

THE COUNTY GOVERNMENT OF KITUI
THE COUNTY ASSEMBLY



SECOND ASSEMBLY- THIRD SESSION
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON CONSIDERATION OF THE KITUI COUNTY CORPORATION
(KITUI COUNTY TEXTILE CENTER REGULATIONS, 2019).

Clerk's Chambers,
County assembly Buildings,
Kitui- Kenya

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1.0 PREFACE

Mr. Speaker

Mr. Speaker, on behalf of the County Assembly Select Committee on Justice and Legal Affairs, it is my pleasant duty and honour to present to this Honourable House the Committee's report on consideration of the Kitui County Textile Centre Regulation, 2019.

1.1 COMMITTEE MEMBERSHIP

Mr. Speaker

The County Assembly Committee on Justice and Legal Affairs as currently constituted is composed of the following Honourable Members.

1. Hon. Nelson K. Musyoka	Chairperson
2. Hon. Eliud Nding'uri	Vice Chairperson
3. Hon. Geoffrey Mwalimu	Member
4. Hon. Dr. Grace Mutua	Member
5. Hon. Stephene M. Makau	Member
6. Hon. Musee Mati	Member
7. Hon. Philip Nguli	Member
8. Hon. Peter M. Kilonzo	Member
9. Hon. Josphine Kavivi	Member
10. Hon. Charity Mwangangi	Member
11. Hon. Deiys Mukala	Member

1.2 COMMITTEE ESTABLISHMENT

The Committee on Justice and Legal affairs was established vide the County Assembly Resolution. The need for the committee establishment arose from the fact that there was no a Committee to effectively and efficiently oversight over Justice and Legal issues in the County hitherto.

It was thus observed that the Committee be established for the purposes of over-sighting on all legal matters arising from the functions of the County departments / ministries.

In undertaking the subject matter, the Committee was guided by section 12 of the Statutory Instruments Act, 2013 which states

‘Every Statutory instrument issued, made or established after the commencement of this Act shall upon tabling before the respective House of the parliament stand referred to the Committee or any other Committee that may be established for that purpose of reviewing and scrutinizing statutory instruments.’

1.3 RELEVANT CONSIDERATIONS

In carrying out its scrutiny of the Statutory Instrument the Committee was guided by the doctrine of Separation of powers , the principles of good governance, rule of law, and in particular considered whether the statutory instrument:-

- i. Is in accord with the provisions of the Constitution, the Act pursuant to which it is made or any other written law.
- ii. Infringes on fundamental rights and freedoms of the public
- iii. Contains a matter which in the opinion of the committee should be more dealt with by an Act of the Parliament
- iv. Contains Imposition of taxation
- v. Directly or indirectly bars the jurisdiction of courts
- vi. Gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such powers
- vii. Involves expenditure from consolidated Fund or other public revenue
- viii. Is defective in its drafting or for any reason the form of purport of the Statutory Instrument calls for elucidation
- ix. Appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made
- x. Appears to have had unjustifiable delay in its publication or laying before Parliament
- xi. Makes rights, liberties or obligations unduly dependent upon non reviewable decisions
- xii. Makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers
- xiii. Inappropriately delegates legislative powers
- xiv. Imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation
- xv. Appears to infringe on the rule of law

- xvi. Inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- xvii. Accords to any other reason that the Committee considers fit to examine.

Further, in undertaking its mandate, the Committee was greatly guided by the provisions of the Public Finance Management Act, 2012 and article 94(5) of the Constitution of Kenya 2010.

Mr. Speaker

A '*Statutory Instrument*' is defined in Section 2 of the Statutory Instruments Act as any rule, order, Regulation, direction, form, tariff of cost 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 or County legislation under which that Statutory Instrument or subsidiary legislation is expressly authorised to be issued

Mr. Speaker,

Pursuant to section 12(1) of the Statutory Instruments Act, 2013 The Kitui County Textile Centre Regulations, 2019 were committed to the Committee on Justice and Legal affairs on the 4th day of December, 2019 for consideration and subsequently reporting to the House for adoption.

Mr Speaker

Worth noting is that in scrutinizing the said Regulations, the powers vested on the Committee pursuant to the provisions of section 15(1) and (2) of the Statutory Instruments Act are either;

- a. to accede to the regulations or
- b. to annul the whole or part of the Regulations

Where the Committee resolves to accede to the Statutory Instruments, the Clerk shall convey that resolution to the relevant County department or the authority that published the Statutory Instrument without passing through the House.

Where on the other hand the Committee resolves not to accede to the Regulations the Committee shall make a report to the House containing only resolution that the Regulations that stood referred to the Committee be revoked.

1.4 COMMITTEE MEETINGS

The Committee held meetings to consider and review the Kitui County Cooperation (Kitui County Textile Centre) Regulations, 2019, and eventually compiled the final Committee report.

During the Committee Meetings, and in line with section 16 of the Statutory instruments Act, The Committee met with the Assistant Director for the County Ministry on Trade Cooperatives and Investments to shed more light on the said Regulations

1.5 ACKNOWLEDGEMENT.

Mr Speaker

The Committee is grateful to the Offices of the Speaker and the Clerk of the Assembly for the support extended to it in facilitating the production of this report

I also wish to extend my appreciations to the Members of the Committee and the Staff of the County Assembly who worked tirelessly to compile this report.

Mr. Speaker

I wish to confirm to that the recommendations and the resolutions of this committee were unanimous. It is therefore my pleasant duty and privilege, on behalf of the Committee on Justice and Legal Affairs Committee to table this report to the House for consideration and consequent approval.

SIGNED BY _____

HON. NELSON K. MUSYOKA (M.C.A).

CHAIRPERSON, COMMITTEE ON JUSTICE AND LEGAL AFFAIRS.

COUNTY ASSEMBLY OF KITUI.

DATE _____

2.0 EXECUTIVE SUMMARY

Article 94(5) of the Constitution of Kenya 2010 precludes all other persons or bodies other than persons or bodies other than Parliament from making provisions having the force of law in Kenya except under authority conferred by the Constitution or delegated by the legislature through a statute.

The County Assembly may, therefore, delegate to any person or body the power to make Subsidiary legislation, which require approval of the House before having the force of the law. Subsidiary legislation made by persons or bodies other than the parliament are commonly known as Statutory Instruments

The manner, procedure and criteria for considering Statutory Instruments is detailed in Statutory Instruments Act, NO.23 of 2013 and the Standing Orders

2.1 LEGAL FRAMEWORK AND BASIS.

Mr Speaker sir.

The Constitution of Kenya under Article 186 provides for the functions of the respective levels of the Government. Article 187 on the other hand envisages a situation where functions are transferred from one level of the government to other but observes in strict terms that despite the transfer of the Constitutional responsibility for the functions set out under schedule four part two shall remain with the level of government that is assigned that function under that said schedule. The Kitui County Textile Centre Regulations, 2019 seeks to establish the KICOTEC and give a framework for its operations

3.0 OVER VIEW OF THE KITUI COUNTY TEXTILE CENTER HEALTH REGULATIONS 2019

Mr. Speaker.

The Kitui County Cooperation (Kitui County Textile Centre) Regulations 2019, seek to provide a legal frame work under which the Cooperation shall be established and managed in Kitui County. Further These Regulations provide for the operations of KICOTEC and for its winding up.

3.1 OBJECTS AND THE PURPOSE OF KICOTEC

Pursuant to Section 6 of the Kitui County Cooperation (Kitui County Textile Centre) Regulations the objects and the purpose of KICOTEC shall be to:

- I. Manage textile manufacturing in the County in accordance to the provision of the Kitui County Cooperation Act, 2019 and these Regulations.
- II. Promote best practices in and regulate the production, processing, and marketing of apparel, garments and textiles.
- III. Advise the county Government on textile manufacturing dealing levies for purposes of planning, enhancing harmony and equity in the sector.
- IV. Carryout such other functions as may be assigned to it by the County Executive Committee Member.

3.4 FUNDS OF KICOTEC (Regelation 9)

Mr. Speaker,

KICOTEC shall get it funding from the following sources:

- I. Money as May from time to time, be appropriated by the County Assembly for that purpose.
- II. Money that accrues to the corporation in the performance of its functions.
- III. Grants, donations or gifts to the corporation for its activities under the Kitui County Corporations Act, 2019 and these Regulations

3.5 DOSSOLUTION OF KICOTEC (Regulation 12)

Mr. Speaker,

In the event of a dissolution of KICOTEC, the procedure is expressly provided for in Regulation 12 which provides for the following conditions;

- i. The corporation is not carrying out is not carrying out business or is not in operation.
- ii. The corporation is in liquidation and the County Executive Committee Member believes that its affairs are fully wound up.
- iii. The Board applies to the County Executive Committee Member for dissolution.
- iv. The Advisory committee advices on the dissolution; or
- v. If the County passes a motion for dissolution.

3.6 THE MANNER OF DISSOLUTION

Mr. Speaker,

The dissolution of the corporation shall be done in the following manner as per the provisions of Regulation 12 (2) which outlines the following;

- i. In the event of dissolution the corporation's financial reports shall be attached to the written application for dissolution together with comprehensive list of its assets and liabilities and staff to the County Executive Committee Member.
- ii. The County Executive Committee Member shall then table the application for dissolution together with the attachment and a full report on the financial implication of dissolution and proposal of assets and liabilities distribution and transition of the corporation staff to the County Executive Committee Member.
- iii. The Advisory Committee shall give their advisory to the County Executive Committee before it's deliberates on dissolutions.
- iv. The Governor shall then submit the decision of the County Executive Committee together with the attachments to the county assembly for approval.
- v. Upon the approval by the County Assembly, the County Executive Committee Member shall implement the approved proposal on Assets and liabilities distribution and staff transition.
- vi. The County Executive Committee Members shall also cause to be dissolve the Board of the Corporation and mark the Corporations as dissolved in the Schedule under Regulation 201(2) of the Public Finance (County Governments) Regulations.

4.0 COMMITTEE OBSERVATIONS

Mr. Speaker,

Having been able to scrutinize the Kitui County Corporation (Kitui County Textile Centre) Regulations 2019, the Committee makes following observations:-

- i. The Committee noted with concern that Section 9(d) of the Regulations states that the Funds of the Corporation will include, any other Monies that may be approved by the County Treasury. The Committee is of the

opinion that the sole mandate to approve and appropriate funds rests with the County Assembly.

- ii. The Committee notes that the Regulations omit the word Liabilities in Section 12 (2) (a),(b) and (e). After the word Assets. It is the opinion of the Committee KICOTEC as a corporate body will acquire liabilities in its operations.
- iii. Committee notes that Kicotec has not been able to cater for its operations expenses since its inception and thus it relies on funds appropriated by the Assembly through the line Ministry.
- iv. The Committee further notes that there has been high staff turnover occasioned by uncertain term of service.
- v. Committee observes that Kicotec in its current status does not have limited liabilities, if the status quo remain this may result to loss of Assets to the county in case of debts and suits.
- vi. Committee further observes that Kicotec sources its raw materials from outside the County and this does not promote the spirit of Value chain addition to local available raw materials such as cotton, hides and skins among other which are readily available.

5.0 COMMITTEE RECOMMENDATIONS

Mr. Speaker,

Upon scrutinizing the Kitui County Corporation (Kitui Textile Centre) Regulations, 2019 in line with the Statutory Instruments Act, and the Kitui County Assembly Standing Orders, the Committee resolves to accede to the Kitui County Corporation (Kitui Textile Centre) Regulations, 2019 with exemption of sub Section 9(d) and inclusion of the liabilities in Section 12 (2) (a),(b) and (e). After the word Assets in the Regulations.

Owing to the above observations, the Committee recommends the following for effective operationalization of KICOTEC;-

- i. The Committee recommends deletion of Section 9 (d) of the Regulations and bestow the mandate to appropriate funds for the corporation with the County Assembly.

- ii. The Committee recommends the inclusion of the word liabilities in Section 12 (2) (a), (b) and (e) after the word Assets.
- iii. Committee recommends that Kicotec should be able to meet its operational and other overhead expenses within the grace period of the two years as stipulated in the Annual Development Plan for the financial year 2019/2020.
- iv. The Committee recommend the Kicotec Board to formulate and implement clear terms of service for the corporation staff to avoid high staff turnover which otherwise results to low morale and high brain drain.
- v. Committee recommend that Kicotec should seek to attain a limited liability status whereby the County Government will not be liable for the corporation's debts or liabilities.
- vi. Committee recommends that kicotec should seek to source its raw materials from the locally available products e.g. cotton, hides and skins in order to promote and increase local production and value addition to locally available materials.

6.0 CONCLUSION

Mr. Speaker

In conclusion the committee appreciates the bold step taken by County Government of Kitui to embrace the National Government's big four agenda among them industrialization. It is the belief of this Committee that KIKOTEC will soon attain the status of a garment industry/ factory upon operationalization of these Regulations. This will eventually result to wealth creation and subsequently job creation for the people of kitui.