

Approved for tabling.
B. S. N. A.
17/12/15



Paper laid
By the chair
Delegated Legislation
Committee, Hon. William
Chepkuma on
Thursday 17/12/15
[Signature]

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - THIRD SESSION (2015)

THE SELECT COMMITTEE ON DELEGATED LEGISLATION

REPORT

**ON THE KAIMOSI FRIENDS UNIVERSITY COLLEGE
ORDER, 2015**

**Clerk's Chambers,
Parliament Buildings,
NAIROBI**

DECEMBER, 2015

1.0 PREFACE

Mr. Speaker Sir,

On behalf of the Members of the Select Committee on Delegated Legislation, and pursuant to Standing Order No.199, it is my pleasure and duty to present to the House the Committee's Report on the Kaimosi Friends University College Order, 2015.

1.1 Committee Membership

The Committee on Delegated Legislation was constituted by the House on 21st May, 2013 and is comprised of the following Members;

Hon. William Cheptumo, MP – **Co-Chairperson**
Hon. Joseph Gitari, MP – **Vice Chairperson**
Hon. Richard Onyonka, MP
Hon. Alfred Keter, MP
Hon. Hassan Aden Osman, MP
Hon. Timothy W. Wetangula, MP
Hon. George Theuri, MP
Hon. Elisha K. Busienei, MP
Hon. Eng. Shadrack Manga, MP
Hon. Yusuf Hassan Abdi, MP
Hon. Michael Kisoi, MP
Hon. Mohamed Adan Huka, MP
Hon. John M. Waiganjo, MP
Hon. Paul K. Bii, MP
Hon. Charles Gimose, MP
Hon. T. J. Kajwang, MP
Hon. Simba Arati, MP
Hon. Rachael A. Amolo, MP
Hon. Vincent Musau, MP
Hon. William Kisang, MP
Hon. Neto Agostinho, MP
Hon. Paul Koinange, MP
Hon. Ibrahim Abdi Saney, MP
Hon. Eusilah Ngeny, MP
Hon. Nicholas Ngi'kor Nixon, MP
Hon. Benard Shinali, MP
Hon. Kabando wa Kabando, MP
Hon. Marcus Mutua Muluvi, MP

1.2 Mandate of the Committee

The Committee on Delegated Legislation is a Select Committee established pursuant to provisions of the Standing Order No. 210 whose mandate is to consider in respect of any statutory instrument whether it:-

- a. Is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- b. Infringes on fundamental rights and freedoms of the public;
- c. Contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- d. Contains imposition of Taxation;
- e. Directly or indirectly bars the jurisdiction of the court;
- f. Gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
- g. Involves expenditure from the consolidated fund or other public revenues;
- h. Is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- i. Appears to make some unusual or unexpected use of the power 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 Parliament;
- k. Makes rights, liberties or obligations unduly dependent upon non-renewable 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 Parliamentary scrutiny; and,

- q. Accords to any other reason that the Committee considers fit to examine.

Standing Order No. 210(4) provides that 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, the Committee may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled.
- c. The Clerk shall submit the resolution under paragraph 4(b) above to the relevant state department or the authority that published the statutory instrument.

1.3 Consideration of the Kaimosi Friends University College Order, 2015

Pursuant to section 20 (3) and 70 of the Universities Act (No.42 of 2012) the Cabinet Secretary for Education, Science and Technology is empowered to make Order.

The Order was published on 22nd May, 2015 and submitted to the Clerk of the National Assembly by the Cabinet Secretary, Education, Science and Technology on 9th June, 2015.

The Order was upon tabling referred to the Select Committee on Delegated Legislation, by the Hon. Speaker for review and scrutiny pursuant to section 12(1) of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly.

1.4 Committee Meetings

The Committee held one sitting and scrutinized the Order pursuant to the Provisions of Section 13 of the Statutory Instruments Act and Standing Order No. 210.

1.5 Committee Observation and Recommendation

The Committee observed that save for paragraph 24 of the Order; the Order as published complies with the requirements of section 13 and other enabling provisions of the Statutory Instruments Act and Standing Orders of the National Assembly. Order 24 seeks to provide for the protection of the name of the University and prohibit registration of the same.

In view of the foregoing and pursuant to provisions of section 13 of the Statutory Instruments Act and Standing Order 210 (4) (b), the Committee recommends to the House that paragraph 24 of the Order be annulled.

1.6 Acknowledgement

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate;

I take this opportunity to thank all the Members of the Committee for their useful and immense contribution in scrutinizing the Kaimosi Friends University College Order, 2015.

The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

Finally, it is now my pleasant duty, on behalf of the Committee, to recommend this Report to the House pursuant to the provisions of Standing Orders of the National Assembly for adoption and passage.

Signed..........Date.....16.12.15.....

**Hon. William Cheptumo, MP
(Chairperson)**

Select Committee on Delegated Legislation

2.0 COMMITTEE'S CONSIDERATION OF THE KAIMOSI FRIENDS UNIVERSITY COLLEGE ORDER, 2015

The Order is made pursuant to section 70 of the Universities Act, 2012 as read together with section 20 (1) (d) empowering the Cabinet Secretary to make the Order.

The Order seeks to establish the Kaimosi Friends University College as a constituent college of the Masinde Muliro University of Science and Technology and as a body corporate and as a successor of the Kaimosi Teachers Training College and to take over the assets, liabilities and rights of the said Teachers' College.

It provides for the objects and functions of the College, the powers to award degrees and diplomas, scholarships and bursaries. It provides for the administrative and governance structures of the University and spells out the membership of the University College, establishes offices of the Principal, deputy principal, deans and directors of faculties, schools, institutes and centres, establishes and provides for the functions of the council, the academic and management boards, the alumni association. It also details the financial provisions and making of the statutes.

2.1 Committee Observations

The Committee on Delegated Legislation scrutinized the Kaimosi Friends University Order, 2015, and observed as follows;

- a. The attached Explanatory memorandum details the purpose of the Order as improving access to higher education in light of vision 2030.
- b. The memorandum provides for Legislative context to be operationalising section 26 of the Act of establishing public universities in Counties and the policy background as being sessional paper No.14 of 2012 and indicates the extent of public consultation done, outlines the guidance and modalities of reviewing the order, its impact on fundamental rights and freedoms.
- c. Paragraph 24 of the Order seeks to provide for the protection of the name of the University and prohibit registration of the same. This is already covered in section 27 of the Act and other statutes such as Cap 499, Cap 486

and Cap 107 and may not be addressed in a Statutory Instrument .It provides under paragraph 24 (2) for a fine not exceeding one million shillings and a prison term not exceeding twelve months contrary to section 13 (n) and 24 (5) of the Statutory Instruments Act.

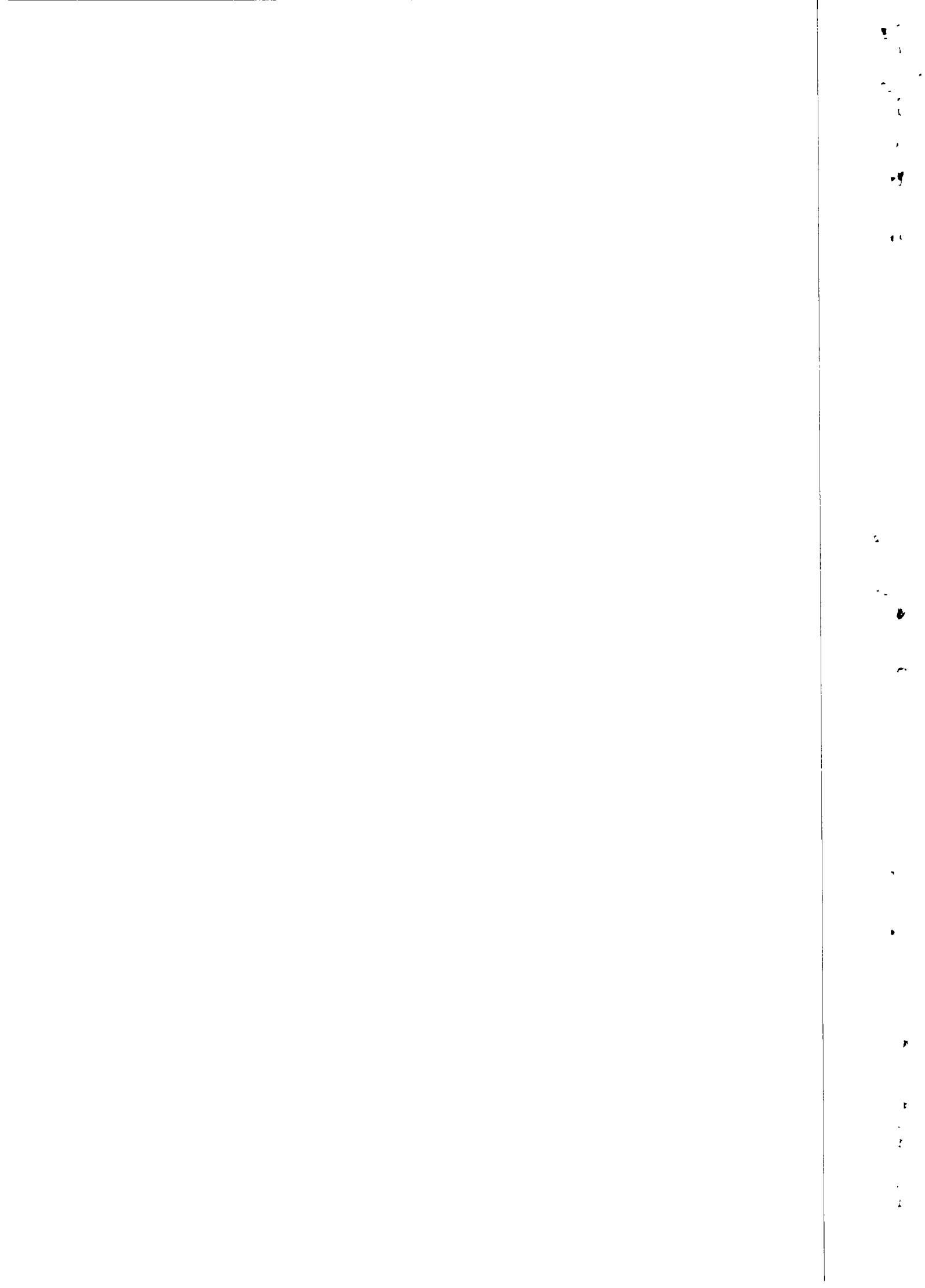
- d. The statutory Instruments Act under section 13 (n) prohibits imposition of a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation. The said Act further stipulates under section 24 (5) that for breach of a statutory instrument the penalty imposed should not exceed twenty thousand shillings or such a term of imprisonment not exceeding six months.

The Committee found that except for paragraph 24, the Order as published accords with the provisions of the Constitution, the Act Pursuant to which it is made, the Statutory Instruments Act, 2013, Standing Orders 210 (3) and other relevant written laws.

3.0 Committee Recommendation

In view of the Committee’s considerations, observations and findings under 2.0 and 2.1 above and pursuant to the provisions of section 13 and other relevant provisions of the Statutory Instruments Act (No.23 of 2013) and Standing Order No.210 and other relevant legislations, **the Committee hereby recommends to the House that paragraph 24 of the Kaimosi Friends University College Order 2014 be annulled.**

.....**END**.....



PARLIAMENT OF KENYA

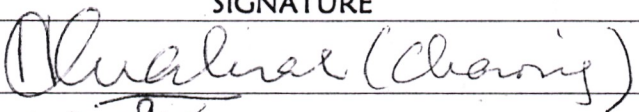


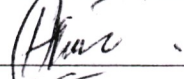
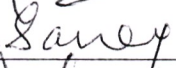
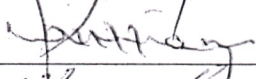
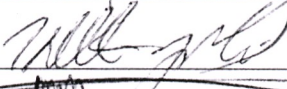
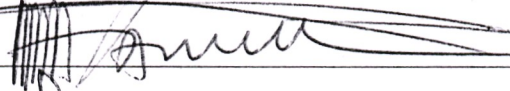
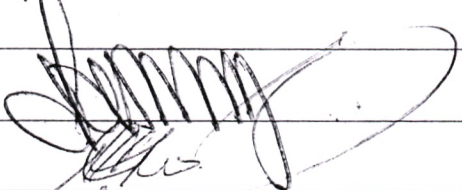
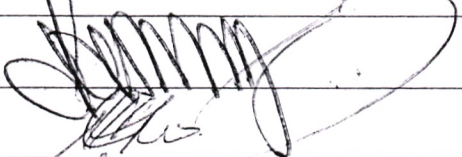

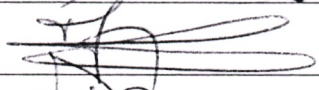
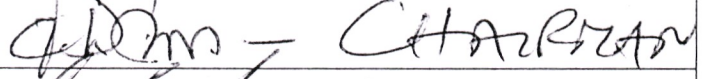
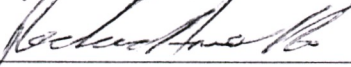
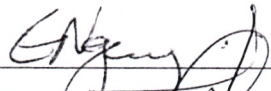
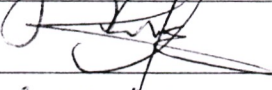
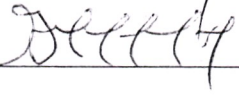
THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

ATTENDANCE REGISTER FOR MEMBERS

DATE...30/07/2015

ADOPTION OF REPORTS

	NAME	SIGNATURE
1	Hon. Joseph Gitari	
2	Hon. Paul K. Bui	
3	Hon. G. Thero	
4	Hon. Hassan Osman	
5	Hon. Ibrahim A. Sanyal	
6	Hon. William Kisingi	
7	Hon. Tim Wanjau	
8	Hon. Nixon Ngũgĩ	
9	Hon. Richard Ombaka	
10	T. J. Kajwang	
11	Hon. HUKA	
12	II SIMBA AATI	
13	Hon. W. Cheptura	
14	Hon. Rachana Amoo	
15	EUSILA NGENY	
16	Hon. KABAMBO wa KABAMBO	
17	John M. Wanjau	


A.M. WASIKE
For: CLERK OF THE NATIONAL ASSEMBLY

Karim

**MINUTES OF THE 24TH SITTING OF THE SELECT COMMITTEE ON
DELEGATED LEGISLATION HELD ON THURSDAY 30TH JULY, 2015 IN THE
MEMBERS NEW LOUNGE, PARLIAMENT BUILDINGS AT 10.00 A.M**

PRESENT

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. Joseph Gitari, M.P. - **Vice Chairperson**
3. Hon. John Waiganjo, M.P.
4. Hon. Mohamed Aden Huka, M.P
5. Hon. William Kisang, M.P..
6. Hon. George Theuri, M.P.
7. Hon. Simba Arati, M.P.
8. Hon. Kabando wa Kabando, M.P.
9. Hon. Hassan Aden, M.P.
10. Hon. T. J. Kajwang, M.P.
11. Hon. Richard Onyonka, M.P.
12. Hon. Paul Bii, M.P
13. Hon. Saney Abdi Ibrahim, M.P.
14. Hon. Wetangula Timothy Wanyonyi, M.P
15. Hon. Nicholas Nixon, M.P.
16. Hon. Eusilah Jepkosgei, M.P
17. Hon. Rachael Ameso, M.P.

ABSENT WITH APOLOGIES

1. Hon. Marcus Mutua Muluvi, M.P.
2. Hon. Vincent Musau, M.P.
3. Hon. Yusuf Hassan, M.P.
4. Hon. Shadrack Manga, M.P.
5. Hon. Paul Koinange, M.P
6. Hon. Charles Gimose, M.P
7. Hon. Michael Kiso Manthi, M.P.
8. Hon. Elisha Busienei, M.P.
9. Hon. Benard Shinali, M.P.
10. Hon. Alfred Keter, M.P.
11. Hon. Neto Agostinho, M.P.

IN ATTENDANCE

The National Assembly

A.M Wasike -First Clerk Assistant

MIN.DL.112/2015PRELIMINARIES

The meeting was called to order at 10.55 a.m after a word of prayer by Hon. Paul Bii.

The vice-Chairperson informed members that the secretariat has filed draft reports on Kaimosi Friends University College, Human Resource Professionals Management (Registration and Training) Regulations, 2015 Kisumu, Eldoret and Kenya Technical Trainers for adoption by the Committee.

MIN.DL.113/2015 ADOPTION OF COMMITTEE REPORTS

a. Report on the Human Resource Management Professionals (Registration and Training) Regulations, 2015

The Hon.T.J Kajwang, MP proposed adoption of the Report and was seconded by Hon. Paul Bii, MP

Members of the Committee present unanimously adopted the Report by recommending that all of the Human Resource Management Professionals (Registration and Training) Regulations, 2015 be annulled.

b. Report on the Eldoret National Polytechnic Order, 2014

The Hon. William Kisang, MP proposed adoption of the Report and was seconded by Hon.George Theuri, MP

Members of the Committee present unanimously adopted the Report by recommending that Order 20 and 21 of the Eldoret National Polytechnic Order, 2014 be annulled.

c. Report on the Kisumu National Polytechnic Order, 2014

The Hon. Rachael Ameso, MP proposed adoption of the Report and was seconded by Hon. Nixon Ngikor Nicholas, MP

Members of the Committee present unanimously adopted the Report by recommending that Order 19 and 20 of the Kisumu National Polytechnic Order, 2014 be annulled.

d. Report on the Kenya Technical Trainers Order, 2014

The Hon. TJ Kajwang, MP proposed adoption of the Report and was seconded by Hon. Joseph Gitari, MP

Members of the Committee present unanimously adopted the Report by recommending that Order 19 and 20 of the Kenya Technical Trainers Order, 2014 be annulled.

e. Report on the Kaimosi Friends University College Order, 2015

The Hon. Hassan Osman, MP proposed adoption of the Report and was seconded by Hon. Rachael Ameso, MP

Members of the Committee present unanimously adopted the Report by recommending that paragraph 24 of the Kaimosi Friends University College Order, 2015 be annulled.

MIN.DL.114/2015 ANY OTHER BUSINESS

There being no other business, the meeting was adjourned at 11.50 a.m.

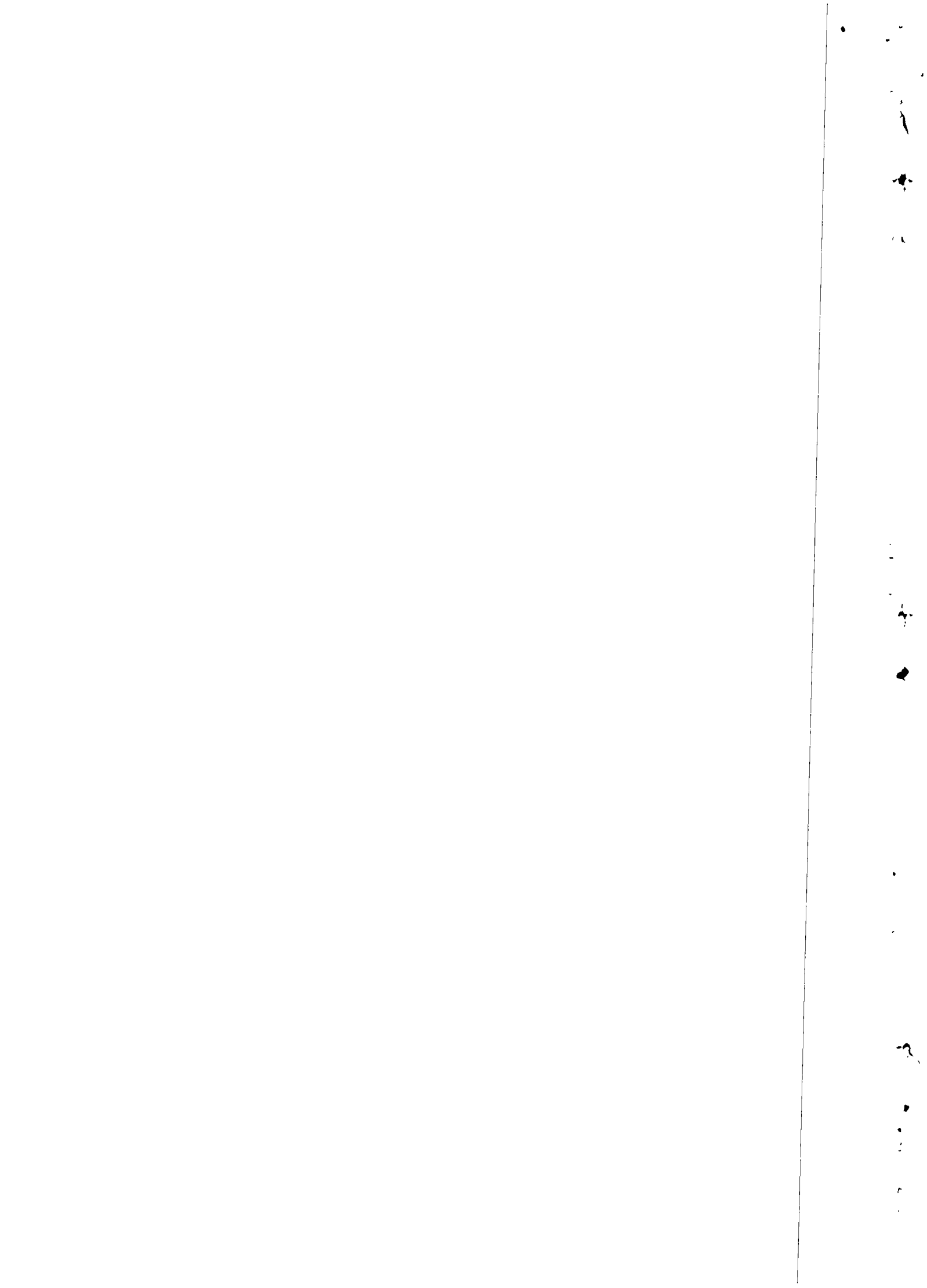
MIN.DL.115/2014 DATE OF NEXT MEETING

The next meeting will be held on Tuesday 4th August 2015..

Signed 

Hon. William Cheptumo
(Chairperson)

Date 4/08/2015



MINUTES OF THE 22ND SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY 30TH JUNE, 2015 IN THE RESTAURANT, CONTINENTAL HOUSE, 7TH FLOOR, AT 10.00 A.M

PRESENT

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. Paul Bii, M.P.
3. Hon. William Kisang, M.P.
4. Hon. Eusilah Jepkosgei, M.P
5. Hon. Rachael Ameso, M.P.
6. Hon. Elisha Busienei, M.P.
7. Hon. George Theuri, M.P.
8. Hon. Benard Shinali, M.P.
9. Hon. Neto Agostinho, M.P.
10. Hon. Simba Arati, M.P.
11. Hon. Kabando wa Kabando, M.P.
12. Hon. Nicholas Nixon, M.P.
13. Hon. Hassan Aden, M.P.
14. Hon. Paul Koinange, M.P

ABSENT WITH APOLOGIES

1. Hon. Joseph Gitari, M.P. - **Vice Chairperson**
2. Hon. Alfred Keter, M.P.
3. Hon. Mohamed Aden Huka, M.P.
4. Hon. Marcus Mutua Muluvi, M.P.
5. Hon. Vincent Musau, M.P.
6. Hon. Yusuf Hassan, M.P.
7. Hon. Shadrack Manga, M.P.
8. Hon. Charles Gimose, M.P.
9. Hon. Richard Onyonka, M.P.
10. Hon. John Waiganjo, M.P.
11. Hon. Saney Abdi Ibrahim, M.P.
12. Hon. T. J. Kajwang, M.P.
13. Hon. Wetangula Timothy Wanyonyi, M.P
14. Hon. Michael Kisoi Manthi, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

A.M Wasike -First Clerk Assistant

Wilson Dima -Senior Legal Counsel

Catherine Wangui -Sergeant at arms

MIN.DL.101/2015

PRELIMINARIES

The meeting was called to order at 10.55 a.m after a word of prayer by Hon.Kabando Wa Kabando.

The Chairperson updated members on progress of Regulations before the Committee.

MIN.DL.102/2015

CONSIDERATION OF REGULATIONS

The Science, Technology and Innovations Regulations

The secretariat reported to the Committee that the Regulation making authority had submitted three sets of explanatory memorandum as resolved by members on 9th June 2015.

Members confirmed the position and resolved to accede to the three sets of Statutory Instruments namely;

- i. The Science, Technology and Innovations (Research and Licensing) Regulations, 2014
- ii. The Science, Technology and Innovations (Registration and Accreditation) Regulations, 2014
- iii. The Science, Technology and Innovations (Relevancy and Quality Assurance) Regulations, 2014

The Human Resource Management Professionals (Registration & Training) Regulations, 2015

Members scrutinized the Regulations and observed as follows;

- a. The Regulations were published on the 22nd May 2015 and were tabled in the National Assembly on 9th June 2015 which is within the statutory timelines stipulated under section 11(1) of the Statutory Instruments Act, 2013.
- b. The Regulations provide *inter alia* for criteria to be followed by professionals in registration as an associate member, member or fellow of the Institute of Human Resource Management; the eligibility for and modalities of obtaining the annual practicing certificate, continuing professional development including the conduct of education programmes, award of credit points and certificates and records of accredited programmes and participants and requirements for continuing education programmes. It also tackles issues of accreditation and the fees to be paid for the same.

- c. The Regulations do not require a Regulatory Impact Statement since the nature of the Regulations are such that they are merely administrative and do not operate to the disadvantage of other persons by decreasing a persons' right to property or imposing liabilities within the meaning of section 11 (2) of the Statutory Instruments Act,2013.
- d. The Regulation making authority failed to attach an explanatory memorandum as required under section 11 (2) of the Statutory Instruments Act.
- e. The Act stipulates for an explanatory memorandum to be attached in a manner prescribed in the schedule to any statutory instrument laid or tabled before Parliament.

An explanatory memorandum is a critical and integral requirement document in so far as Regulations are concerned and lack of it constitutes a fundamental breach by the Regulations making authority.

Where an explanatory memorandum is not attached, the Committee is denied an opportunity to comprehensively understand the substance of a given statutory instrument. In this case the regulation making authority has not annexed the memorandum to provide information on the purpose of the Regulations, legislative context, plicy background, outcome of consultations (if any), guidance, impact on fundamental rights and freedoms and how the regulation making authority shall monitor and review implementation of the regulations.

The Committee found that the regulation making authority did not comply with the provisions of section 11 (2) of the Statutory Instruments Act and therefore the instrument should be annulled.

The Kaimosi Friends University College Order, 2015

The Committee on Delegated Legislation scrutinized the Kaimosi Friends University Order, 2015, and observed as follows;

- a. The attached Explanatory memorandum details the purpose of the Order as improving access to higher education in light of vision 2030.
- b. The memorandum provides for Legislative context to be operationalising section 26 of the Act of establishing public universities in Counties and the policy background as being sessional paper No.14 of 2012 and indicates the extent of public consultation done, outlines the guidance

and modalities of reviewing the order, its impact on fundamental rights and freedoms.

- c. Paragraph 24 of the Order seeks to provide for the protection of the name of the University and prohibit registration of the same. This is already covered in section 27 of the Act and other statutes such as Cap 499, Cap 486 and Cap 107 and may not be addressed in a Statutory Instrument .It provides under paragraph 24 (2) for a fine not exceeding one million shillings and a prison term not exceeding twelve months contrary to section 13 (n) and 24 (5) of the Statutory Instruments Act.

- d. The statutory Instruments Act under section 13 (n) prohibits imposition of a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation. The said Act further stipulates under section 24 (5) that for breach of a statutory instrument the penalty imposed should not exceed twenty thousand shillings or such a term of imprisonment not exceeding six months.

The Committee found that except for paragraph 24, the Order as published accords with the provisions of the Constitution, the Act Pursuant to which it is made, the Statutory Instruments Act, 2013, Standing Orders 210 (3) and other relevant written laws.

MIN.DL.103/2015

COMMITTEE PROGRAMME

Members resolved to consider Equalization Funds Regulations 2015 on 7th July 2015. Members from areas affected by the fund will attend.

MIN.DL.104/2015

ANY OTHER BUSINESS

The Committee resolved that it will in future arrange a meeting with the AG on processing Subsidiary legislation by the executive.

MIN.DL.105/2015

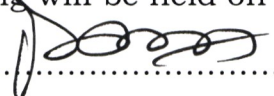
ADJOURNEMENT

The Chairperson adjourned the meeting at 12.05 p.m.

MIN.DL.106/20145

DATE OF NEXT MEETING

The next meeting will be held on Thursday 2nd July 2015.

Signed. 

Hon. William Cheptumo

(Chairperson)

Date. 