

COUNTY GOVERNMENT OF BUNGOMA



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COUNTY ASSEMBLY OF BUNGOMA
(LPCS)
24 JUL 2024
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COUNTY ASSEMBLY OF BUNGOMA
OFFICE OF THE CLERK

THIRD ASSEMBLY

THIRD SESSION

COMMITTEE ON DELEGATED COUNTY LEGISLATION

REPORT ON THE STATUS OF FOUR ACTS PASSED BY THE COUNTY ASSEMBLY OF BUNGOMA : THE BUNGOMA COUNTY FLAG, EMBLEMS AND NAMES PROTECTION ACT, 2015, PROPERTY HIRE AND LEASE ACT, 2017, AGRICULTURAL PRODUCE CESS ACT, 2017 AND TRANSPORT ACT, 2015

Clerks Chambers
County Assembly Buildings
P.O BOX 1886 - 50200
BUNGOMA, KENYA

JUNE, 2024

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CHAPTER ONE

1.0 Chairperson's forward

Hon. Speaker

In line with its legislative role as provided for under the Constitution and the law, the County Assembly of Bungoma has enacted various legislations since its inception. The committee undertook the scrutiny of the following Acts passed by the County Assembly since inception and made its observations and recommendations thereafter:

The Bungoma County Flag, Emblems, and Names Protection Act, 2015

This is a legislative measure aimed at preserving the dignity and sanctity of the County symbols. This act provides a legal framework for the use, display, and protection of the County's flag, coat of arms, and other official emblems. It defines the circumstances under which these symbols can be used and establishes penalties for misuse or unauthorized use. The act seeks to foster respect and pride in the county's identity and heritage.

The Bungoma County Property Hire and Lease Act, 2017

The Act outlines the procedure governing the hiring and leasing of County property. This legislation is designed to ensure transparency, efficiency, and fairness in the management of County-owned assets. It stipulates the terms and conditions for leasing County properties, including the process for application, evaluation, and approval. The act aims to optimize the use of County resources, generate revenue, and prevent misuse or underutilization of County properties.

The Bungoma County Agricultural Produce Cess Act, 2017

The Act establishes a framework for levying and collecting cess tax on agricultural produce within the County. The act defines the type of produce subject to cess and the responsibilities of both the producers and the County authorities. The revenue collected from this cess is intended to support agricultural development, infrastructure, and

services within the County. This act aims to enhance the agricultural sector's contribution to the local economy through cess tax.

The Bungoma County Transport Act, 2015

The Act sets out a legal framework for the management and development of transport infrastructure and services in Bungoma County. This legislation covers various aspects of transport, including road maintenance, public transportation, traffic management, and safety standards. It provides guidelines for the planning and implementation of transport projects and establishes a regulatory framework for public transport operators. The Act seeks to improve mobility, reduce congestion, and enhance the overall efficiency of the county's transport system.

Revenue raising legislations

One of the key findings of the committee was that the fees and charges are not anchored in The Bungoma County Agricultural Cess Act 2017 and The Bungoma County Property, Hire and Lease Act, 2017, neither is there subsidiary legislation on the same pursuant to the Acts, cognisant of the fact that these are revenue raising legislations.

The County governments are required to enact or operationalize required legislations to underpin revenue raising measures. The practise by the National government offers guidance on how County governments should deal with revenue legislations. At the National level, the Finance Act does not impose taxes, fees and charges. The Finance Act merely alters the amount or rate of a tax or fee by amending a section in the principal law that dictates the rate. This approach is consistent with accepted revenue raising practices whereby sector specific legislations impose taxes, fees and charges hence providing for easier financial regulation of each sector.

Having scrutinised the above stated Acts passed by the County Assembly since its inception, the committee made the following recommendations:

1. **THAT** the relevant Select committees, in exercise of their oversight mandate pursuant to Article 185(3) of the Constitution should inquire from the concerned departments on the implementation status of these Acts. For instance:

- with regard to The Bungoma County Transport Act 2015; measures put in place to regulate non-motorised vehicles and taxis/cabs
2. With regard to The Bungoma County Agricultural Produce Cess Act, 2017 and The Bungoma County Property Hire and Lease Act,2017:
 - i. **THAT** the department of Finance should provide for fees and charges either in the parent Act or subsidiary legislation subject to public participation and consideration and approval by the County Assembly. This will inform the amendment of these legislations in the Finance Act where necessary,forming the basis for revenue raising measures.
 - ii. **THAT** the relevant County Executive Committee Member contemplated under section 2 of the Bungoma County Property Hire and Lease Act,2017 to make the application form for hire or lease of any property or item as stipulated under section 5 of the Act and any other form to be prescribed under the Act and submit it to the County Assembly for consideration as a subsidiary legislation.
 3. With regard to The Bungoma County Flag,Emblems and Names Protection Act,2015,the County Executive Committee Member responsible for matters public administration should fast track the enactment of the Regulations and in particular, those prescribed under section 12 of the Act since they are necessary for operationalization of the Act.

1.1. Establishment of the Committee on Delegated County Legislation

The Committee on Delegated County Legislation is established pursuant to the County Assembly Standing Order No. 214 and is mandated to consider statutory instruments submitted to the County Assembly. Standing Order number 214 states as follows:

- 1) There shall be a select Committee to be known as the Committee on Delegated County Legislation.
- 2) The Committee shall comprise of a chairperson and not more than ten other members.

1.2 Mandate of the committee

Standing Order 214(3) provides that 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, or any other member and shall thereafter stand referred to the Committee on Delegated County Legislation.

In executing its mandate, the Committee on Delegated County Legislation is guided by Standing Order 214(4) and (5) and the Statutory Instruments Act(No.23 of ,2013).Section 13 of the Statutory Instruments Act states that:-

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 and shall in particular consider whether the statutory instrument—

- a) Is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
- b) Infringes on fundamental rights and freedoms of the public;
- c) Contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- d) 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 Consolidated 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 parliament;
- 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 Parliamentary scrutiny; and
- q) Accords to any other reason that the Committee considers fit to examine.

1.3. Committee Membership

The committee as currently constituted comprises of:-

1.	Hon. George Kwemoi Tendet	Chairperson
2.	Hon. Ndasaba Dorcas	Vice chairperson
3.	Hon. Job Mukoyandali	Member
4.	Hon. Godfrey Wanyama	Member
5.	Hon. Martin Chemorion	Member
6.	Hon. Angeline Rugut	Member
7.	Hon. Aggrey Bosire	Member
8.	Hon. Jeremiah Kuloba	Member
9.	Hon. Metrine Wilson	Member
10.	Hon. Wafula Waiti	Member
11.	Hon. Allan Nyongesa	Member

ACKNOWLEDGEMENT

I wish to most sincerely thank the Hon. Speaker and the Office of the Clerk of the County Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

I would also like to sincerely thank the Hon. Members of the Committee on Delegated County Legislation for the commitment exhibited during the analyses of various Acts passed by the County Assembly and compiling of this report.

Finally, it is now my pleasure, on behalf of the Committee to present this report in accordance with Standing Order number 202(7).

SIGNED.....*G. Kemmerdet*.....DATE :.....*26/6/2024*.....

HON. GEORGE KWEMOI TENDET, MCA, ELGON WARD

Chairperson, Committee on Delegated County Legislation

CHAPTER TWO

2.0 Legislative framework

Hon. Speaker

Both plenary and committee sessions are the avenues where Members of the County Assembly can project their voice.

Over time, parliamentary committees have emerged as a creative way for parliaments to perform their basic functions. This is because they serve as focal points for legislation, oversight and representation.

2.1 Legislative authority

The Constitution of Kenya 2010 recognises Parliament at the National level and County Assemblies at the County level as organs with powers to make provisions with the force of law in the Republic.

Article 185 of the Constitution vests legislative authority to County Assemblies:

- (1) the legislative authority of a County Assembly is vested in and exercised by its County Assembly
- (2) A County Assembly may make any laws that are necessary for or incidental to the effective performance of the functions and exercise of the powers of the County Government under the fourth schedule.
- (3) A County Assembly while respecting the principle of separation of powers may exercise oversight over the County Executive Committee and any other organs.

Thus, no person or body can make provision with the force of law except under the authority of the Constitution as stipulated under Article 94(5) of the Constitution

Part xx of the Standing Orders make provisions on public Bills including the stages in the law making process in the County Assembly. These provisions are in line with section 21 of the County Governments Act regarding procedure for the exercise of legislative authority.

2.2 County Assembly Oversight role

Article 185(3) of the Constitution assigns County Assembly the oversight role with respect to the County Executive. In this regard, Article 177 of the Constitution as read together with sections 8 and 9 of the County Governments Act (No.17 of 2012) sets the basis for this assignment with regard to the role of the County Assembly and the members of the County Assembly in representing the people of the Wards and special interest in the County Assembly.

Thus, the above provisions of law resonates with the principle of people's sovereignty under Article 1 of the Constitution and the fact that the County Assembly while performing its oversight role under the Constitution ,is exercising the power delegated to it by the people they represent.

As an integral process for the enhancement of rule of law, the role of a legislature in oversight is bound within the established legal contours hence must be exercised in accordance with the law.

The Constitution provides for oversight by a County Assembly over County revenue expenditure. For instance:

- Article 183(3) of the Constitution obligates the County Executive Committee to provide the County Assembly with full and regular reports on matters relating to the County.
- Pursuant to Article 207, the County Assembly authorizes the County Executive to withdraw money from the exchequer account by passing a law authorizing that withdrawal (Appropriation Act).
- The County Assembly approves the budget and expenditure of the County government in accordance with the Public Finance Management Act(No.18 of 2012).

In addition, pursuant to Article 183

- (1).A County Executive Committee is obligated to:
 - a) implement county legislation

- b) Implement within the County, national legislation to the extent that the legislation so requires.
- c) manage and co-ordinate the functions of the County administration and its departments and;
- d) Perform any other function conferred on it by the Constitution or national legislation.

(2).A County Executive Committee may prepare proposed legislation for consideration by the County Assembly.

2.3 Statutory Instruments

Hon. Speaker

Statutory Instruments are secondary legislations created as a consequence of an Act of Parliament called the parent Act or “enabling Act”. The parent Act sets out what type of Statutory Instrument should be produced. Article 94(5) of the Constitution precludes all other persons or bodies other than Parliament from making provisions having the force of law in Kenya except under the authority conferred by the Constitution or delegated by a legislature through a statute.

Where such delegation has been conferred; Article 94(6) of the Constitution requires that an Act of Parliament or legislation of a County that confers on any State organ, state officer or person 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 to the law made under the authority.

The Parliament or any other legislature may therefore delegate its legislative power to other persons and bodies. This delegated legislation is also referred to as subsidiary or subordinate legislation. Subsidiary legislations made by Parliament or legislature are commonly known as statutory instruments. The manner, procedure and criteria for considering Statutory Instruments is detailed in the Statutory Instruments Act(No.23 of 2013) and the County Assembly Standing Orders.

2.4 Legal aspects of public participation

Constitution of Kenya requires County Governments to ensure and co-ordinate participation of communities in governance at the local level. Article 196 of the Constitution stipulates that the County Assembly shall facilitate public participation and involvement in the legislative and other business of the Assembly. Further, Section 87 of the County Governments Act (No.17 of 2012) sets out the principles of citizen participation.

2.5 Post-Legislative Scrutiny

According to West Minister Foundation for Democracy, Parliaments or Legislatures make and change laws. They also have a role in checking the implementation of laws and evaluating whether they achieve their intended outcomes. Implementation is complex and does not happen automatically. What is more, parliaments and elected representatives often have little information on what happens after a law is adopted. So, parliaments need mechanisms to effectively monitor the implementation of legislations.

Post-legislative scrutiny (PLS) thus is the practice of monitoring the implementation and evaluating the impact of laws. The aim is to ensure that laws benefit citizens in the way originally intended by lawmakers. Post legislative scrutiny is often carried out by parliamentary committees and is a prominent feature of UK parliamentary democracy. As post legislative scrutiny (PLS) is recognized as an integral part of the legislative cycle, it is emerging as a new dimension within the legislative and oversight role of parliament.

CHAPTER THREE

3.0 Scrutiny of the legislations enacted

Hon. Speaker

In line with its legislative role as provided for under the Constitution and the law, the County Assembly of Bungoma has enacted various legislations since its inception. From the foregoing, the committee undertook the scrutiny of the following Acts passed by the County Assembly since inception and made its observations and recommendations thereafter.

3.1 The Bungoma County Transport Act, 2015

Hon. Speaker,

The Act was enacted pursuant to Part 2 paragraph 5 of the fourth schedule to the Constitution which states county transport as a function under the County Government and it includes;

- (a) County roads
- (b) Street lighting
- (c) Traffic and parking
- (d) Public roads and transport
- (e) Ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.

Under paragraph 11, the county function includes county public works and services.

3.1.1 Summary of Bungoma County Transport Act, 2015

The purpose of this Act is to provide a harmonized, efficient and effective legal and regulatory framework for the development and regulation of county transport matters. County Government institutions and officials have the mandate to observe the overriding objects of the Act.

In the exercise of the powers or the performance of functions under this Act, the relevant County Officers are guided by the principles outlined in Chapter ten of the Constitution. The relevant County Officer is required to create collaborative links with National government to ensure a coordinated implementation and master planning of the transport sector.

The Act establishes the Directorate of Transport. The functions of the directorate includes: ensuring the implementation of an efficient and sustainable transport system in the County; undertaking studies and analysis of transport problems; implementation of collaborative linkages with National government institutions and transport departments of neighbouring Counties; operation and maintenance of County roads, parking facilities, bridges and related infrastructure. In the exercise of its duties, the directorate is bound by the values and provisions of the Constitution and other national laws and is required to be non-partisan and non-political and adhere to any performance targets.

In enforcing the provisions of this Act, an authorised officer is mandated to inspect a public transport facility and inquiries thereon. Any person who unlawfully prevents an authorized officer from undertaking his/her duties commits an offence punishable under this Act.

Operating a licence on a public road must meet the conditions set out by the Act, and any contrary action will amount to an offence. No person will be prevented from using public transport vehicle or preventing the driver from taking passengers. Any contrary to these provisions constitute an offence herein.

A person in charge of a public transport vehicle is prohibited from conveying any person or thing when the same is prohibited or has a contagious disease, and any contrary actions to this provision will constitute an offence. All persons are prohibited from boarding a public transport vehicle until all persons desiring to disembark from such vehicle have done so; where the number of passengers would be in excess; alight or attempt to board or disembark from any public transport vehicle whilst such a vehicle is in motion.

A queue should be erected where all passengers intending to enter any public transport vehicle at an established ranking facility or stopping place and they must comply with all the instructions given by a public transport conductor. Passengers should pay the

prescribed fare for the use of a public transport motor vehicle. Passengers have the right to disembark from any defective vehicle and upon that, they will be entitled to refund of their fare. Smoking, playing offensive or excessively loud music, using obscene or offensive language, interfering with the comfort of another passenger, damaging anything and interfering with the equipment of the public transport vehicle are prohibited on a public transport vehicle.

Passenger's property left in the vehicle should be delivered to the owner or the property office designated by the relevant officer. Private vehicles are prohibited to park in a stopping place designed for public transport vehicles or traverse a pedestrian crossing, when stopping to enable passengers to be picked up or dropped off. Pedestrians should enjoy the traffic rights provided for by the Act.

Any person in control of the vehicle is prohibited from using a communication device while driving. The County will install street lighting with special attention to all the designated areas in the Act which will be maintained by the relevant County Officer. Section 26 of the Act prohibits parking in a public road.

Parking on public roads and other designated areas is prohibited. However, the directorate may make provisions to cause movable signs to be posted on or near a public road indicating "No parking", or "street maintenance", and when so posted, such signs to take precedence over all other traffic control devices. A vehicle parked contrary to these provisions may be towed away and the relevant Officer may not be responsible for that. Parking on alleys is prohibited unless traffic control device otherwise permits. Parking on private property is also not allowed unless with the permission of the owner. Parking of trailers upon public roads is prohibited unless the said trailer is attached to a vehicle by which it may be propelled or as the Act stipulates.

Cab or Boda Boda operations will only be allowed when one belongs to a formed taxi associations as a precondition of doing cab/tax/boda business in Bungoma County. Vehicles are prohibited from parking in certain designated areas for taxi cabs unless with permission pursuant to the provision for compliance of this Act by taxi cabs. Guidelines on parallel parking and on angle parking when no parking signs are visible are provided for by the Act. Parking of heavy commercial vehicles in the Central

Business District is prohibited by the Act except when offloading goods in designated warehouses located in such areas as may be prescribed.

The directorate may develop light railway works in the County and may maintain, improve or repair the light railway and has power to enter and inspect and survey the land and make any inquiry, investigation to ascertain whether or not the land is suitable for the purposes of construction of a light railway. Trespassing or use of a vehicle on a light railway is prohibited.

Anyone who obstructs or interferes with or assists a person to obstruct or interfere with any person in the performance of a function conferred on that person under this Act commits an offence.

An annual report should be prepared for each financial year detailing description of the activities of the directorate .The directorate should then submit the report to the County Executive Committee Member for transmission to the County Assembly. Similarly, the directorate is required to develop a transport plan and submit it to the County Assembly for approval before being implemented.

The County Executive Committee Member may make regulations generally for the better carrying into effect the provisions of this Act.

3.1.2 Committee Observations

- 1) The Act allows the County Executive Committee Member to make Regulations for the better carrying into effect the provisions of this Act under section 47. For instance, in respect to:
 - a) recognition and modes of dealing with cabs/taxi associations
 - b) development and recognition of non-motorised means of transport.
- 2) Section 5 of the Act establishes a directorate of transport headed by a director appointed by the County Public Service Board through a competitive and transparent recruitment process;
 - a) The directorate is mandated to develop and periodically review a transport plan for Bungoma County.

- b) The directorate is required to submit to the County Assembly the transport plan before being implemented.
- 3) Section 24 obligates the County Government to install street lighting with special attention to all the designated areas; major traffic routes, high crime urban areas, town centres, pedestrian crossing, pedestrian subways, bus stop, market places, flyovers, narrow bridges, tunnels and institutions

3.1.3 Committee Recommendations

1. The County Executive Committee Member for roads and infrastructure to make regulations for the better carrying into effect the provisions of this Act.
2. The directorate of transport should develop a transport plan and submit it to the County Assembly for consideration and approval within 60 days in compliance with section 44 of the Act.
3. The Act needs revision in order to align it with the emerging issues in the transport sector.

3.2 The Bungoma County Agricultural Produce Cess Act 2017 and Bungoma County Property Hire and Lease Act, 2017

Hon. Speaker,

The aforementioned Acts are revenue raising legislations. Article 174 of the Constitution states objects and principles of devolved government to include;

(f). promotion of social and economic development and the provision of proximate, easily accessible services throughout Kenya.

(g). ensuring equitable sharing of national and local resources throughout Kenya

Pursuant to Article 175 (b), County Governments should have reliable sources of revenue to enable them to govern and deliver services effectively. The County Government performance should be measured against their economic growth, food security, creation of employment and increased connectivity.

Under Article 209 of the Constitution:

(4) the national and county governments may impose charges for services.

(5) the taxation and other revenue raising powers of a County shall not be exercised in a way that prejudices national and economic policies, economic activities across county boundaries or the national mobility of goods ,services ,capital or labour.

Article 210 (1) provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation

3.2.1 Summary of the Bungoma County Agricultural Produce Cess Act, 2017

Hon. Speaker

This is an Act of the County Assembly of Bungoma to provide for the imposition of cess tax on any kind of agricultural produce or animal produce within the County as highlighted in the schedule

Section 3 of the Act provides for object and purpose of the Act which is to impose tax and/or levies on crop and animal produce grown in and on transit within the County pursuant to the provisions of Article 209(3) of the Constitution.

Section 4 provides that County Executive Committee Member with the approval of the County Assembly will determine the chargeable amount with regards to the scheduled produce. Tax on agricultural produce will be levied according to the categories of crops as prescribed herein.

Section 5 of the Act, provides that Agricultural produce shall not be levied or imposed on agricultural produce that is declared to be an essential produce under this Act.

Under section 6, in any event the cess remains unpaid when due, it shall be recovered in court as a debt due owing to the county. The receiver of the revenue on behalf of the county will sue the defaulter upon producing a signed certificate as evidence, certifying the amount due to the county.

Section 7 provides for the County Cess Committee. The committee will serve for a term of three years, and no member may be appointed to represent an agricultural sector for more than two terms.

Section 8 provides for the functions of the County Cess Committee which includes: to oversee and enhance collection of cess; facilitate enforcement of Agricultural cess legislation; Planning and implementation of programmes; Monitoring and Evaluation of the programmes and; Reporting biannually to the County Executive Committee Members of Agriculture and Finance and Economic Planning on the progress made.

Under Section 9, Persons conducting business in the County without a valid trading licence will attract a penalty prescribed herein.

Section 10(1) provides that all payments to the County Government by agricultural producers will be deducted and paid by individuals where the agricultural produce is produced or supplied or stored, which will be remitted to the county revenue account by the authorized officer. The County Executive Committee Member is obligated to determine and publish all county exit points from which cess should be collected.

Section 11 provides that an authorised officer shall ensure that cess on agricultural produce on transit out of the county is collected at barriers set up at county exit points.

Pursuant to Section 12, 90% of the money collected as cess from all agricultural produce shall be used in maintaining agricultural infrastructure and provide other services related to agriculture in areas where the agricultural produce are produced in the County and three per cent (3%) deposited in the county revenue account to be used for the cess committee's administrative purposes while the remaining seven per cent (7%) to be credited to the county Revenue account.

Section 13 and 14 s makes provision for offences by Agricultural producer or non-natural person and an authorized Officer and the penalties.

Section 15 provides that the relevant County Officer may waive the Cess payable under this Act with reasons to any agricultural producer, persons or group of persons to whom this Act applies for a period not exceeding one year. The County Executive Committee Member should give reasons for such waiver and table before the County Assembly the list of persons to whom payment of cess is waived and the reasons thereof. The same can also be overturned if the County Assembly is of the view that no sufficient grounds exist for the waiver of the cess as made by the County Executive Committee Member.

Section 16 provides for fees and charges payable pursuant to the provisions of the Act.

Section 17 provides that the County Executive Committee Member may make Regulations for the better carrying into effect the provisions of the Act..

3.2.2 Committee Observations

Hon. Speaker

- 1) Section 7 of the Act makes provision for the establishment of a County Cess Committee whose function is stipulated under section 8 of the Act:
 - a) To oversee the agricultural cess programmes in the County.
 - b) To enhance collection of cess in the County.
 - c) To facilitate enforcement of agricultural cess legislation
 - d) Planning and implementation of programmes under the agricultural cess fund.
- 2) Section 4(1) requires the County Executive Committee Member responsible for matters finance, with the approval of the County Assembly to determine the cess chargeable on scheduled produce within the county, the schedule is not part of the Act
- 3) The fees and charges payable pursuant to the provision of this Act shall be determined each year by the County Assembly in the County Finance Act.
- 4) Section 12 of the Act stipulates that ninety percent (90) of all monies collected as cess from agricultural produce or products should be used in maintaining agricultural infrastructure and provide other services related to agriculture in areas where the agricultural produce are produced in the county.
- 5) Section 11(1) of the Act requires an authorised officer to ensure that cess on agricultural produce on transit out of the county is collected at barriers set up at county exit points. In addition, under subsection (4),the County Executive Committee Member for finance should determine and publish all county exit points from which cess should be collected
- 6) Under section 5, the Act exempts imposition or levy of agricultural produce cess on agricultural produce declared as essential produce in the Act. However, the Act does not specify which these essential produce are.
- 7) Section 17 of the Act allows the County Executive Committee Member responsible for matters Finance to make Regulations for the better carrying into effect the provisions of this Act.

3.2.3 Committee Recommendations

1. The County Executive Committee Member for Finance should propose the amendment to the Act to include schedule for fees and charges and submit the proposed amendments to the County Assembly for consideration and approval subject to public participation.
2. The department of finance should ensure barriers exist at county exit points for purposes of collecting cess on agricultural produce on transit out of the county in compliance with section 11 (1) of the Act. In addition, the County Executive Committee Member for finance should determine and publish all county exit points from which cess should be collected in compliance with section 11(4) of the Act.
3. The department of finance should ensure that ninety(90) percent of all monies collected as cess from agricultural produce or products are used in maintaining Agricultural infrastructure and provision of other services related to agriculture in areas where agricultural produce are produced in the county in compliance with section 12 of the Act.
4. The department of Finance to make provision in the Act citing essential produce to be exempted from agricultural produce levy as contemplated under section 5 of the Act subject to public participation and approval by the County Assembly.
5. For better implementation of the Act ,the County Executive Committee Member responsible for matters Finance to make Regulations for the better carrying into effect the provisions of this Act

3.3 Summary of the Bungoma County Property Hire and Lease Act, 2017

Hon. Speaker

Section 3 of the Act provides for the purpose and object of the Act which includes control of the hiring and leasing of the public properties and services belonging to the County government of Bungoma in order to better the livelihoods of its residents.

Section 4 stipulates the available properties for hire or lease which includes: any of its property; open grounds in rural and urban areas; any of its equipment or other

machinery; motor vehicles; public amenities; labour; and such other property, item, facility or services as may be prescribed.

Section 5 provides for the threshold to be met before one hires or leases a property; an interested person will make an application to the relevant County Officer in the prescribed form upon payment of prescribed fee. The applicant will thereupon be notified in writing after seven days of the availability of the property or service requested, then later called upon to sign the contract.

Under Section 6, 7, 8 and 9, a contract for hire or lease is in a prescribed form and is signed by the relevant County Executive Committee Member. The contract entails the normal terms and conditions just like any other contract, i.e terms of payment, duration for lease, maintenance and so forth. The County Executive Committee Member responsible will keep the records of the hired or leased items which will thereafter be submitted to the County Assembly within 90 days from the end of each financial year.

Section 10 provides for regular inspection with unrestricted access to the leased or hired item by the authorised officer to ascertain the condition of the item, who may also where necessary require the lessee to take reasonable measures to restore the item to its proper condition.

Pursuant to Section 11, 12 and 13, leasing or hiring of the county item will not confer ownership to any individual, and neither will such arrangement (for ownership) under this Act pass by way of adverse possession. The leased item will only be sub-let with prior approval of the relevant County Executive Committee Member, failure to which will constitute an offence attracting a prescribed penalty therein. Under Section 14, the County Government may at any point institute recovery proceedings whenever the lessee contravenes the terms of the contract.

According to Section 15, it's an offence to voluntarily damage the hired facility or item, or failing to return the item upon expiration of the terms of the contract. The net effect of such actions will constitute an offence with a prescribed penalty forthwith.

Under Section 16, fees and charges payable pursuant to the Act shall be determined each year by the County Assembly in the Finance Act.

Section 17 provides for regulations in the Act.

3.3.1 Committee Observations

Hon. Speaker

- 1) Section 5 of the Act requires a person who intends to hire or lease any of the property or other items to make an application to the relevant County Executive Committee Member in the prescribed form accompanied by the prescribed fee and such other information as may be prescribed.
- 2) Section 9(2) of the Act obligates the County Executive Committee Member responsible to maintain records of hired and leased items and submit the copies of these records to the County Assembly not later than 90 days from the end of the financial year.
- 3) The fees and charges payable pursuant to the provision of this Act shall be determined each year by the County Assembly in the County Finance Act.
- 4) Section 17 of the Act allows the County Executive Committee Member responsible to make Regulations for the better carrying into effect the provisions of this Act.

3.3.2 Committee Recommendations

1. The department of finance should ensure that taxes, fees and charges are anchored in the Act subject to public participation and consideration and approval by the County Assembly.
2. The County Executive Committee Member responsible should make the application form under section 5 of the Act and any other form to be prescribed under the Act and submit it to the County Assembly for approval as a Statutory Instrument.
3. The Executive Committee Member responsible should submit to the County Assembly records of hired and leased items not later than 90 days from the end of each financial year in compliance with section 9(2) of the Act.

3.4 Summary of the Bungoma County Flag, Emblems and names Protection Act, 2015

Hon. Speaker

The purpose of the Act is to provide a legal regime to prevent the improper use of the County Flag, the County Emblem, and title of the Governor for professional and commercial purposes and to prohibit the display of certain flags.

Pursuant to Section 4, the design and description, Seal and Coat of Arms of the flag of Bungoma County are set out in Parts I, II and III of the Second Schedule to this Act respectively.

Under Section 5, any form of disrespect, in speech, manner or writing, to a County Government emblem will constitute an offence punishable under the Act.

Section 6 provides that a person will not be allowed (except with permission of the Executive Committee Member) to use any specified emblem, specified name or specified likeness, or display the same as an advertisement for, any trade or business or in any trade mark or manufacture. Failure to comply with these provisions will be in contravention of the Act and will attract a penalty. However, this will not apply to the publication of a bona fide news item.

The only officers allowed to fly the County Flag are; the Governor, Deputy Governor and the Speaker of the County Assembly as provided for under Section 8. The relevant County Executive Committee Member shall prescribe the manner in which the County Flag may be flown or displayed subject to the approval of the County Assembly.

Section 9 provides that the County flag will be hoisted in the following places and occasions: at all official functions that are attended by the governor, the deputy governor and the Speaker of the County Assembly; at the headquarters of the county government; at the head offices of sub-counties, wards and villages; all institutions of learning; and at the county assembly.

Under Section 10, the Chief Officer will be the custodian of the County flag, emblems, coat of arms and all other symbols protected by this Act.

Section 11 and 12 states that Member of the Executive Committee may amend the first schedule and make regulations pertaining all other matters related to the County Flag, Emblems and Names protection and which will then be approved by the County Executive Committee and the County Assembly before they take effect.

3.4.1 Committee Observations

Hon. Speaker

1. Section 12 of the Act allows the County Executive Committee Member responsible for matters Public administration to make Regulations for the better carrying into effect this Act. Without prejudice to the generality of section 12, the County Executive Committee Member responsible for matters public administration may make the following Regulations:
 - i. prescribing other occasions upon which, other persons by whom and the manner in which the County Flag may be flown or displayed, as the case may be;
 - ii. prescribing the days and the times during which the County flag shall be flown;
 - iii. without detracting from the general design depicted in the Second Schedule, prescribe the standard sizes, dimensions, proportions, and colours of the County Flag for all or any purposes or in all or any circumstances;
 - iv. on the conduct and the etiquette to be followed in the flying or other use of the County Flag;
 - v. prohibiting, controlling or restricting the use of any specified emblem, specified likeness or specified name;
 - vi. regulating the manner in which application may be made to the office of the Member of the Executive Committee for permission under section 6 of this Act.
 - vii. prescribing the form of any licence by which such permission may be given and fixing any fee for such application and licence;
 - viii. on the introduction of documents requiring the official use of the protected symbols;

3.4.2 Committee Recommendations

The County Executive Committee Member responsible for Public administration to make Regulations for the better carrying into effect the provisions of this Act. In particular, provision detailing the manner in which the County flag may be flown or displayed and submit it to the County Assembly for consideration

CHAPTER FOUR

4.0 Committee General Observations

Hon. Speaker

- a) The Statutory Instruments Act, 2013 provides for the making, scrutiny, publication and operation of Statutory Instruments and for matters connected therewith. In particular, section 11 of the Act outlines the laying of Statutory Instruments before County Assembly whereby the regulation making authority is required within 7 sitting days after publication of a Statutory Instrument to submit it to the Clerk for tabling before the County Assembly. Based on the records of the House, no subsidiary legislation pursuant to the Acts scrutinised have been submitted to the House for consideration.
- b) The County governments are required to enact or operationalize required legislation to underpin revenue raising measures. The practise by the National government offers guidance on how County governments should deal with revenue legislations. At the National level, the Finance Act does not impose taxes, fees and charges. The Finance Act merely alters the amount or rate of a tax or fee by amending a section in the principal law that dictates the rate. This approach is consistent with accepted revenue raising practices whereby sector specific legislations impose taxes, fees and charges hence providing for easier financial regulation of each sector.

Thus, the County government is required to develop principle revenue legislation to anchor its taxes, fees and charges. This is in line with Article 210(1) of the Constitution and section 132 of the Public Finance Management Act (No.18 of 2012).

From the foregoing, the fees and charges are not anchored in the Bungoma County Agricultural Cess Act ;2017 or the Bungoma County Property, Hire and Lease Act,2017,neither is there subsidiary legislation on the same pursuant to the Acts, cognisant of the fact that these are revenue raising legislations.

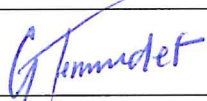
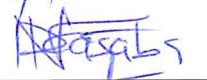
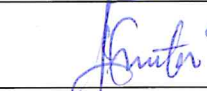
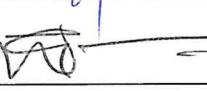
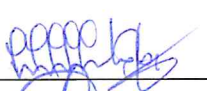
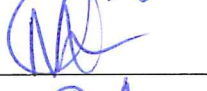

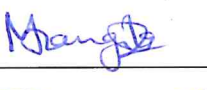
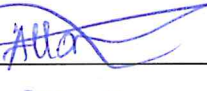
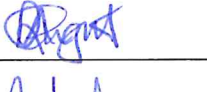
4.1 Committee General Recommendations

Hon. Speaker

- 1) **THAT**, the relevant Select committees, in exercise of their oversight mandate pursuant to Article 185(3) of the Constitution should inquire from the concerned departments on the implementation status of these Acts. For instance:
 - with regard to The Bungoma County Transport Act 2015; measures put in place to regulate non-motorised vehicles and taxis/cabs
- 2) With regard to The Bungoma County Agricultural Produce Cess Act, 2017 and The Bungoma County Property Hire and Lease Act, 2017:
 - i. **THAT** the department of Finance should provide for fees and charges either in the parent Act or subsidiary legislation subject to public participation and consideration and approval by the County Assembly. This will inform the amendment of these legislations in the Finance Act where necessary, forming the basis for revenue raising measures.
 - ii. **THAT** the relevant County Executive Committee Member contemplated under section 2 of the Bungoma County Property Hire and Lease Act, 2017 to make the application form for hire or lease of any property or item as stipulated under section 5 of the Act and any other form to be prescribed under the Act and submit it to the County Assembly for consideration as subsidiary legislation.
- 3) With regard to The Bungoma County Flag, Emblems and Names Protection Act, 2015, the County Executive Committee Member responsible for matters Public administration should fast track the enactment of the Regulations and in particular, those prescribed under section 12 of the Act since they are necessary for operationalization of the Act.

ADOPTION SCHEDULE

We the undersigned members of Delegated County Legislation Committee affix our signatures adopting this report with the contents therein

	MEMBERS NAME	DESIGNATION	SIGN
1	Hon. George Tendet	Chairperson	
2	Hon. Ndasaba Dorcas	Vice Chairperson	
3	Hon. Wafula Waiti	Member	
4	Hon. Godfrey Wanyama	Member	
5	Hon. Jeremiah Kuloba	Member	
6	Hon. Martin Chemorion	Member	
7	Hon. Job Mukoyandali	Member	
8	Hon. Metrine Wilson	Member	
9	Hon. Allan Nyongesa	Member	
10	Hon. Angeline Rugut	Member	
11	Hon. Bosire Aggrey	Member	