. The county's health budget is 36% of the total budget in accordance with the Abuja declaration that recommends that 15% of governments' budget is earmarked for health. They were second only to Kwale which incidentally has a higher allocation. The number of deliveries at King Fahad hospital has increased exponentially.
- (4) The county government has tried to revive tourism and especially local tourism by organizing cultural festivals during which hotels have reported 80% capacity. The next festival is slated for 1st August, 2015. The county is therefore encouraged by the move by the Senate to insist that the allocation to counties be increased by 7 billion shillings.
- (5) Lamu county government was in the process of revamping the agricultural sector by leasing tractors to farmers, providing free maize seeds and subsidized fertilizer and building small granaries in preparation for the harvest. The County Government had also set up a training centre for farmers and had passed the Lamu County Fisheries Act. They were also providing nets and outboard machines to fishermen. The government had also constructed five (5) cattle dips and was planning on constructing a farmers' market near Witu. The government was also collecting pasture to be turned into hay for use in the dry season.
- (6) The County Government was in the process of revamping the only coal factory in the county in order to enable fishermen to store the fish. He acknowledged that even though coal is considered harmful to the environment it may be the only way that jobs will be created for the residents of Lamu.
- (7) The government has dug a number of boreholes and has bought desalination machines for Kiunga town.

- (8) The government has introduced a cashless system to forestall corruption and increase revenue collection.
- (9) Safaricom had agreed to put up 8 telecommunication towers to improve interconnectivity in the county.
- (10) The County Government has tried to bring back cohesion between the communities living in Lamu and it is hoped that the Lamu – South Sudan – Ethiopia Transport (LAPPSET) corridor project and the Amu power project will reverse the damage done to the economy. It is expected that the LAPPSET project will avail 5000 jobs in the construction phase alone.
- (11) The County Government is planning on constructing the county headquarters consisting of three storey steel structures at a cost of 180 million, and will be done in 6 months. The CRA has warned that monies allocated to counties cannot be used for such construction projects. The county government requires infrastructure to effectively discharge its functions. The IFMIS system also impedes efficacy.

In response to the foregoing, Senator Boni Khalwale, observed that the Senate realizes that as protector of counties it must visit the various counties to address issues of capacity building and accountability. He further observed that over the last two years Members of the County Assembly (MCAs) had begun to lose sight of their core mandate. This had resulted in calls by MCAs for funds to implement projects. The Senate therefore intended to guide MCAs to focus on their primary mandate of oversight and law making. He expressed the wishes of the Senate to see more legislation being passed by counties. In response to various queries raised by Senator Khalwale, the Governor outlined the following matters-

1. **Legislative Drafting Capacity:** The Executive arm of the County Government has a Director of Legal Services. Further, the Kenya Law Reform Commission (KLRC) had assisted in scrutinizing various legislative proposals that the Executive had developed for introduction in the Assembly. The Committee was

however informed that the Executive has cautioned itself against creating statutory bodies unnecessarily.

2. **Processing of Legislation:** The County Assembly of Lamu had passed the Finance Act, the Scholarships and Bursaries Act, the Fisheries Act and were in the process of considering the Flags and Emblems Bill. The Assembly had also passed the Polytechnics Act that the governor did not assent to. They have also passed an Act on their mortgages and car grants. The Executive had also developed policy guidelines under the Fisheries Act.
3. **Public participation:** The Committee was informed that the Executive arm of the Lamu County Government carries out intensive public participation. The Executive carries out public participation in all wards with respect to all its work including development projects and legislative proposals. This process however faces various challenges including the geography of Lamu and its negative effect on the accessibility of far flung islands especially in Lamu East. In such areas public participation is carried out at the village level. The Executive however has put in place mechanisms to ensure adequate public participation including the use of town criers to publicize public participation and the use of radio stations although signals may not be available in some of the islands. They also inform representatives of the national government and faith based organizations such as mosques. The Governor also holds public *barazas* at which the county executive committee members commit to undertake certain projects within a given time frame. In their assessment therefore the Executive has exceeded the requirements of the law.

It was further observed that public participation is useful as the residents make meaningful contributions. The Committee commended the Executive and observed that in certain counties the county government only engaged stakeholders amenable to their position during public participation.

4. **Publication of Statutory Instruments:** The Executive publishes at the Government Press and copies of the published documents are stored at county

government offices. The Governor expressed the view that presently it may not be economic to have printing machines in every county. There must be active assemblies to justify the establishment of county printers in each county. One of the reasons the laws take long to pass is because they have to be cleared by the Attorney General before publication. The Governor is trying to speed up this process by liaising with the KLRC on the technical and legal compliance of county laws.

The Committee expressed the intention of the Senate to take advantage of the power of the Senator to address a County Assembly as a means through which Senators can address MCAs on matters of good governance. The Chair was not aware of the circular from CRA proscribing the use of monies allocated to counties for the construction of administrative buildings for the county government. This issue has not been brought to the fore as many counties already have administrative structures in place.

He however opined that in light of the development projects Lamu was likely to be a financial hub on the same level as Nairobi, Mombasa and Kisumu and its population was also likely to rise. He went on to identify education, agriculture and health as the main sectors that must be devolved for devolution to work. In this regard the county government should be in charge of setting up infrastructure and national government should be in charge of setting standards, developing policy and control of professionals. He observed that the National Treasury could easily make available 50 billion shillings for additional allocation to counties.

A county executive committee member observed that resource mobilization in the implementation of the LAPSET and Lamu power project should involve the county government. For instance in the case of the establishment of the coal plant, the county government is expected to expand the roads even in light of limited revenue streams. There must be a consensus *ad idem* between Senators and Governors and take advantage of speaking with a united voice.

The Committee was also informed that the views of the county were not taken into consideration when purchasing specialized medical equipment. The county does not have medical specialists and therefore the use of the specialized equipment may not be optimal. The Committee informed the meeting that the Senate Committee on Finance, Commerce and Budget was inquiring into the matter of the procuring of the specialized health equipment. The Committee advised the Governor to accept the equipment once the national government has capacitated the county government to use the equipment.

The Committee was further informed that formula used for allocation of revenue did not take into account the geographical peculiarities of certain counties. For instance while the population of Lamu East is low the difficulties in accessing the East makes service delivery very costly. The county further needs to be consulted on the setting of the ceilings. The Executive arm of the county government of Lamu also expressed concerns that the Commission for Revenue Allocation has increased the ceilings for the salaries of the MCAs from Ksh.155,000 to 305,000. The Chair assured the executives that the matter was currently being considered by the Senate Committee on Finance, Commerce and Budget. He advised that these issues may also be brought to the attention of the Senate through the Speaker of the Senate, Petitions to Parliament and engaging with the relevant committees of the Senate. He also noted that Senator Abu Chiaba, the Senator for Lamu County spearheaded the reconsideration of the second generation revenue sharing formula.

2.2 Meeting with the Members of the counterpart committee of the County

Assembly of Lamu

The Senate Committee met with the members of the Lamu County Assembly Committee on Delegated Legislation represented by Hon. Johanna Karanja, Hon. Amina Khale, Hon. Edith, Hon. Khadija Hamid and Hon. Abbas.

The session was opened by the Senate Leader of Delegation, Sen. Khalwale communicating his condolences for the Mpeketoni attack. He then begun his address by informing the members of the meeting that the Senate Committee on Delegated

Legislation was cognizant of the fact that the mandate of a Committee on Delegated legislation is complex and in this regard he gave a brief exposition of the process of the making and scrutiny of subsidiary legislation.

He begun by appreciating that when a law is made not all matters relating to the area the law is dealing with will be taken into account in the statute. The implementers of the law therefore may give further effect to the law through the making of rules, regulations and other statutory instruments. He also noted that statutory instruments may be used to ensure the economic development of the residents of the county by creating the conditions necessary for job creation to benefit local residents.

The Statutory Instruments Act, 2013 provides a framework for the development of subsidiary legislation that is in conformity with the Constitution. He further explained that at the national level, once Parliament passes a law, the Cabinet Secretary in charge of its implementation may develop subsidiary legislation under that law of which he is required to table such subsidiary legislation for approval by Parliament. There are therefore three important things to remember when considering subsidiary legislation. These are whether the subsidiary legislation-

- (a) is in conformity with the Constitution;
- (b) is in conformity with the enabling Act; and
- (c) was taken through Public participation by the regulation making authority.

A member of the Lamu County Assembly Committee on Delegated Legislation expressed that the Committee is conversant with its mandate with respect to the scrutiny of statutory instruments. For instance the Lamu Committee had been required to scrutinize certain subsidiary legislation under the Lamu County Fisheries Act and the Scholarships and Bursaries Fund. The meeting was informed that some of the challenges are that Lamu County Assembly does not have legal officers at to assist in scrutinizing statutory instruments. The Committee also requires capacity building in this area. The

Committee however has not carried out any public participation on statutory instruments that it has scrutinized.

The leader of the delegation from the Senate impressed upon the meeting the importance of public participation in ensuring that laws take into account the peculiarities of different regions of the country. He however clarified that the mandate of the Committee on Delegated Legislation was to interrogate whether the regulation making authority had carried out adequate public participation.

A member of the Lamu County Assembly inquired as to whether the Ward Development Fund may be used for development projects in the counties. The leader of the Senate delegation clarified that the Constitution is premised on the doctrine of separation of powers and the function of budget implementation is the purview of the Executive while Legislatures carry out oversight of the implementers.

A member of the Lamu County Assembly also inquired as to how does the CRA determines the allocation of monies from the Equalization Fund to marginalized counties. The leader of the Senate delegation explained that the money allocated by CRA totaled 6.5 billion deposited in the Equalization Fund account. Disbursement of the money was however yet to be done as a Board for the management of the Fund is required to be set up. However the Fund may only be used for the development of water, roads, health facilities and electricity in accordance with Article 204(2) of the Constitution.

In response to question raised on the requirement of section 114(2) of the County Governments Act requiring that nationally significant projects in a county be considered and approved or rejected by the county assembly, the leader of the Senate delegation cautioned the members that unless the project had gone through the requisite procurement processes, the project may be lawfully terminated. An attendant consequence of non-compliance with the procurement process may be grounds for the removal of a public or state officer from office.

The Senate Committee informed the Members of the County Assembly that the Senate would propose that monies earmarked for use by the County Assembly to be at the direct disposal of the Assembly as opposed to the present situation where the Governor assigns funds to the county assembly for use. He further noted that Lamu had to position itself to benefit from the LAPSSET project. This includes investing in education in order to position the youth for job opportunities that are likely to arise.

CHAPTER THREE

VISIT TO KILIFI COUNTY

3.1 Meeting with the County Executive, County Government of Kilifi

The Senate Committee on Delegated Legislation met with Members of the Executive arm of the County Government of Kilifi. The Committee was informed that the Governor was away on official duty while the Deputy Governor had been involved in accident and was recuperating. The Committee informed the county executive committee members that the Committee would be paying a visit to the County Assembly of Kilifi the next day. The Committee however looked forward to meeting the duly constituted executive including the Governor and Deputy Governor at a later date.

Senators Godliver Omondi expressed the need to have public offices accessible to persons with disabilities as it is a requirement of both domestic and international law. The Member reiterated that the right to access buildings is a human right for persons with disabilities guaranteed under the Constitution.

The Committee inquired as to whether the Governor had been available to meet other Committees of the Senate. A representative of the Executive indicated that the Governor had met the Committee on Implementation of the Senate. The leader of the Senate delegation observed that the county legislature needs to be strengthened in order to ensure that the projects proposed by the county executive are implemented through the putting in place of laws.

3.2 Meeting with the Members of the counterpart committee of the County Assembly of Kilifi

Mr. Mkare Jefwa, the Clerk of Kilifi County received and welcomed the delegation to the Assembly and facilitated a tour of the ongoing construction and refurbishment of the County Assembly of Kilifi chambers and administrative offices. The meeting with the

Kilifi Committee was attended by Mr. Theophilus Fondo, the – Chairperson of the Committee on Delegated Legislation, Ms. Elizabeth Muthoka the Vice-Chairperson and other members of the Committee.

The leader of the Senate delegation explained that the Senate had realized that County Assemblies were facing a number of challenges and had resolved to address these challenges through the various committees of the Senate. He informed the meeting that the Committee on Delegated Legislation in particular was concerned mainly with the issue of subsidiary legislation which is a complex and unique type of legislation. The Statutory Instruments Act, 2013 provides for the process of making and approval of subsidiary legislation so as to operationalize an Act of Parliament or County Legislation. He informed the meeting that once the Executive develops subsidiary legislation it is required to bring them before the County Assembly for interrogation as to whether the particular instrument is compliant with the constitution and the enabling Act. The Committee then has the option to either annul the subsidiary legislation in its entirety or a part of it or approve. It is also paramount that the Committee establishes that the regulation making authority carried out sufficient public participation in developing the subsidiary legislation within the framework set out under the Act.

A Member of the Kilifi Committee inquired as to the position of laws passed by the County Assembly that may be contrary to an Act of Parliament. The leader of the Senate delegation informed the meeting that was a hierarchy of laws in which the Constitution is supreme. Article 191 of the Constitution further provides for the application of national legislation in areas where uniform law is required. The County Assembly must therefore ensure that the legislation at the counties is consistent with the Constitution and the general legal framework.

A member of the Kilifi Committee further inquired as to how the County Assembly could ensure that the Executive develops subsidiary legislation. The leader of the Senate delegation proposed that the County Assembly could use the Leader of Majority as a link

to the Executive in determining when the Executive intends to develop and table subsidiary legislation.

The Kilifi Committee informed the Senate Committee was yet to receive any statutory instrument for scrutiny despite the passage of the following Acts of the Kilifi County Assembly-

- a) Ward Scholarship Fund Administration Act
- b) Coconut Act
- c) Tax Waiver Act
- d) Revenue Administration Act
- e) Emblems and Symbols; and
- f) The Order of Precedence and Protocol Act.

The Kilifi Committee identified the following challenges to the discharge of their mandate-

- (a) inadequate capacity of the members and staff of the Committee on Delegated Legislation;
- (b) failure by the Executive to develop and to submit statutory instruments;
- (c) the County Assembly had legal researchers but did not enjoy the services of a legal draftsman;
- (d) inadequate funds due to the ceilings imposed by the CRA; and
- (e) membership and service to the different committees of the Assembly.

The leader of the Senate delegation congratulated the Assembly for their legislative business. The Clerk was urged to make available adequate resources and build the capacity of the Committee to carry out its mandate. In this regard the Clerk and the Speaker of Kilifi County Assembly were urged to work closely with the Senate to build the capacity of the Members of the County Assembly in carrying out its mandate. Local and international benchmarking trips may be made to appropriate destinations with similar laws and governance structures.

On the issue of lack of resources due to ceilings the leader of the Senate delegation indicated that ceilings are a necessary part of prudent budgeting for resources. However he expressed concerns that the CRA may have over stepped its mandate in communicating directly to County Assemblies. He clarified that CRA was mandated to make its recommendations to the Senate for adoption with or without amendments. He further expressed concerns that the ceilings set may not have been equitable. For instances there are certain County Assemblies that are larger than the Senate and further the needs of counties are diverse and all these factors should be taken into account in determining the ceilings. The leader of the Senate delegation indicated that the Senate and County Assemblies Forum were working together to ensure that County Assemblies had adequate resources to function. A member of the Senate delegation reiterated that counties must capitalize on their strengths while they deal with their challenges and it should be remembered that devolution is not an event but a process.

The Speaker of the County Assembly Kilifi, Hon. Jimmy Kahindi confirmed that by a circular the Commission on Revenue Allocation had proscribed the use of monies allocated to the counties for capital expenditure such as the putting up of administrative offices and had directed that the monies should be used for health and education. He explained that the circular adversely affected projects that had already been started by the County Assembly for setting up administrative infrastructure which is necessary for the functioning of county assemblies.

The leader of the Senate delegation urged the Speaker to make use of the various devolution structures to petition the Senate on the matter. He informed the members that the Senate had approved the establishment of adequate infrastructure for county governments and their headquarters including the Governor's office and offices for members of the county assemblies. Indeed he observed that in other countries, used as a blue print for devolution by Kenya, devolved units of government had better facilities than central government.

He further observed that devolved government must be given the opportunity to be autonomous. Devolution works because the officers in the county government are not only professionals but are also personally invested in the success of the counties that they serve because more often than not they work in their home counties.

The Senate Committee was also informed that the Kilifi County Assembly has inadequate members of staff and this has affected the efficiency and effectiveness of the County Assembly. This problem has been further compounded by the fact that CRA has not authorized the release of funds for recruitment of staff. The Speaker of Kilifi County Assembly therefore requested that once the recruitment was done the new staff could undergo an attachment with the staff of the Senate to develop their capacity. He however added that a big part of their budget is geared towards oversight. In response to this the leader of the Senate delegation informed the meeting that the CRA should only make recommendations and not purport to direct the County Assembly as to how it should use its funds.

The Clerk of the County Assembly further indicated that the County Assembly had come to a stalemate because of lack of funds. The leader of the Senate delegation indicated that in the next financial year the budgets of County Assemblies would be autonomous from that of the County Executive to safeguard the Assemblies' role of oversight. He compared the current situation to the National Assembly's dependence on the Executive which proved to be untenable and led to the establishment of an independent Parliamentary Service Commission with its own budget.

On the issue of publication of legislative and other instruments, the Speaker of Kilifi County Assembly noted that publication of documents was problematic and there are several documents awaiting publication. This situation had necessitated sending the Director of Legal Services to the Government Press in Nairobi to follow up on the publication of documents. He opined that to overcoming this challenge could mean the expansion of the capacity of the Government Press. He however expressed reservation as in his assessment the counties that are further from Nairobi face the greatest challenges.

To deal with this he proposed that counties be lumped into regions and share the services of one printing press.

A member of the Kilifi County inquired as to whether there were specific instruments that the Committee on Delegated Legislation of the Senate scrutinizes. In response the meeting was informed that there were numerous statutory instruments developed by the national Executive to give further effect to legislation and all these subsidiary legislation must be scrutinized by the Committee on Delegated Legislation.

CHAPTER FOUR OBSERVATIONS AND RECOMMENDATIONS

Observations

Following the meetings held, the Committee observed the following:

8. Inadequate resource allocation to Counties

The Committee observed that despite the terrain and historical marginalization, Lamu County is allocated least amount of resources.

9. Lack of a legal basis for scrutiny of statutory instruments

There is no legal basis for the scrutiny of statutory instruments in the counties

10. Delays in publication of legislation

The committee was informed that the slow legislation process at the Counties is as result of delay of Bills at the Attorney Generals chamber. The counties also experience delays in the publication of legislations passed caused by the backlog at the National Government Printers.

11. Lack of structured public participation

Public participation in the legislative process at the county level is not well structured and costed. The committee was informed that public participation is very expensive exercise and to undertake it requires enough resources.

12. Lack of capacity

Members of the counterpart Committees of the County Assembly lacked the capacity to understand the technical mandate of the Committee. Further, the counties face capacity problems with regard to legislative drafting and informed the committee that due to the ceiling they are unable to recruit enough technical staff.

13. Lack of commitment

There is a failure of the Executive to develop or submit policy guidelines/statutory instruments to the County Assembly and more specifically to the relevant committees.

14. Welfare of Nominated Members

The Committee observed that nominated members of County Assemblies are not paid mileage allowance.

Recommendations

The Committee makes the following recommendations based on the above observations:

1. The Senate to engage more with the Counties for capacity building.
2. The Counties to have a legal department with well trained personnel who have the prerequisite competence to handle technical aspects of legislation.
3. The Senate to fast-track legislation that will allow the creation of either two Government Attorneys for the two levels or County Attorneys.
4. The Senate to fast-track the legislation on County Government Printers to enable counties to publish their Bills. This will address the issue of backlog at the Government Printer.
5. The Commission on Revenue Allocation to make only recommendation so that the Senate while exercising its mandate will set the budget ceiling for the counties.
6. Welfare of members of County Assemblies improved especially that of Nominated Members who should also be paid mileage allowance.

APPENDICES

REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

VISITS TO LAMU AND KILIFI COUNTIES

TUESDAY 2ND JUNE TO FRIDAY 5TH JUNE, 2015

PROGRAMME

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

JUNE, 2015

Day 1: TUESDAY 2ND JUNE, 2015

10.15 a.m.	Departure for Lamu
1.00 p.m.	Check in at the Majlis Resort and Lunch
2.30 – 4.00p.m.	Meeting with the Governor, Lamu County

Day 2: WEDNESDAY 3RD JUNE, 2015

9.00 - 10.30 a.m.	Meeting with the counterpart Committee of the County Assembly of Lamu
11.45 a.m.	Departure for Malindi
1.00 – 2.00p.m	Check-in and lunch at Medina Palms, Watamu
2.00 p.m.	Departure for Kilifi
3.00 - 4.00 p.m.	Meeting with the Governor, Kilifi County (Kilifi Town)

Day 3: THURSDAY 4TH JUNE, 2015

9.00 a.m.	Meeting with the counterpart Committee of the County Assembly of Kilifi (Malindi Town)
1.00 – 2.00 p.m.	Lunch
2.00 – 4.00 p.m.	Consideration and adoption of committee reports

Day 4: FRIDAY 5TH JUNE, 2015

Departure for Nairobi

END OF PROGRAMME

Programme Coordinator:

Ms. Carol Namunyak – Clerk Assistant- 0717488917

Rapporteurs:

Mr. Said Osman – Research Officer - 0723819581

**MINUTES OF THE 7TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION HELD ON TUESDAY, 5TH MAY, 2015 AT 9.00 A.M. IN
THE 2ND FLOOR BOARDROOM, KICC**

PRESENT

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

IN ATTENDANCE

- | | |
|--------------------------|----------------------------------|
| 1. Ms. Josephine Kusinyi | SENATE
- Legal Counsel |
| 2. Ms. Beatrice Kapei | - Legal Counsel |
| 3. Ms. Carol Kirorei | - Committee Clerk |

MIN. NO. 66/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 11.20 a.m. followed by a word of prayer.

MIN. NO. 67/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Gwendu and seconded by Sen. Mbura

MIN. NO. 68/2015

- CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 4th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Godliver and seconded by Sen. Juma Boy.

- ii. The minutes of the 6th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Chelule and seconded by Sen. Karaba.

MIN. NO. 69/2015 - CONSIDERATION OF THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF MOTORCYCLES) REGULATIONS, NTSA (OPERATION OF TOURIST SERVICE VEHICLES) REGULATIONS, 2015, THE TRAFFIC AMENDMENT RULES, 2015 AND THE DRAFT KENYA INFORMATION AND COMMUNICATIONS (REGISTRATION OF SIM-CARDS) REGULATIONS, 2015

Ms. Kusinyi gave a brief to Members on the National Transport and Safety Authority (Operation of Motor Cycles) Regulations, 2015 considered at the previous meeting. Ms. Kapei then took Members through the National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 and the Traffic (Amendment) Rules 2015.

The key provisions of the Traffic (Amendment) Rules 2015 were summarized as follows:

1. Regulation 86A. (2) Provides that public service vehicles should operate on a commuter service route that has been determined by the Authority.
2. Regulation 86A. (3) Puts a condition to granting of a license by the Authority. The public service vehicles have to conform to prescribed construction standards as set out in the rules. Construction standard of KS.372:2014.
3. Regulation 86A(6) Requires that the public service vehicles shall display on real time the number of passengers on board on real time basis on an electronic screen on the front and rear of the vehicle.
4. Regulation 86A (8) Exempts standing passengers in public service vehicles from rule 22. From the reading it is not clear what rule 22 is on.
5. Regulation 86A (10) provides for penalties. An operator who contravenes the provisions of paragraph 9 commits an offence under the regulation and is liable upon conviction to

(a) first offence to a fine of five thousand shillings for each passenger in excess of the licensed capacity and

(b) for a second offence and subsequent offence to revocation or suspension of the license by the Authority.

She noted the following drafting issues in the Regulations:

1. Regulation 86A (2) does not outline the commuter routes and the license issued by the Authority fails to state the number of sitting and standing passengers.
2. Regulation 86A (3) is not clear on the requirement that public service vehicles comply to the prescribed construction standards of KS372:2014.
3. Regulation 86A (4) is not clear on the requirement to indicate on the license the maximum number of sitting and standing passengers, on whether this will be a different class of license as well as the cost implications.
4. Regulation 86A (6) does not state the system that will reconcile the number of passengers on board a public service vehicle at all times. Similarly the requirement that the number of passengers to be displayed is not elaborated and how such a system is to be installed.
5. Regulation 86A (8) makes reference to Rule 22. It is not immediately clear what rule 22 is about until reference is made to the previous regulations. The rule is not clear that the requirement is on the use of seat belts by passengers.

The key provisions of the National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 were summarized as follows:

1. Regulation 5(1) sets out the requirements and conditions to be met by an applicant.
2. A valid license issued by the Tourism Regulatory Authority is required for one to operate a tourist service vehicle. The rules require that an application for a license is made in a prescribed form and accompanied with a prescribed fee as set out in the first schedule.

3. Conditions to be met by applicant are set out as follows-
- (a) have a valid tour operator license issued by the Tourism Regulatory Authority;
 - (b) have in place a code of conduct approved by the Authority, this code is to govern its employees, agents and subcontractors;
 - (c) have in place a documented management system, safety management system based on road traffic safety management system or equivalent and customer complaint handling system;
 - (d) comply with labor laws and regulations including those relating to statutory deductions, health, safety of the workplace, work injuries Benefits Act, insurance statutory leave days and written contract of employment for staff ;
 - (e) subscribe to an accident and emergency mutual aid system.
4. Regulation 7 sets out the documents every operator of a licensed tour operator should have in place-
- (a) the requirement to have in place a fleet or outsource of management system capable of recording speed and location of the vehicle. This system needs to be elaborated and operators given guidelines on what kind of system they should be installing or outsourcing;
 - (b) subscribe to a data storage system capable of storing data on vehicle speed and location and operation for a period of thirty days;
 - (c) provide the data stored in (b) to the Authority before the expiry of the prescribed storage period;
 - (d) in case of any accident resulting in a fatality, submit an investigation report to the Authority within fourteen days containing details of the driver, passengers ,time of accident, probable cause and corrective measure undertaken;
 - (e) boldly display on a conspicuous place on the vehicle an identification mark approved by the Authority;
 - (f) except for private car hire, boldly display on the vehicle the name of the company under which the vehicle operates ;and
 - (g) maintain a passenger manifest

The following drafting issues were noted:

1. Regulation 5(2)(a) does not state the mandatory requirements to be complied with or provide a period within which the applicant should comply with the requirements.
2. Regulation 5(2)(b) does not state the stipulated period needed for compliance before the issuance of a conditional license.
3. Regulation 7 is not clear on the data storage system and the specification.

Members resolved to invite the Cabinet Secretary, Ministry of Transport and Infrastructure to a meeting on Tuesday, 12th May, 2015, to discuss the concerns raised on the Regulations.

Ms. Kusinyi then took Members through the draft Kenya Information and Communications (Registration of Sim-Cards) Regulations, 2015 as follows:

1. Regulation 4(2) provides that only telecommunications operators or their agents shall be allowed to sell sim-cards. The operator is obligated to submit to the Communications Authority of Kenya, on a quarterly basis, a record of all its agents, sim-cards sold, registered subscribers[4(4)(a)], deactivated and suspended subscribers[15(7)].
2. A minor upon attaining the age of majority is required to register his/her personal details within ninety days to avoid suspension of telecommunication services [8(4)].
3. In terms of penalties, Regulation 12 states that a person who commits an offence under the Regulations shall, on conviction be liable to a fine not exceeding 300,000/= or imprisonment not exceeding six months or both.

4. A subscriber registered before commencement of the Regulations is required to fulfill requirements contained therein within six months to avoid disconnection of services. On the other hand, unregistered subscribers are required to comply within thirty days to avoid disconnection.

The following drafting issues were highlighted:

1. The Regulations are enacted pursuant to Section 27(2)(gg) & (h) and not 27D as stated.
2. Regulation 5(1)(l) needs to be clarified further by adding a corporate body as well, as it gives an assumption that only statutory bodies will be require a letter from the CEO before registration.
3. Regulation 6(2)(e)(ii), realignment of the words at one least partner, to at least one partner & 6(2)(e) (iii), there should be more clarity on what legislation or gazette notice is required.
4. Regulation 7(1), the Form in the Schedule is not marked A, the letter A may be deleted, as it's the only form in the Schedule.
5. Regulation 15(2), refers to the wrong paragraph, the 14(1)(c), should be 15(1)(c).
6. Regulation 18 should refer to the 2014 Regulations, as the 2013 Regulations had already been revoked by Legal Notice No. 10 of 2014.
7. In the Schedule, the use of the term mentally handicapped at (i) and (k) should be deleted and a more friendly term such as persons with disabilities that may hinder them from

undertaking the registration process, be adopted. This will also ensure that persons with other severe disabilities (blind, maimed) are covered.

8. In (l) still under the Schedule reference should be made to (j) and not (i).
9. The Authority could consider adding a requirement on the agent's details in the Schedule, which could assist in records in terms of keeping a tab on rogue agents.

The Committee resolved to communicate the drafting issues noted to the Communication Authority of Kenya before the publication of the final Regulations.

MIN. NO. 70/2015

-ANY OTHER BUSINESS

i. Regulations

Members were informed that the Basic Education Regulations, 2015 and the Tobacco Control regulations had been tabled in the House.

Members resolved to consider the Regulations on Thursday, 7th May, 2015. Further, in light of the public discourse on the Regulations, the Committee, resolved to invite stakeholders in the education and tobacco sectors, on Thursday 14th May, and Thursday, 21st May respectively, to give their submissions on the Regulations.

ii. County Visits and meetings with Counties

Members resolved to undertake county visits to Lamu and Kilifi Counties between 31st May and 3rd June, 2015. The Secretariat was tasked to summarize the counties visited and engaged through meetings with the Committee, and those pending by the next meeting.

MIN. NO. 71/2015

-DATE OF NEXT MEETING

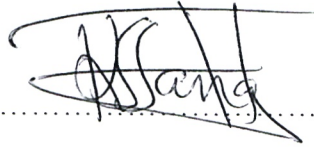
The next meeting would be on Thursday, 7th May, 2015.

MIN. NO. 72/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 10.30 a.m.

SIGNED:

A handwritten signature in black ink, appearing to read 'A. Sang', is written over a horizontal dotted line.

(CHAIRPERSON)

DATE:

26/05/2015

**MINUTES OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
WITH THE GOVERNOR OF LAMU COUNTY HELD ON 2ND JUNE, 2015 AT 2.30 P.M
IN THE GOVERNOR'S OFFICE, LAMU**

PRESENT

1. Sen. (Dr.) Boni Khalwale (Ag. Chairperson)
2. Sen. Joy Gwendo
3. Sen. Daniel Karaba

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
2. Sen. Judith Sijeny - Vice-Chairperson
3. Sen. Godliver Omondi
4. Sen. Liza Chelule
5. Sen. Emma Mbura
6. Sen. Boy Juma Boy

IN ATTENDANCE

1. H.E. Hon. Issa Timamy
2. Mr. Ahmed Albeity
3. Ms. Grace Mburu
4. Ms. Amina Masoud
5. Dr. Kombo Mohamed

LAMU COUNTY GOVERNMENT

- Governor, Lamu County
- CEC, Finance
- CEC, Information and Communication
- CEC, Lands
- CEC, Health

IN ATTENDANCE

1. Ms. Lucy Radoli
2. Ms. Carol Kirorei
3. Mr. Said Osman

SENATE

- Legal Counsel
- Committee Clerk
- Research Officer

MIN. NO. 01/LK/2015

- PRELIMINARIES

The Chairperson thanked the Governor for hosting the Committee. He then led in a self-introductory session. The Governor welcomed the Senate delegation to Lamu County and noted that it was the first time a visiting Committee had requested to meet with the CEC Members; adding that this would enrich the deliberations.

MIN. NO. 02/LK/2015

**- MEETING WITH THE GOVERNOR, LAMU
COUNTY**

H.E. Governor Issa Timamy gave a summary of the challenges facing his government as follows-

1. Lamu County received the least amount of resources as compared to other counties, for example Isiolo, whose governance structure was similar to that of Lamu.
2. A major challenge to service delivery was the terrain of the county. He observed that if the Governor wished to visit one of the far flung areas he may be precluded from doing so as the only available mode of transport are speedboats that have high fuel consumption.
3. Lamu did not have any administrative infrastructure to support the devolved system of government and this had adversely affected the Executive's work. Indeed the Governor's office was to be found in his official residence as he did not as yet have an office from which he could conduct official business.
4. There was no electricity supply in Lamu County except in Lamu town.
5. While information communication technology is enables the discharge of functions such as health, communication and revenue collection, Lamu does not have the northpick cable while other counties are implementing phase 2.

6. Lamu County had inherited a lot of staff from the defunct local authority and while the wage bill was staggering the county's revenue streams were limited as
 - (a) the tourism, fisheries and agriculture sector had been adversely affected by the Mpeketoni attacks. The curfew imposed after the attack had an adverse effect on the economy of Lamu and 2000 jobs were lost in the tourism sector alone;
 - (b) there was no single industry operating in the county;
 - (c) the only area that subject to the payment of rates was Lamu town.

The Governor, however, informed the Committee that despite the challenges the County Government of Lamu continued to strive to discharge its functions. He highlighted the strides made by his government summarized below-

1. Lamu county government had employed fifty (50) early childhood education teachers up from seven (7) teachers. He however noted that optimal number of ECD teachers would be three hundred (300).
2. The number of students who had attained 350 points and above in the Kenya Certificate of Primary Education had increased. Further students eligible for admission into university has increased to 90. The impetus for this marked improvement in the education sector had been common exams funded by the county which had led to increased positive competition, training of teachers, provision of syllabi to schools that had none, the establishment of one-month achievers academies and extra classes to spur academic excellence.
3. The County Government had also supplied books to the twenty-four (24) high schools in the county and established a reward system for best performing schools, teachers and

students. The county government was also supporting extra-curricular activities such as sports;

4. The county government had employed eighty (80) medical personnel. The county's health budget is 36% of the total budget in accordance with the Abuja declaration that recommends that 15% of governments' budget is earmarked for health. Further, the number of deliveries at King Fahad hospital has increased exponentially.
5. The county government has attempted to revive tourism and especially local tourism by organizing cultural festivals during which hotels have reported 80% capacity. The next festival is slated for 1st August, 2015.
6. Lamu county government was in the process of revamping the agricultural sector by leasing tractors to farmers, providing free maize seeds and subsidized fertilizer and building small granaries in preparation for the harvest. The County Government had also set up a training centre for farmers and had passed the Lamu County Fisheries Act. They were also providing nets and outboard machines to fishermen. The government had also constructed five (5) cattle dips and was planning on constructing a farmers' market near Witu. The government was also collecting pasture to be turned into hay for use in the dry season.
7. The County Government was in the process of revamping the only coal factory in the county in order to enable fishermen to store the fish.
8. The government has dug a number of boreholes and has bought desalination machines for Kiunga town.
9. The government has introduced a cashless system to forestall corruption and increase revenue collection.

10. Safaricom had agreed to put up 8 telecommunication towers to improve interconnectivity in the county.
11. The County Government has tried to bring back cohesion between the communities living in Lamu and it is hoped that the Lamu – South Sudan – Ethiopia Transport (LAPPSET) corridor project and the Amu power project will reverse the damage done to the economy.
12. The county government is planning on constructing the county headquarters consisting of three storey steel structures at a cost of 180 million, and will be done in 6 months.

Following deliberations, it was agreed as follows:

1. The Senate as protector of counties would visit the various counties for purposes of capacity building of Members of the County Assembly (MCAs) on their mandate of oversight and law making.
2. There was need to improve the legislative drafting capacity of the county.
3. Public participation is a crucial component of governance. The meeting was informed that the Executive has put in place mechanisms to ensure adequate public participation including the use of town criers to publicize public participation and the use of radio stations although signals may not be available in some of the islands. They also inform representatives of the national government and faith based organizations such as mosques. The Governor also holds public *barazas* at which the county executive committee members commit to undertake certain projects within a given time frame.
4. It may not be economic to have printing machines in every county as proposed in the County Government Printers Bill currently in the Senate.

5. There is need for the Senators to make use of provisions of the Standing Orders to address a County Assembly as a means through which Senators can address MCAs on matters of good governance.
6. Resource mobilization in the implementation of the LAPSSET and Amu power project should involve the county government. For instance in the case of the establishment of the coal plant, the county government is expected to expand the roads even in light of limited revenue streams.
7. There must be a consensus ad idem between Senators and Governors and take advantage of speaking with a united voice.
8. There is need to incorporate the views of the county when purchasing specialized medical equipment. The county does not have medical specialist and therefore the use of the specialized equipment may not be optimal.
9. The formula used for allocation of revenue needs to take into account the geographical peculiarities of certain counties. For instance while the population of Lamu East is low the difficulties in accessing the East makes service delivery very costly. The county further needs to be consulted on the setting of the ceilings.

MIN. NO. 03/LK/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 10.15 a.m.

SIGNED:



(CHAIRPERSON)

DATE:

12/11/15

**MINUTES OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
WITH THE COUNTERPART COMMITTEE OF THE COUNTY ASSEMBLY OF LAMU
HELD ON 3RD JUNE, 2015 AT 9.30 A.M. IN AT THE KENYA PORTS AUTHORITY
OFFICES, LAMU**

PRESENT

1. Sen. (Dr.) Boni Khalwale (Ag. Chairperson)
2. Sen. Joy Gwendu
3. Sen. Daniel Karaba

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
2. Sen. Judith Sijeny - Vice-Chairperson
3. Sen. Godliver Omondi
4. Sen. Liza Chelule
5. Sen. Emma Mbura
6. Sen. Boy Juma Boy

IN ATTENDANCE

1. Hon. Amina Khali
2. Hon. Johanne Karanja
3. Hon. Fatma Adhnan
4. Hon. Abbass
5. Dr. Kombo Mohamed

COUNTY ASSEMBLY OF LAMU

- Vice-Chairperson
- Member
- Member
- Member
- Member

IN ATTENDANCE

1. Ms. Lucy Radoli
2. Ms. Carol Kirorei
3. Mr. Said Osman

SENATE

- Legal Counsel
- Committee Clerk
- Research Officer

The Vice-Chairperson of the counterpart committee of the County Assembly of Lamu welcomed Senators to the meeting. She then led in a self-introductory session Members

COMMITTEE ON DELEGATED LEGISLATION

The Leader of the Senate Delegation, Sen. Boni Khalwale stated the following-

1. The mandate of a Committee on Delegated legislation is complex
2. When a law is made not all matters relating to the area the law is dealing with will be taken into account in the statute. The implementers of the law therefore may give further effect to the law through the making of rules, regulations and other statutory instruments.
3. The Statutory Instruments Act, 2013 provides a framework for the development of subsidiary legislation that is in conformity with the Constitution.
4. Once Parliament passes a law, the Cabinet Secretary in charge of its implementation may develop subsidiary legislation under that law of which he is required to table such subsidiary legislation for approval by Parliament.

Members of the County Assembly of Lamu stated the following-

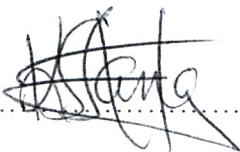
1. The Lamu County Assembly Committee on Delegated Legislation is conversant with its mandate with respect to the scrutiny of statutory instruments. For instance the Lamu Committee had been required to scrutinize certain subsidiary legislation under the Lamu County Fisheries Act and the Scholarships and Bursaries Fund.
2. The Lamu County Assembly does not have legal officers at to assist in scrutinizing statutory instruments.
3. The Committee requires capacity building.

Following deliberations the following emerged-

1. A member of the Lamu County Assembly inquired as to whether the Ward Development Fund may be used for development projects in the counties. The Constitution is premised on the doctrine of separation of powers and the function of budget implementation is the purview of the Executive while Legislatures carry out oversight of the implementers.
2. The money allocated by CRA totaled 6.5 billion deposited in the Equalization Fund account. Disbursement of the money was however yet to be done as a Board for the management of the Fund is required to be set up. However the Fund may only be used for the development of water, roads, health facilities and electricity in accordance with Article 204(2) of the Constitution.
3. An attendant consequence of non-compliance with the procurement process may be grounds for the removal of a public or state officer from office.
4. The Senate would propose that monies earmarked for use by the County Assembly to be at the direct disposal of the Assembly as opposed to the present situation where the Governor assigns funds to the county assembly for use.
5. Lamu had to position itself to benefit from the LAPSSET project. This includes investing in education in order to position the youth for job opportunities that are likely to arise.

There being no other business, the meeting was adjourned at 10.15 a.m.

SIGNED:

A handwritten signature in black ink, appearing to be "K. G. G.", written over a horizontal dotted line.

(CHAIRPERSON)

DATE:

12/11/15

**MINUTES OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
WITH THE COUNTERPART COMMITTEE OF THE COUNTY ^{GOVERNMENT} ASSEMBLY OF KILIFI
HELD ON 3RD JUNE, 2015 AT 4.30 P.M AT THE COUNTY GOVERNMENT OF KILIFI
OFFICES, KILIFI**

PRESENT

1. Sen. (Dr.) Boni Khalwale (Ag. Chairperson)
2. Sen. Joy Gwendo
3. Sen. Daniel Karaba
4. Sen. Godliver Omondi

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
2. Sen. Judith Sijeny - Vice-Chairperson
3. Sen. Liza Chelule
4. Sen. Emma Mbura
5. Sen. Boy Juma Boy

IN ATTENDANCE

1. Mr. John Harrold
2. Ms. Salma Ahamed
and Social Services
3. Gideon Saburi
e-Government
4. Mr. Owen Baya

COUNTY GOVERNMENT OF LAMU

- CEC Member, Finance and Economic Planning
- CEC Member, Education, Youth Affairs, Culture
- CEC Member, Information, Communication and
- County Secretary

IN ATTENDANCE

1. Ms. Lucy Radoli
2. Ms. Carol Kirorei
3. Mr. Said Osman

SENATE

- Legal Counsel
- Committee Clerk
- Research Officer

MIN. NO. 08/LK/2015

- PRELIMINARIES

The CEC Member, Finance and Economic Planning welcomed Senators to the meeting. The Committee was informed that the Governor was away on official duty while the Deputy Governor had been involved in accident and was recuperating.

MIN. NO. 09/LK/2015

**- MEETING WITH THE COUNTY
EXECUTIVE OF KILIFI COUNTY**

Members raised concern on the ether the Governor to meet other Committees of the Senate. It was noted that a number of Committees had missed the Governor on several occasions. To this concern, a representative of the Executive indicated that the Governor had met the Committee on Implementation of the Senate. The Committee looked forward to meeting the duly constituted executive including the Governor and Deputy Governor at a later date.

MIN. NO. 10/LK/2015

-ANY OTHER BUSINESS

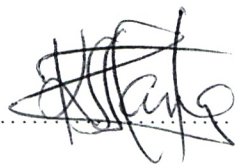
Senators Godliver Omondi expressed the need to have public offices accessible to persons with disabilities as it is a requirement of both domestic and international law. The Member reiterated that the right to access buildings is a human right for persons with disabilities guaranteed under the Constitution.

MIN. NO. 11/LK/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 5.00 p.m.

SIGNED:



(CHAIRPERSON)

DATE:

17/11/15

**MINUTES OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
WITH THE COUNTERPART COMMITTEE OF THE COUNTY ASSEMBLY OF KILIFI
HELD ON 4TH JUNE, 2015 AT 9.30 A.M. AT THE COUNTY ASSEMBLY OF KILIFI**

PRESENT

1. Sen. (Dr.) Boni Khalwale (Ag. Chairperson)
2. Sen. Joy Gwendo
3. Sen. Daniel Karaba
4. Sen. Godliver Omondi

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
2. Sen. Judith Sijeny - Vice-Chairperson
3. Sen. Liza Chelule
4. Sen. Emma Mbura
5. Sen. Boy Juma Boy

IN ATTENDANCE

COUNTY ASSEMBLY OF KILIFI

1. Hon. Jimmy Kahindi - Speaker of the County Assembly
2. Hon. Theophilus Kalama Fondo - Chairperson
3. Hon. Elizabeth Muthoka - Vice- Chairperson
4. Hon. Bonface Mkombe Mwango - Member
5. Hon. Duncan Kaingu - Member
6. Hon. Grace Kwekwe Mwangome - Member
7. Hon. Gibson Matano Herbert - Member
8. Hon. Bakari Ali Mwinyi - Member
9. Hon. Jared Kaunda Chokwe - Member
10. Hon. Kahindi Geoffrey Muhambi - Member
11. Mr. Mkare Jefwa - Clerk of the County Assembly
12. William Katana Nyanje - Principal Clerk Assistant

IN ATTENDANCE

1. Ms. Lucy Radoli

SENATE

- Legal Counsel

2. Ms. Carol Kirorei - Committee Clerk
3. Mr. Said Osman - Research Officer

MIN. NO. 12/LK/2015

- PRELIMINARIES

The Clerk of Kilifi County received and welcomed the delegation to the County Assembly of Kilifi. The Committee was informed that the Governor was away on official duty while the Deputy Governor had been involved in accident and was recuperating.

MIN. NO. 13/LK/2015

- MEETING WITH THE COUNTY

EXECUTIVE OF KILIFI COUNTY

The leader of the Senate delegation explained that the Senate had realized that County Assemblies were facing a number of challenges and had resolved to address these challenges through the various committees of the Senate. He stated the following-

1. The Committee on Delegated Legislation was concerned mainly with the issue of subsidiary legislation which is a complex and unique type of legislation.
2. The Statutory Instruments Act, 2013 provides for the process of making and approval of subsidiary legislation so as to operationalize an Act of Parliament or County Legislation.
3. Once the Executive develops subsidiary legislation it is required to bring them before the County Assembly for interrogation as to whether the particular instrument is compliant with the constitution and the enabling Act. The Committee then has the option to either annul the subsidiary legislation in its entirety or a part of it or approve. It is also paramount that the Committee establishes that the regulation making authority carried out sufficient public participation in developing the subsidiary legislation within the framework set out under the Act.

The following emerged following discussions and queries raised by the MCAs-

1. There was a hierarchy of laws in which the Constitution is supreme. Article 191 of the Constitution further provides for the application of national legislation in areas where uniform law is required. The County Assembly must therefore ensure that the legislation at the counties is consistent with the Constitution and the general legal framework.

2. The County Assembly could use the Leader of Majority as a link to the Executive in determining when the Executive intends to develop and table subsidiary legislation.

The Kilifi Committee informed the Senate Committee was yet to receive any statutory instrument for scrutiny despite the passage of the following Acts of the Kilifi County Assembly-

- a) Ward Scholarship Fund Administration Act
- b) Coconut Act
- c) Tax Waiver Act
- d) Revenue Administration Act
- e) Emblems and Symbols; and
- f) The Order of Precedence and Protocol Act.

The Kilifi counterpart committee identified the following challenges to the discharge of their mandate-

- (a) inadequate capacity of the members and staff of the Committee on Delegated Legislation;
- (b) failure by the Executive to develop and to submit statutory instruments;
- (c) the County Assembly had legal researchers but did not enjoy the services of a legal draftsman;
- (d) inadequate funds due to the ceilings imposed by the CRA; and
- (e) membership and service to the different committees of the Assembly.

MIN. NO. 14/LK/2015

-ANY OTHER BUSINESS

The following was discussed-

1. On the issue of lack of resources due to ceilings the leader of the Senate delegation indicated that ceilings are a necessary part of prudent budgeting for resources. The CRA may have over stepped its mandate in communicating directly to County Assemblies. The CRA is mandated to make its recommendations to the Senate for adoption with or without amendments and the ceilings set may not have been equitable.
2. The Senate had approved the establishment of adequate infrastructure for county governments and their headquarters including the Governor's office and offices for members of the county assemblies.

3. The counties be lumped into regions and share the services of one printing press for faster publication of legislations.

MIN. NO. 15/LK/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 11.10 a.m.

SIGNED:



(CHAIRPERSON)

DATE:

24/11/15

MINUTES OF THE 17TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 7TH JULY, 2015 AT 9.00 A.M. IN THE 2ND FLOOR BOARDROOM, KICC.

PRESENT

1. Sen. Stephen Sang - Chairperson
2. Sen. Godliver Omondi
3. Sen. Liza Chelule
4. Sen. Joy Gwendu
5. Sen. Boy Juma Boy
6. Sen. Daniel Karaba

ABSENT WITH APOLOGY

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. (Dr.) Boni Khalwale
3. Sen. Emma Mbura

IN ATTENDANCE

1. Ms. Josephine Kusinyi
2. Mr. Said Osman
3. Ms. Carol Kirorei
4. Ms. Mercy Mutemi

SENATE

- Legal Counsel
- Research Officer
- Committee Clerk
- Pupil

MIN. NO. 124/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 9.30 a.m. followed by a word of prayer.

MIN. NO. 125/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Karaba and seconded by Sen. Chelule.

MIN. NO. 126/2015

- CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 14th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Chelule and seconded by Sen. Sang.

- ii. The minutes of the 15th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Chelule and seconded by Sen. Boy.
- iii. The minutes of the 16th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Chelule and seconded by Sen. Sang.

MIN. NO. 127/2015

**-CONSIDERATION OF THE TOBACCO CONTROL
REGULATIONS, 2014**

Sen. Sang briefed Members on the status of the Tobacco Control Regulations, 2014 as follows:

- i. The Chairman, Tobacco Control Board following the meeting with the Committee had indicated that he was not in a position to respond to the issues raised by the Committee, as the Board takes a similar position to that of the Ministry that the matter is *sub judice*;
- ii. The Cabinet Secretary and the Principal Secretary had indicated that they were awaiting the finalization of the scrutiny by the Parliament;

Members considered the Regulations and reviewed the annulments. The Committee was of the opinion that there was need to ensure that as much as possible Regulations that are for the benefit of the health of the citizens of Kenya. Members also noted that stakeholders would want to push for their interests. The Committee resolved to annul the following Regulations:

- 1. Regulation 21
- 2. Regulation 22
- 3. Regulation 23
- 4. Regulation 26
- 5. Regulation 30 (c) and (f)
- 6. Regulation 37
- 7. Regulation 45 (2)

Members resolved to finalize with the Tobacco Control Regulations, 2014. The secretariat was tasked to prepare a brief on the Regulations and circulate hard and soft copies to the Members.

MIN. NO. 128/2015

- CONSIDERATION AND ADOPTION OF REPORTS

Members were taken through pending committee reports as follows:

- i. The Report on The NTSA (Operation of PSVs)(Amendment No. 2) Regulations, 2014;
- ii. The Report on The NTSA (Operation of Motorcycles), (Operation of Tourist Service Vehicles, and the Traffic (Amendment) Rules, 2015;
- iii. The Report on the Draft Kenya Information and Communications (Registration of Sim-Cards) Regulations 2015;
- iv. The Report on the Homa Bay Action Planning Retreat;
- v. The Report on the Lamu and Kilifi County Visits.

Members considered and adopted the above reports as were presented.

MIN. NO. 129/2015

-DATE OF NEXT MEETING

The next meeting would be on notice.

MIN. NO. 130/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 10.08 a.m.

SIGNED:

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(CHAIRPERSON)

DATE:

..... 21/07/2015