

COUNTY ASSEMBLY OF SIAYA



SECOND REPORT OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION, JUSTICE AND LEGAL AFFAIRS

REPORT ON BENCHMARKING VISIT TO THE SENATE, NAIROBI ON THE 19TH NOVEMBER 2015

March 2016.

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ABBREVIATIONS

SI.....Statutory Instrument

SO.....Standing Orders

KCLR.....Kenya Council for Law Reporting

NA.....National Assembly

CA.....County Assembly

SUNY..... State University of New York

DL.....Delegated Legislation

L.S.K.....Law Society of Kenya

DLCs.....Delegated Legislation Committees

CGA.....County Government Act

PREFACE

The Select Committee on Delegated Legislation, Justice and Legal Affairs is established pursuant to the Assembly Standing Order 190 which states:-

- (1) There shall be a select Committee to be known as the Committee on County Delegated Legislation.

- (2) Whenever a statutory instrument is submitted to the County Assembly 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 County Assembly by the Chair of the relevant Sectoral Committee and thereafter stand referred to the Committee on Delegated Legislation

- (3) The Committee shall consider in respect of any statutory instrument whether it-
 - (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 County Assembly;
 - (d) contains imposition of taxation;
 - (e) directly or indirectly bars the jurisdiction of the Courts;
 - (f) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - (g) involves expenditure from the County Revenue Fund or other public revenues;

- (h) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;
- (i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- (j) appears to have had unjustifiable delay in its publication or laying before County Assembly;
- (k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- (l) makes rights , liberties or obligations unduly dependent insufficiently defined administrative powers;
- (m) inappropriately delegates legislative powers;
- (n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (o) appears for any reason to infringe on the rule of law;
- (p) inadequately subjects the exercise of legislative power to County Assembly scrutiny; and
- (q) 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 County department or the authority that published the statutory instrument;
- (b) does not accede to the statutory instrument, the Committee may recommend to the County Assembly that the County Assembly resolves that all or any part of the statutory instrument, as the case may be, be annulled.

Membership

The Committee is comprised of the following members:-

1. Hon Sylvester Madialo - Chairperson
2. Hon Booker Minami - Vice Chairperson
3. Hon Stephen Kadera - Member
4. Hon Peter Muhulah - Member
5. Hon Pamela Midumbi - Member
6. Hon Walter Okello - Member
7. Hon Teresa Osore - Member
8. Hon Andrew Omwende - Member
9. Hon Hilda Otieno - Member
10. Hon Fred Ouda - Member

Acknowledgement

Special appreciation goes to Hon. Members of the Senate Sessional Committee on Delegated Legislation, Chairpersons and members of the County Assembly Committees on Delegated Legislation, and staff who participated in the benchmarking.

The Committee would wish to extend its gratitude to the office of the Speaker and the Assembly Clerk for its support towards the planning and facilitating the benchmarking visit.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 180(6), to present the Report of the Select Committee on Delegated Legislation, Justice and Legal Affairs on the Benchmarking with the Senate Sessional Committee on Delegated Legislation and its counterpart committees of the five county assemblies for consideration by the House.

Signed..... Date.....

**HON SYLVESTER MADIALO, MCA,
CHAIRPERSON, SELECT COMMITTEE ON DELEGATED LEGISLATION,
JUSTICE AND LEGAL AFFAIRS**

EXECUTIVE SUMMARY

The Select Committee on Delegated Legislation, Justice and Legal Affairs held a benchmarking meeting with the Senate Sessional Committee on Delegated Legislation and its counterpart committees of five county assemblies, namely Kilifi, Bungoma, Meru, Tharaka Nithi and Embu on 19th November, 2015 at the Mini Chambers, County Hall, Parliament Buildings, in Nairobi.

The objective of the meeting was to build capacity of the Committee Members and to further share achievements challenges faced so far in the execution of their mandate and deliberate on issues of mutual interest.

This report documents the proceedings of the benchmark which are contained in the three main chapters of the report.

During the meeting, the Senate Sessional Committee on Delegated legislation made presentations on the origin and development of Delegated Legislation Committee; background operational mechanisms and enhancing of delegated legislation; mandate of the Committee; tracking of delegated legislation; and overview of the Statutory Instruments Act, 2013. The participants had successful deliberations from which it was recommended that the Committee should:-

1. Forge a closer working relationship with the Senate Sessional Committee on Delegated legislation and Committee on Legal Affairs due to their overlapping mandates.
2. Form linkages with organizations such as Law Society of Kenya, Kenya Law Reform Commission, State University of New York among others, for purposes of capacity building for members and secretariat.
3. Organize similar capacity building workshops for Members of the County Executive Committees and Members of the Committees on Delegated Legislation of the County assemblies.

The role of the Senate under Article 96 of the Constitution is to, among others, represent the counties, and serve to protect the interests of the counties and their governments. In the new political dispensation, there is need for the Senate to enlighten the county assemblies for the successful implementation of devolution.

During its meeting held on 29th January, 2014, the Committee on Delegated Legislation noted that their role in protecting counties under Article 94(1) of the Constitution included building capacity of members of its counterpart committees of the county assemblies. This was with the objective that the Members of the county assemblies would understand clearly the mandate of the Committee on Delegated Legislation and its operations.

It was against this that the committee resolved to hold a regular consultative meetings with the counterpart committees of the county assemblies.

The outline of the presentation were given as follows:-

- I. Establishment of the Committee on Delegated Legislation
- II. From a resolution of the House to a Committee of the House
- III. From establishment to operationalizing the Committee on Delegated Legislation
- IV. Challenges

The Committee on Delegated Legislation in Kenya emanated from personal frustrations faced by Hon. Amina Abdalla as member of the 9th Parliament. There were unfulfilled government promises which put the legislative authority of parliament in jeopardy. The frustration about one of the subsidiary legislations which was developed under the Environmental Management and Coordination Act required an environmental impact assessment for every construction in an area already zoned for construction of a particular density. This prompted Hon. Amina to initiate the process of forming a Committee on Delegated Legislation.

After long discussions with the Opposition Whip, it was realized that important regulations were in some cases not even gazetted. The Opposition agreed to Hon. Muturi (then KANU Chief Whip) convinced Hon. Abdalla to deal with the wider problem of Delegated Legislations rather than focusing on a legislative challenge posed by this one subsidiary legislation. It was on this advice that she drafted a motion on the establishment of the Committee on Delegated Legislation which read as follows:-

THAT, *in view of the fact that subsidiary legislation should be consistent with current statutes; aware that certain authorities have failed to Gazette mandatory rules and regulations as required by the parent Act; concerned that some of the delegated authorities have been*

abused by the concerned authorities by gazetting regulations that are ultra vires to the parent law; this House resolves to establish a Delegated Legislation Committee to scrutinise all subsidiary legislation.

The motion on establishing a Committee on Delegated Legislation was debated and passed by the House on 21st April 2006.

From a Resolution of the House to a Committee of the House

There was a challenge in having the proposed Committee be part of the Standing Orders. Fortunately the change of ruling party from KANU to NARC meant that both side of the political divide had reason to change the Standing Orders. By the end of the 9th Parliament, the draft Standing Orders had agreed to include a Committee on Delegated Legislation as one of the new Committees. The 9th Parliament however came to an end before replacing the Standing Orders.

In the Tenth Parliament, despite not being a member of the House Procedures and Rules Committee, the then Speaker Hon. Kenneth Marende co-opted Hon. Abdalla to the Committee that finally delivered the 2009 Standing Orders. Hon. Abdalla's presence in that Committee played a major role in maintaining the proposed Committee in the Standing Orders. This was because many members were not convinced of the need of having such a Committee.

From establishment to operationalizing the Committee on Delegated Legislation

Upon adoption of the Standing Orders, Hon. Amina Abdalla was appointed to the Select Committee on Delegated Legislation and as is tradition she was elected its first Chairperson.

The challenges faced were:-

a) Weak legal regime for the making and scrutiny of subsidiary legislation

Despite the provisions of the Interpretation and General Provisions Act on scrutiny on delegated legislation, negligible tabling of subsidiary legislation had taken place since independence. The Standing Orders wanted the Committee to cause the tabling of these legislations –the question was how? What would happen to those ministries who decline to table? How do you change a long tradition of non-tabling?

b) Where to begin the scrutiny?

It was not clear when scrutiny would begin, what would happen to the legislations gazetted prior to the establishment of the Committee, obtaining records of the list of Delegated Legislations that had been gazetted since independence and how to deal with emerging issues.

Action: they chose to be reactive to set up the structures for more proactive work such as amending legislation and developing tools.

c) Lack of tools for scrutinizing delegated legislations

There was no clarity as to what parameters to look at while scrutinizing delegated legislation.

d) Low capacity and understanding of the mandate of the Committee

The capacity and understanding problem affected members of Parliament, staff and members of the executive.

e) Gazette Notices linked to appointments

The fact that Ministers acted outside the parent Acts of Parliament while appointing Chief Executive Officer of state corporations and or Semi Autonomous Government Agencies (SAGAs) were the most complaints forwarded to the Committee for annulment. It reached a point where the committee concentrated on such matters of appointments that almost derailed its work.

2.1 REMARKS BY THE CHAIRPERSON OF THE COMMITTEE

Sen. Judith Sijenyi, the vice chairperson of the Sessional Committee on Delegated Legislation welcomed members to the retreat. She briefed members about the role of the Committee, objective of the workshop and the expectations. She took the members through the programme that was tailored to fit into the objectives of the meeting. Members then unanimously adopted the programme of the visit.

She quoted Article 94 of the Constitution which vested the legislative authority in Parliament. She noted that Members of the County Assemblies had been given powers by the Constitution to perform several duties, among them the power to supervise delegated authority. She mentioned that delegated legislation was a difficult area to oversee but with the support of SUNY (Kenya), Speaker of the Senate, Clerk of the Senate through capacity building, there would be a lot to learn through sharing of information.

She quoted Article 96(1) that empowers the Committee to engage with the County Assembly Committee. It was within the mandate of the senate to supervise and oversee the work at the County Assembly level and to ensure that the legislations being passed were in order. She explained that the Committee had convened the meeting to discuss on the mode of engagement between the Senate Committee on Delegated Legislation and its counterpart committees of the county assemblies and further to understand the working dynamics of passing delegated legislation upon this basis.

The Senate Committee on Delegated Legislation had gone through a lot of transformation in terms of capacity building. Several forums had been organized and executed with the aim of equipping members with the necessary skills and understanding of the role of the committee.

The objective of the meeting was to enable the participants to understand the development of the Committee on Delegated Legislation, operational

mechanisms of delegated legislation, mandate and scope of the County Assembly committees, overview of the Statutory Instruments Act and the best practices for tracking and documenting Delegated Legislation.

She proceeded by reminding members that citizens are more informed, more vibrant and rich in terms of their intellectual capacity. The Constitution had given them powers to participate in the law making processes hence the Committee had to be alive to that fact and ensure the citizen's rights are safeguarded. The Committees were reminded to follow up the implementation of their reports.

She informed the meeting that prior to the year 2006, the National Assembly did not have a Delegated Legislation Committee. It was only when it was realized that there were a lot of delegated powers which were not being scrutinized that the National Assembly resolved upon a motion moved by Hon. Amina Abdalla to form the Delegated Legislation Committee.

She urged members to strive to understand the Committee mandate and work closely with other committees, most notably the committee on Legal Affairs, for purposes of consultation.

Lastly she assured the County Assembly Committee Chairpersons that the Senate leadership was ready and willing to work with the counties in any matter within its capability.

She informed the Members that SUNY Kenya was an international Nongovernmental Organization that operated in many countries. Their work was geared towards parliamentary strengthening through capacity building. SUNY

With the introduction of a bicameral legislature, Delegated Legislation Committee existed in the National Assembly, Senate and at the county assemblies. Such committees have a huge responsibility which could be overwhelming hence they had to lay down strategies to execute their mandates promptly. She urged the committees to work complementarily and share ideas.

2.2 BACKGROUND, STATUS OF OPERATIONAL MECHANISMS AND ENHANCING OF DELEGATED LEGISLATION

Delegated legislation, secondary, subsidiary or subordinate legislation was legislation made by authority of an Act of Parliament or delegated to lower tiers of Government by the constitution. It included statutory rules, by-laws, ordinances, orders-in-council and various other “instruments” made by the executive.

Delegation of power to the executive raised issues of separation of powers. There had to be checks and balances to avoid executive overreach and misuse or abuse of power. It is law made by an executive authority under powers given to them by primary legislation in order to implement and administer the requirements of that primary legislation.

There are three types of delegated legislation;

- a) Statutory instruments which are regulations made by government departments,
- b) By-laws which are made by county governments and local authorities, or public corporations, and
- c) Legal Notices issued by Cabinet Secretaries.

Reasons for delegated legislation

- The area to be legislated on may be technically complex, making it difficult to set out all the permutations in the original statute.
- The subject matter may be novel hence needing time to experiment and determine how the legislation is operating.
- The executive may wish to implement the legislation at a later stage or to alter its detail.

- An Executive with an onerous legislative timetable, or only a small majority, there is the temptation to pass skeleton legislation with the details being etched in by the minister

Rules to check delegated legislation

This must be constitutional with the statute or Act of parliament with other statutes, Acts or written law. These rules must be reasonable and certain; two maxims developed here *delegate potestas non potest delegari*– a delegated authority cannot be again delegated, and *delegatus non potest delegare* – a delegate or deputy cannot appoint another. This shows that legislative organs like Senate, the National Assembly and County Assemblies may pass delegated legislation. These include standing orders, rules and regulations.

She cited the following as laws governing delegated legislation:-

- a) Statutory Instrument Act No 23 of 2013 which provides for the making, scrutiny, publication and operation of statutory instruments.
- b) Paragraph 211 of the Senate Standing Orders “Committee on Delegated Legislation.”
- c) Paragraph 210 of the National Assembly Standing Orders ‘Committee on Delegated Legislation.’

Procedure to be followed when a statutory instrument is brought before Parliament

The Statutory Instrument Act No 23 of 2013 provides in section 10 for Parliamentary scrutiny of Statutory Instruments and set out the circumstances and manner in which the statutory instruments, or provisions of the statutory instruments, may be disallowed, as well as the consequences of the disallowance.

Every County Executive Member responsible for a regulation-making authority shall within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument with an explanatory memorandum in the manner prescribed in the Schedule shall be attached is transmitted to the responsible Clerk for tabling before County Assembly.

The Committee shall in carrying out its scrutiny of any statutory instrument or published bill be guided by the principles of good governance, rule of law. Subject to Section 16 of the Statutory Instrument Act, the Committee may exempt certain statutory instruments from scrutiny if the committee is satisfied that the scrutiny is not reasonably practical due to the number of regulations in that class.

The Committee shall then make a report to County Assembly containing only a resolution that the statutory instruments that stand permanently referred to the Committee be revoked.

Subject to section 11 of the Statutory Instrument Act, and so far as its practically possible, the Committee shall confer with the regulation-making authority for which the statutory instrument has been made and brought before the Committee for scrutiny, before tabling the report to the County Assembly for their information and modification where necessary.

2.3 MANDATE OF THE DELEGATED LEGISLATION COMMITTEES OF COUNTY ASSEMBLIES, THEIR ROLE AND SCOPE

She stated that Article 185 of the Constitution vests the legislative authority of a county on its county assembly. Consequently, at the national level, Article 94 vests the legislative authority of the Republic on Parliament. No person/body can make a provision with the force of law except under the authority of the Constitution or legislation.

Article 94 (6) requires that an Act of Parliament or legislation of a county that confers the authority to make a provision having the force of law shall expressly specify:

- a) the purpose and the objective for which the authority is conferred;
- b) the limits of the authority;
- c) the nature and scope of the law that may be made; and
- d) The principles and standards applicable.

Section 14 of the County Governments Act provides for the application of the standing orders of the National Assembly to the county assemblies with necessary modifications pending formulation of their own standing orders. The County Assembly did revise the interim Standing Orders initially circulated at the inception.

Apart from the Constitution, the Statutory Instruments Act, and section 8 of the CGA define the mandate of the Committee.

Section 13 of the Statutory Instruments Act which is replicated in the Standing Orders mandates the Committee to carry out scrutiny of any statutory instrument or published Bill be guided by the following principles of good governance, rule of law and report whether it-

- i. is in accord with the Constitution, or other law;
- ii. infringes on fundamental rights and freedoms;
- iii. contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- iv. contains imposition of taxation;

- v. directly or indirectly bars the jurisdiction of the Courts
- vi. retrospective effect;
- vii. involves expenditure from the Consolidated Fund or other public revenues; viii. is defective in its drafting;
- viii. appears to make some unusual or unexpected use of the powers conferred by the Constitution;
- ix. conferred by the Constitution;
- x. appears to have had unjustifiable delay in its publication or laying before Parliament
- xi. Parliament
- xii. makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers; xii. inappropriately delegates legislative powers;
- xiii. makes rights , liberties or obligations unduly dependent upon nonreviewable decisions;
- xiv. imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation; xv. appears for any reason to infringe on the rule of law;
- xv. inadequately subjects the exercise of legislative power to parliamentary scrutiny; and xvii. Accords to any other reason that the Committee considers fit to examine.

Every Statutory instrument is required to be accompanied by a memorandum containing:

- a) a statement of the objects and reasons of the instrument,

- b) a statement of delegation of legislative powers
- c) a statement on limitation of fundamental rights and freedom, if any,
- d) a statement of its financial implication and if the expenditure of public moneys.
- e) Consultations with the people.

2.4 TRACKING DELEGATED LEGISLATION AND DOCUMENTATION; BEST PRACTICES FOR COUNTY ASSEMBLIES

Members were briefed about the National Council for Law Reporting.

It is a State Corporation within the Judiciary. It was established under the National Council for Law Reporting Act, No. 11 of 1994 and is mandated to:-

- I. Publish the Kenya Law Reports, which are the official law reports of the Republic of Kenya.
- II. Revise, consolidate and publish the Laws of Kenya.

Rules cited on delegated legislation:-

- *Delegatus non portestdelegare* – rule against sub delegation.
- There is no general power to make delegated legislation
- Delegated legislation must be based on /spring from parent statute
- Delegated legislation must conform to the parent statute. Meaning of each cause/word must be similar to the usage in the parent statute.

The Parent statutes contain the general broad principles of law while delegated legislation contains their enforcement or implementation as the circumstances may determine.

In understanding devolution, he stated that it was important to note the following:-

- Devolution follows the multi- dimensional approach to governance.
- It organizes State Power along multiple lines - Vertically and Horizontally

However, Article 6(2) describes the governments at the two levels as being DISTINCT (different responsibilities) and Interdependent (must work together/ not in isolation of each other) and which should conduct their mutual relations on the basis of consultation and cooperation.

Article 186 provides the principles that guide assignment of functions recognize three categories of functions.

- *Exclusive* functions which can be performed by only one level of government.
- *concurrent* functions which can be performed by two or more levels of government
- *residual* functions which reside with the original level of government which existed before the creation of the other levels of government

Article 185 provides for functions of the County Assembly. They exercise the legislative authority of the county to make laws that are necessary for, or incidental to, the effective performance and exercise of the powers of the county government. The legislative limits of the County Assemblies are however set out in the Fourth Schedule, Constitution.

All Regulations come to National Council for Law Reporting in the form of Legal Notices. So far only Nairobi County has sent their Statutory Instrument Legal Notices for Commencement dates of Finance and Tax Waiver Act.

Counties who wish to send their instruments do so through scanning and sending them to – countylaws@kenyalaw.org

2.5 OVERVIEW OF STATUTORY INSTRUMENTS ACT, 2013

According to Section 2 of the Statutory Instruments Act, 2013 “statutory instrument” is defined 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.

Stages in the Making of a Statutory Instrument

Pre-Publication Scrutiny: this stage involves consultation before making statutory instruments. Before a regulation-making authority makes a statutory instrument, and in particular where the proposed statutory instrument is likely to have a direct, or a substantial indirect effect on business; or

- a. Restrict competition; the regulation-making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument.

In determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to any relevant matter, including the extent to which the consultation—

-drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and

- ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content

Involve notification, either directly or by advertisement, of bodies that, or of organizations representative of persons who, are likely to be affected by the proposed instrument; or

Invite submissions to be made by a specified date or might invite participation in public hearings to be held concerning the proposed instrument. The requirement for consultation is mandatory before making of any statutory instrument. It is therefore upon the regulation-making authority to determine who to consult and the manner of consultation. The Act is clear on the class of the Statutory Instruments upon which consultation is a must.

Publication

Every statutory instrument shall be published in the Kenya Gazette and shall be assigned a serial number as of the year in which it is made which shall be printed on the face of the instrument.

Laying and tabling of statutory instruments before the Assembly

Every County Executive Committee Member responsible for a regulation-making authority shall within seven (7) sitting days after publication of an statutory instrument, cause to be tabled a copy of the statutory instrument before the Assembly. The instruments shall be tabled together with:

- a. Explanatory memorandum; and
- b. Regulatory impact statement.

Explanatory Memorandum is a statement that is prepared by a regulation making authority and it explains the purpose and operation of the statutory instrument. If any documents are incorporated in the statutory instrument by reference,

contains a description of the documents so incorporated and indicates how they may be obtained;

Consequences of not tabling

If a copy of a statutory instrument that is required to be laid before Assembly is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid without prejudice to any act done under the statutory instrument before it became void

Referral to the Committee

Every statutory instrument issued or made or established after the commencement of this Act shall stand referred to the Committee or any other committee that may be established for the purpose of reviewing and scrutinizing statutory instruments.

The Committee can also scrutinize statutory instruments previously published before the commencement of this Act.

The provisions of the Act shall not apply to any rules, regulations and orders emanating from a court of competent jurisdiction in Kenya.

In carrying out its scrutiny of any statutory instrument or published Act be guided by the principles of good governance, rule of law and shall in particular consider whether the statutory instrument are in tandem with the certain principles as provided in the Act.

Report to County Assembly

The Committee shall make a report to the County Assembly containing only a resolution that the statutory instruments that stands permanently referred to the Committee be revoked. The Committee shall confer with the regulation-making authority for which the statutory instrument has been made and

brought before the Committee for scrutiny, before tabling the report to Parliament for their information and modification where necessary.

Commencement of Instruments

A statutory instrument shall come into operation on the date specified in that behalf in the instrument or, if no date is so specified, then, subject to subsection (2), it shall come into operation-

- a. on the date of its publication in the *Gazette* or elsewhere as may be prescribed under section 17(2);
- b. in any other case, on the date on which it is made.

If an instrument is made after the passing or making but before the coming into operation of the enabling legislation under which it is made, the instrument, whether or not it is previously published, shall not come into operation before the date on which the enabling legislation comes into operation.

Annulment and revocation

When a report on a statutory instrument has been tabled in Parliament, the statutory instrument shall be deemed to be annulled if Parliament passes a resolution to that effect.

Where Parliament has adopted a report or a resolution that a statutory instrument be revoked, the instrument shall stand revoked and the regulation making authority shall publish the revocation within fourteen days.

CHAPTER THREE OBSERVATIONS AND RECOMMENDATIONS

OBSERVATIONS

1. There was need for the Committee members to be well informed regarding rules, procedures and the relevant legislations.
2. The mandate of the Committee overlapped with other standing Committees like the committee on Legal Affairs.
3. The provisions of the Statutory Instrument Act, 2013 were not aligned to the Constitution to incorporate counties.
4. There was need for capacity building for Members of the Committee and the Secretariat.
5. There was no legislation to define parameters for public participation in the process of making statutory instruments.
6. There was need for an increased understanding of the mandate of the counterpart committees.
7. The County Assembly Committees needed to consult more with the office of the Clerk of the Senate on matters pertaining to legislation in the counties and more importantly in the domain of statutory documents.
8. A meaningful working relationship between the Chairpersons and Secretariat was important for a harmonious working engagement.
9. Strategic leadership is very crucial for the success of committees.

10. It was important to exercise vigilance in exercising its constitutional mandate and legislative powers to scrutinize subsidiary legislations.
11. There is need for public sensitization and creation of awareness on the mandate of the committee and provisions of the Statutory Instruments Act, 2013.

RECOMMENDATIONS

1. The Committee members to study and familiarize themselves with key legislative documents such as the constitution, Statutory Instrument Act 2013, Standing Orders, briefing notes etc.
2. The Committee to forge a closer working relationship with the committee on Legal Affairs due to their overlapping mandates.
3. The Committee to review the Statutory Instrument Act, 2013 to incorporate the counties in the provisions of the Act.
4. The Committee to partner with relevant organizations such as Law Society of Kenya, Kenya Law Reform Commission among others, for purposes of capacity building for members of the Committee and the secretariat.
5. The Committee to initiate legislation to define parameters for public participation in the process of making statutory instruments.
6. The Committee to organize similar workshops with Members of the County Executive Committees and chairpersons of county assembly Committees to increase in-depth understanding of their mandates and in the spirit of forging a working relationship.

7. The County Assembly Committees to consult with the office of the Clerk of the Senate on any matter pertaining to legislation in the counties and more importantly in the domain of statutory documents.

8. The respective Chairpersons of Committees to establish meaningful working relationships with the secretariat for a harmonious working engagement.

9. Committees to exercise oversight and make follow-ups in the implementation of recommendations in their reports.

10. Committee chairpersons to exercise strategic leadership for the success of their committees.

11. Committee members to remain vigilant in exercising the Committees' constitutional mandate and legislative powers to scrutinize subsidiary legislations.

12. The Committee to prepare documentations aimed at publicizing and simplifying the contents and meaning of Statutory Instruments Act 2013 and operations of the Committee.

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