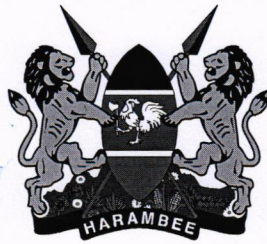


PARLIAMENT OF KENYA LIBRARY

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REPUBLIC OF KENYA

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THE SENATE

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

104
Recommended for
approval for
tabling.
19/02/19

TWELFTH PARLIAMENT

SECOND SESSION

THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

A REPORT ON PUBLIC PARTICIPATION ON THE
STATUTORY INSTRUMENTS (AMENDMENT) BILL (SEN.
BILL NO. 24 OF 2018)

Approved
[Signature]
20/2/2019

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

February, 2019

PAPERS LAID	
DATE	20/02/2019
TABLED BY	Chairperson
COMMITTEE	Legal Affairs
CLERK AT THE TABLE	[Signature]

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ABBREVIATIONS AND ACRONYMS

KLRC	Kenya Law Reform Commission
KNCHR	Kenya National Commission on Human Rights
MP	Member of Parliament
SEN	Senator

PREFACE

Mr. Speaker,

Establishment of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 218 and mandated to *consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

Membership of the Committee

The Committee is comprised of the following members:-

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

Mr. Speaker,

The promulgation of the Constitution in 2010 ushered in a new governance system and greatly expanded the democratic space in the country. The purpose of the Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018) is to amend the Statutory Instruments Act (No.23

of 2013) in order to expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya vide Article 93 of the Constitution of Kenya 2010, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Excluding the Senate from such an important aspect of law making would deny the Counties the right to be represented.

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

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further it wishes to thank stakeholders who made both written and oral submissions such as the Kenya Law Reform Commission (KLRC) and the Kenya National Commission on Human Rights (KNCHR).

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 137, to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on The Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018).

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

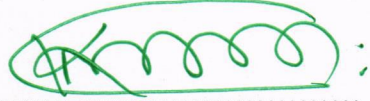
SEN. SAMSON CHERARKEY, MP

CHAIRPERSON

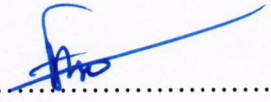
JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

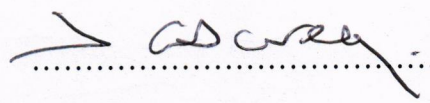
ADOPTION OF THE REPORT OF THE JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE OF THE SENATE

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

Sen. Samson Cherarkey, MP Chairperson :

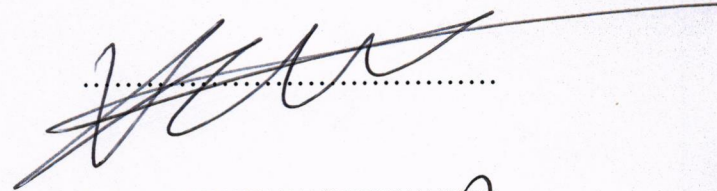
Sen. Mithika Linturi, MP Vice-Chairperson

Sen. Fatuma Dullo, MP Member :

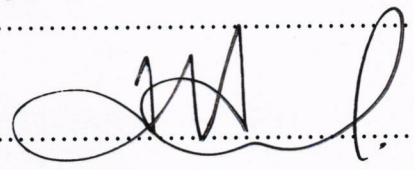
Sen. James Orengo, MP Member :

Sen. Amos Sitswila Wako, MP Member

Sen. Kilonzo Mutula Jnr., MP Member

Sen. Irungu Kang'ata, MP Member :

Sen. Susan Wakarura Kihika, MP Member

Sen. Faki Mohamed, MP Member :

CHAPTER ONE

INTRODUCTION

1.0 Background

The Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018) was sponsored by Sen. Samuel Poghio, Chairperson, Sessional Committee on Delegated Legislation. The purpose of the Bill is to amend the Statutory Instruments Act (No.3 of 2018) in order to expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya vide Article 93 of the Constitution of Kenya 2010, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Excluding the Senate from such an important aspect of law making would deny the Counties the right to be represented.

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

1.1 The Object of the Bill

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

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

be considered too complex to include in the body of an Act. Secondary legislation can also be used to amend, update or enforce existing primary legislation¹.

The purpose of the Bill is to amend the Statutory Instruments Act (No.3 of 2018) in order to expressly include the Senate in the statutory instruments scrutiny process. This will align the Act with the Constitution of Kenya, 2010 which created a bicameral Parliament with two distinct Houses of Parliament. As part of the Parliament of Kenya, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Excluding the Senate from such an important aspect of law making would deny the Counties the right to be represented.

1.2 Legal Framework

Constitution of Kenya (2010)

Article 94 and Article 96 clearly sets out the law-making function of the Senate as follows:

“(1) The Senate represents the counties, and serves to protect the interests of the counties and their governments.

(2) The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.

(3) The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.

(4) The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145.”

Pursuant to Article 96 (2) Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113. Article 110 further defines Bills affecting counties to include those which touch on functions allocated to counties in Part II of the Fourth Schedule to the Constitution, a Bill that relates to elections of members of a county executive or legislature, or any Bill that touches on the finances of County Governments.

¹ House of Commons Information Office , Statutory Instruments <https://www.parliament.uk/documents/commons-information-office/I07.pdf> Retrieved 25.11.2018

The Senate is a national institution and counties do not operate as a separate territory. In the interest of counties, the Senate is the platform in which to scrutinize National Government obligations to Counties and monitor the implementation of mandates and commitments in line with constitutional responsibilities. All these laws must, as a constitutional requirement, be debated and passed by the Senate before presidential assent.

Any law debated and passed in the National Assembly which concerns counties has to be referred to the Senate for debate and approval before the President can assent to it. The threshold of Bills concerning counties should be interpreted to cover all Bills since all matters concerns counties. This should also extend to statutory instruments submitted to Parliament by Ministries' and other agencies. Currently, the Statutory Instruments Act (No.23 of 2013) does not expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments.

1.3 Overview of the Bill

The Bill provides as follows-

Short Title

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

Interpretation

Clause 2 (a) of the Bill seeks to amend section 11 (1) of the Statutory Instruments Act (No.23 of 2013) to ensure that every Cabinet Secretary 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 is transmitted concurrently to the "Clerk of the Senate and the Clerk of the National Assembly"

Amendment of section 11 of No. 23 of 2013

Clause 2 (b) of the Bill seeks to delete Clause 11(2) of the Statutory Instruments Act (No.23 of 2013) which stipulated that regulation-making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.

Clause 2 (c) of the Bill seeks to amend section 11 (3) of the Statutory Instruments Act (No.23 of 2013) by replacing the words “responsible Clerk” with “Clerk of each House” with respect to the registration of every statutory instrument transmitted to the respective House tabling or laying.

Amendment of section 15 of No. 23 of 2013

Clause 3 of the Bill is amended by deleting section 15 (3) which provides that where a time is prescribed for doing an act or taking a proceeding by the National Assembly relating to the handling of a statutory instrument, the National Assembly may, by resolution, extend that time by a period not exceeding twenty-one days and substituting with a new Clause to reflect both Houses.

CHAPTER TWO

PUBLIC PARTICIPATION

2.0 Attendance by Stakeholders

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

2.1 Submissions from Stakeholders

The Committees took into consideration proposals from stakeholders on specific Clauses of the Bills, as follows-

Submissions from the Kenya Law Reform Commission (KLRC)

The Kenya Law Reform Commission submitted that the Statutory Instruments Act (No.23 of 2013) currently does not provide for the procedure of transmission of statutory instruments in a bicameral Parliament. There is need to amend to the Statutory Instruments Act (No.23 of 2013) to include the procedure for transmission of Statutory Instruments between the two Houses of Parliament.

Submissions from the Kenya National Commission on Human Rights (KNCHR)

The Kenya National Commission on Human Rights submitted that as highlighted in the memorandum of objects and reasons in the Bill, involving the Senate in the scrutiny of statutory instruments. Involving the Senate in the scrutiny of statutory instruments in the law-making process will ensure adequate representation from the respective counties and largely the public.

The Kenya National Commission on Human Rights further submitted that it welcomed the spirit of inclusion and cooperation in the scrutiny of delegated legislation by both Houses. Delegated

legislation in the form of rules, regulations or even tariffs forms part and parcel of legislation as per the Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya) Indeed, several of the statutory instruments affect the parent statutes that touch on matters concerning county governments. It is therefore important for the Senate, as the watchdog over county interests and in line its constitutional mandate participates in the approval of the delegated legislation which will form part of the laws that affect county governments.

The Commission further submitted that the proposed amendment should be considered in the spirit of the Constitution and devolution which limits legislative authority of the Senate to Bill affecting county governments. Article 109 (3) of the Constitution expressly states that , “ *A Bill not concerning county government is considered only in the National Assembly , and passed in accordance with Article 122 and the Standing order of the Assembly.* ”

In light of the above, the Commission proposes the need for further clarity in the scrutiny process, given the legislative mandates of the respective Houses and clarifies if for instance, criteria similar to that under Article 110 of the Constitution would apply. For good order, it is also important to mention in the Act, the procedure to be followed when both Houses of Parliament are seized of the statutory instruments.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 General Observations

The Committee observed that the Statutory Instruments Act (No.23 of 2013) does not expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Article 93 of the Constitution provides for the establishment of a bicameral Parliament. Article 94 and Article 96 of the Constitution clearly provides for that the law-making function of the Senate Pursuant to Article 96 (2) Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.

The Committee noted that statutory instruments in the form of rules, regulations or even tariffs forms part and parcel of legislation as per the Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya). The Senate has passed various Bills to guide the implementation of county functions set out under the Fourth Schedule of the Constitution. It is therefore necessary that the Senate scrutinises statutory instruments arising from parent Acts that touch on matters concerning county governments. The Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018) is therefore timely and essential to align the Statutory Instruments Act (No.23 of 2013) with the Constitution.

3.1 Observations and Recommendations on the Clauses of the Bill

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

Procedure for Consideration of Statutory Instruments in a Bicameral Parliament

The Committee observed that the Statutory Instruments Act (No.23 of 2013) currently does not provide for the procedure of transmission of statutory instruments in a bicameral Parliament. The Committee agreed with stakeholders that there is need for further clarity in the scrutiny process,

given the legislative mandates of the respective Houses and clarifies if for instance, criteria similar to that under Article 110 of the Constitution would apply.

The Committee further noted that although the procedure for the consideration is set out under Standing Order 221 and Standing 222 of the Senate Standing Orders, it was important to entrench the procedure in legislation to ensure clarity in the concurrence to statutory instruments between the two Houses.

Recommendation(s)

The Committee therefore recommends that New Clauses be inserted in the Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018) to include a procedure for the consideration of statutory instruments by both Houses of Parliament in the Statutory Instruments Act (No.23 of 2013). The amendment should include specific timelines on the transmission of statutory instruments by both Houses.

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN-ATTENDANCE

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

SENATE SECRETARIAT

- | |
|--------------------|
| - Clerk Assistant |
| - Legal Counsel |
| - Research Officer |

MIN/JLAHR/2019:

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

PRELIMINARIES

MIN/JLAHR /2019:

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

ADOPTION OF THE AGENDA.

MIN/JLAHR /2019:

The Committee adopted the following reports for tabling by consensus.

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

MIN/JLAHR /2019:

There was no other business

ANY OTHER BUSINESS

MIN/JLAHR /2019:

**DATE OF THE NEXT MEETING AND
ADJOURNMENT**

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

Signed  :
SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date: 13/2/2019

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN-ATTENDANCE

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

SENATE SECRETARIAT

- Clerk Assistant
- Legal Counsel

MIN. NO.259/2018

PRELIMINARIES

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

MIN. NO.260/2018

ADOPTION OF THE AGENDA

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

MIN. NO. 261/2018

CONSIDERATION OF THE SUBMISSIONS BY THE PUBLIC ON THE-

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

There were no submissions by the public to this bill.

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

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

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

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

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

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

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

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

MIN. NO. 262/2018

REVIEW OF ELECTIONS AND RELATED LAWS

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

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

Members took note and advised as follows-

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

MIN. NO.263/2018

ANY OTHER BUSINESS

None

MIN. NO.264/2018

DATE OF THE NEXT MEETING AND ADJOURNMENT

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

Signed


SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date:

13/2/2019

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN-ATTENDANCE

Sen. Aaron Cheruiyot, MP

IN-ATTENDANCE

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

SENATE SECRETARIAT

- Clerk Assistant
- Legal Counsel

MIN. NO.242/2018

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

PRELIMINARIES

MIN. NO.243/2018

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

ADOPTION OF THE AGENDA

MIN. NO. 244/2018

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

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

MIN. NO.245/2018

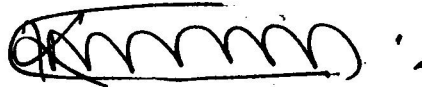
None

ANY OTHER BUSINESS

MIN. NO.246/2018

DATE OF THE NEXT MEETING AND
ADJOURNMENT

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



Signed
SEN. SAMSON CHERARKEY (CHAIRPERSON)

13/2/2019

Date:

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN-ATTENDANCE

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

IN-ATTENDANCE

1. Gov. Kivutha Kibwana

COUNCIL OF GOVERNORS

- Chairperson, Legal Committee

IN-ATTENDANCE

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

SENATE SECRETARIAT

- Clerk Assistant
- Legal Counsel
- Research Officer

MIN. NO.186/2018

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

PRELIMINARIES

MIN. NO.187/2018

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

ADOPTION OF THE AGENDA

MIN. NO. 188/2018

PRE-PUBLICATION SCRUTINY OF THE

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

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

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

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

ii) Petition to County Assemblies Procedure Bill, 2018

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

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

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

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

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

MIN. NO. 189/2018

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

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

MIN. NO.190/2018

ANY OTHER BUSINESS

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

MIN. NO.191/2018

DATE OF THE NEXT MEETING AND ADJOURNMENT

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

Signed



SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date:
13/2/2019