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TWELFTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE CONSIDERATION OF THE OFFICE OF THE COUNTY  
ATTORNEY BILL (SENATE BILL NO. 3 OF 2018)

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

MARCH, 2019

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 28 MAR 2019	DAY: Thursday
TABLED BY:	LOM
CLERK-AT THE-TABLE:	Gebru de Chebet

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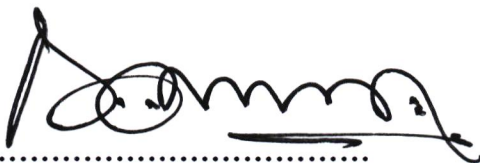
**CHAIRPERSON'S FOREWORD**

The Office of the County Attorney Bill (Senate Bill No. 3 of 2018) was introduced in the National Assembly in October, 2018 and thereafter committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 216(5) (c).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3), the Committee confirmed and was convinced that the Senate did sufficient public participation on the Bill and considered most of the recommendations by the major stakeholders during its consideration of the Bill. Consequently, there was no need for the Committee to conduct another public participation exercise.

May I take this opportunity to commend the Committee Members for their devotion and commitment to duty which made the consideration of the Bill successful. May I also express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing direction and the Committee secretariat for providing technical and logistical support.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the Office of the County Attorney Bill (Senate Bill No. 3 of 2018)

Signed.....

**HON. WILLIAM CHEPTUMO, M.P.**

**Chairperson, Departmental Committee on Justice and Legal Affairs**

This.....<sup>28<sup>th</sup></sup>.....day of.....<sup>March</sup>.....2019

## PART 1

### **1.0 PREFACE**

#### **1.1 Mandate of the Committee**

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
  - (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
  - (b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
  - (c) study and review all legislation referred to it;
  - (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
  - (e) investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
  - (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
  - (g) examine treaties, agreements and conventions;
  - (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
  - (j) examine any questions raised by Members on a matter within its mandate.
2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
  - (a) Constitutional affairs;
  - (b) The administration of law and Justice
  - (c) The Judiciary;

- (d) Public prosecutions;
- (e) Elections;
- (f) Ethics, integrity and anti-corruption; and
- (g) Human rights.

### **1.2 Committee Membership**

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	-	Chairperson
Hon. Alice Muthoni Wahome, M.P.	-	Vice Chairperson
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuyu, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Johana Ng'eno, M.P.		
Hon. William Kamoti Mwamkale, M.P.		
Hon. Ben Orori Momanyi, M.P.		
Hon. Peter Opondo Kaluma, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Gladys Boss Shollei, CBS, M.P.		
Hon. John Munene Wambugu, M.P.		
Hon. George Gitonga Murugara, M.P.		
Hon. Anthony Githiaka Kiai, M.P.		
Hon. John Kiarie Waweru, M.P.		
Hon. Japheth Mutai, M.P.		
Hon. Adan Haji Yussuf, M.P.		
Hon. Zuleikha Hassan, M.P.		

### **1.3 Committee Secretariat**

4. The Committee is facilitated by the following officers-

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer
Ms. Roselyn Ndegi	-	Serjeant-at-Arms

## PART 2

### **2.0 THE OFFICE OF THE COUNTY ATTORNEY (SENATE BILL No. 3 OF 2018)** **BILL**

#### **2.1 INTRODUCTION**

5. The Office of the County Attorney Bill (Senate Bill No. 3 of 2018) seeks to establish the Office of the County Attorney as part of the public service in each of the 47 county governments in the Republic.
6. The Bill proposes that the County Attorney would be the principal legal adviser to the county government and would be responsible for representing the county executive in legal proceedings. The Bill provides for the functions and powers of the County Attorney and the appointment of a County Solicitor as well as County Legal Counsel.

### PART 3

#### 3.0 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL BY THE COMMITTEE

7. The Committee considered the Bill during its sittings of 28<sup>th</sup> February, 5<sup>th</sup>, 7<sup>th</sup>, 12<sup>th</sup> and 14<sup>th</sup> March, 2019, within the precincts of Parliament and made observations and recommendations on each and every Part of the Bill as follows-

#### PART I OF THE BILL

##### 3.1 PRELIMINARY PROVISIONS

8. **Clause 1** on short title and commencement time of the Bill.

##### Committee observation and Recommendation

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 1 of the Bill as per the Senate Bill.

9. **Clause 2** on interpretation of the terms used in the Bill

##### Committee observation and recommendation

The Committee observed that there is no Cabinet Secretary responsible for matters relating to justice and legal affairs in the current government structure who would perform the functions contemplated in the substantive Part of the Bill. The Committee further observed that the function of amending the Second Schedule to the Act relating to the review of the Code of Conduct for County Legal Counsel is best performed by the Attorney General. The Committee therefore recommended that the definition of the term “Cabinet Secretary” be deleted and be substituted with the following new definition;

“Attorney-General” means the Attorney-General appointed under Article 156 of the Constitution;

**Rationale:** The Attorney General is responsible for matters relating to justice and legal affairs in the current government structure. The Attorney-General is also the titular head of the bar as provided for in section 6 (2) of the Office of the Attorney General Act, No. 49 of 2012 and has the requisite qualifications and experience to review the Code of Conduct applicable to the County Attorney, the County Solicitor and the County Legal Counsel.

10. **Clause 3** is on the application of the Bill



### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 3 of the Bill as per the Senate Bill.

## **PART II OF THE BILL**

### **3.2 ESTABLISHMENT AND ADMINISTRATION**

11. **Clause 4** establishes in each county the Office of the County Attorney as an office in the county public service that shall consist of the County Attorney, the County Solicitor and any other number of County Legal Counsel as the County Attorney in consultation with the County Public Service Board may consider necessary.

### **Committee observation and Recommendation**

The Committee considered the clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 4 of the Bill as per the Senate Bill.

12. **Clause 5** provides for the procedure for appointment and the qualifications for appointment expected of a person seeking the Office of the County Attorney. Clause 5 (2) provides that the persons should have at least five years' experience as an Advocate of the High Court of Kenya and meet the requirements of Chapter Six of the Constitution.

### **Committee observation and recommendation**

The Committee observed that sub-clause 2(b) as passed by the Senate would allow people who are not Advocates to be appointed as County Attorneys and resolved that the sub-clause be deleted.

**Rationale:** The Committee observed that the County Attorney holds a very important office in the county government akin to the Office of the Attorney-General in the national government. The County Attorney is the principal legal advisor to not only the county executive but also the County Assembly. It is important for the holder of that office to have the required professional requirements for the practice of law including admission as an Advocate of the High Court of Kenya. A person having other legal qualifications but not admitted as an advocate is unlikely to have the legal knowledge and skills required to properly and effectively serve as the County Attorney or even as a County Legal Counsel.

The Committee further observed that admission as an advocate brings the County Attorney within the purview of the statutory body responsible for the professional regulation of advocates (the Law Society of Kenya). The LSK has a duty to ensure that all advocates uphold high standards of professional integrity and the person to be appointed as County Attorney should not be exempted from these standards.

13. **Clause 6** provides for the tenure of office of the County Attorney which is a term of six years.

**Committee observation and recommendation**

The Committee observed that the County Attorney requires security of tenure and resolved to amend the Clause by inserting the word “renewable” immediately before the word “term”.

**Rationale:** The amendment will provide security of tenure and ensure ease in transition whenever a new Governor takes office.

The Committee further observed that there is need for the Bill to be explicit that the County Attorney shall have the status and rank of a member of the County Executive Committee Member. The Committee noted that the provision was included as Clause 10 of the Bill as published on 2<sup>nd</sup> March, 2018 but was deleted by the Senate.

The Committee was of the view that it is important to give the County Attorney the status and terms of service enjoyed by the Members of the County Executive Committee in order to attract a high calibre of advocates to the position and retain the ones currently serving in those offices, if they have the stipulated qualifications. The Committee thus recommends that a new subclause (2) be inserted in Clause 2, to read as follows-

(2) The County Attorney shall have the status and rank of a Member of the County Executive Committee.

14. **Clause 7** sets out the functions of the County Attorney.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 7 of the Bill as per the Senate Bill.

15. **Clause 8** sets out the powers of the County Attorney which include appearing at any stage of any proceedings before any courts or tribunals, requiring any officer in the county public service to furnish the Office with information, summoning officers within the county public service and issuing of directions to officers within the county public service.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 8 of the Bill as per the Senate Bill.

16. **Clause 9** provides for the right of audience for the County Attorney on matters of public interest

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 9 of the Bill as per the Senate Bill.

17. **Clause 10** protects the County Attorney, the County Solicitor, County Legal Counsel or any other officer in the Office from criminal proceedings or civil suits in respect of any proceedings in a court of law or in the course of discharging their official duties.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 10 of the Bill as per the Senate Bill.

18. **Clause 11** prohibits the County Attorney, the County Solicitor and the County Legal Counsel from engaging in any other gainful employment that may result in a conflict of interest.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 11 of the Bill as per the Senate Bill.

19. **Clause 12** provides the procedure for resignation which shall be in writing addressed to the Governor.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 12 of the Bill as per the Senate Bill.

20. **Clause 13** provides for the procedure and grounds for the removal of the County Attorney from Office. It provides that the County Attorney may only be removed from office for serious violation of the Constitution, gross misconduct, physical or mental incapacity, incompetency or bankruptcy.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 13 of the Bill as per the Senate Bill.

21. **Clause 14** provides delegation of powers and functions by the County Attorney

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes clause 14 of the Bill as per the Senate Bill.

22. **Clause 15** provides that all County Legal Counsel in any department in the county executive shall be officers of the Office and shall be answerable to the County Attorney.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 1 of the Bill as per the Senate Bill.

23. **Clause 16** provides for the engagement of legal consultants to provide legal services to the county. It states that where the legal services relate to the functions of the County Attorney, the County Attorney must approve. The request by a department of public entity to that effect must be done in writing and the approval by County Attorney will also be made in writing.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 16 of the Bill as per the Senate Bill.

## **PART III OF THE BILL**

### **3.3 APPOINTMENT, TERMS AND CONDITIONS OF SERVICE OF COUNTY SOLICITOR AND COUNTY LEGAL**

24. **Clause 17** establishes and provides for the qualifications of a County Solicitor who shall have at least five years' experience as an Advocate of the High Court of Kenya and meet the requirements of Chapter Six of the Constitution.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 17 of the Bill as per the Senate Bill.

25. **Clause 18** provides for the appointment and the qualifications of County Legal Counsel who shall be Advocates of the High Court of Kenya, meet the requirements of Chapter Six of the Constitution and such other qualifications as the county public service board may require.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 18 of the Bill as per the Senate Bill.

26. **Clause 19** sets out the terms and conditions of service for the County Attorney, County Solicitor and County Legal Counsel which shall be set by the county public service board, in consultation with the Salaries and Remuneration Commission.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 19 of the Bill as per the Senate Bill.

27. **Clause 20** requires the County Attorney, the County Solicitor and the County Legal Counsel to observe the Code of Conduct set out in the Second Schedule.

### **Committee observation and recommendation**

The Committee noted that it had already recommended that the definition of the term “Cabinet Secretary” needed to be deleted and substituted with the Attorney-General. The Committee thus recommends that the Clause be amended in sub-clause (2) by deleting the word “Cabinet Secretary” and substituting therefor the word “Attorney-General”

**Rationale:** The Attorney-General is the titular head of the bar as provided for in section 6 (2) of the Office of the Attorney General Act, No. 49 of 2012 and has the requisite qualifications and experience to review the Code of Conduct applicable to the County Attorney, the County Solicitor and the County Legal Counsel.

28. **Clause 21** sets out the terms for Secondment of County Legal Counsel

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 21 of the Bill as per the Senate Bill.

29. **Clause 22** provides for the staff of the Office of the County Attorney.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 22 of the Bill as per the Senate Bill.

**PART IV OF THE BILL**

**3.4 MISCELLANEOUS PROVISIONS**

30. Clause 23 prohibits the unauthorized disclosure of information by an officer or member of staff of the Office.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 23 of the Bill as per the Senate Bill.

31. **Clause 24** provides that the Office shall be the depository of all laws and legal documents and agreements signed for or on behalf of the county executive.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 24 of the Bill as per the Senate Bill.

32. **Clause 25** provides that the County Attorney shall have access to persons, relevant records, documents and property pertaining to civil or criminal cases in the performance of the duties of the County Attorney.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 25 of the Bill as per the Senate Bill.

33. **Clause 26** requires the county government to provide adequate facilities for the efficient functioning of the Office.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 26 of the Bill as per the Senate Bill.

34. **Clause 27** provides for the source of funds for the office of the County Attorney and stipulates that the funds shall be used for the administrative expenses of the Office and such other purposes as may be necessary.

### **Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 27 of the Bill as per the Senate Bill.

35. **Clause 28** provides that the County Attorney shall prepare and furnish an annual report to the Governor on the operations of the Office and that a copy of that report shall be submitted to the County Assembly within fifteen days of submission to the Governor.

36. **Clause 29** empowers the Cabinet Secretary to make regulations for matters required to give further effect to the Act.

### **Committee observation and Recommendation**

The Committee noted that it had already recommended that the definition of the term “Cabinet Secretary” needed to be deleted and substituted with the Attorney-General. The Committee thus recommends that the Clause be amended by deleting the word “Cabinet Secretary” and substituting therefor the word “Attorney-General”

**Rationale:** The Attorney-General is the titular head of the bar as provided for in section 6 (2) of the Office of the Attorney General Act, No. 49 of 2012 and has the requisite qualifications and experience to make Regulations prescribing all matters required or necessary to give effect to the Act.

37. **Clause 30** provides that the Act will prevail in case of inconsistencies with county legislation in accordance with the provisions of Article 191(3)(b) of the Constitution (Conflict of Laws)

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 30 of the Bill as per the Senate Bill.

38. **Clause 31** provides for the transition for members of staff employed by the county executive performing the functions of the Office.

**Committee observation and Recommendation**

The Committee considered the Clause and agreed to the provisions of the Bill as passed by the Senate and recommends that the House passes Clause 31 of the Bill as per the Senate Bill.

39. **The First Schedule** to the Bill sets out the Oath of Office to be taken and subscribed to upon assuming office as the County Attorney.


**Committee observation and Recommendation**

The Committee considered the schedule and agreed to it as passed by the Senate and recommends that the House passes First Schedule of the Bill as per the Senate Bill.

40. **The Second Schedule** to the Bill sets out the Code of Conduct to be adhered to by the County Attorney, County Solicitor and County Legal Counsel.

**Committee observation and Recommendation**

The Committee considered the schedule and agreed to it as passed by the Senate and recommends that the House passes Second Schedule of the Bill as per the Senate Bill.

Signed by..........Date.....28.03.19.....

**Hon. William Cheptumo, M.P.**

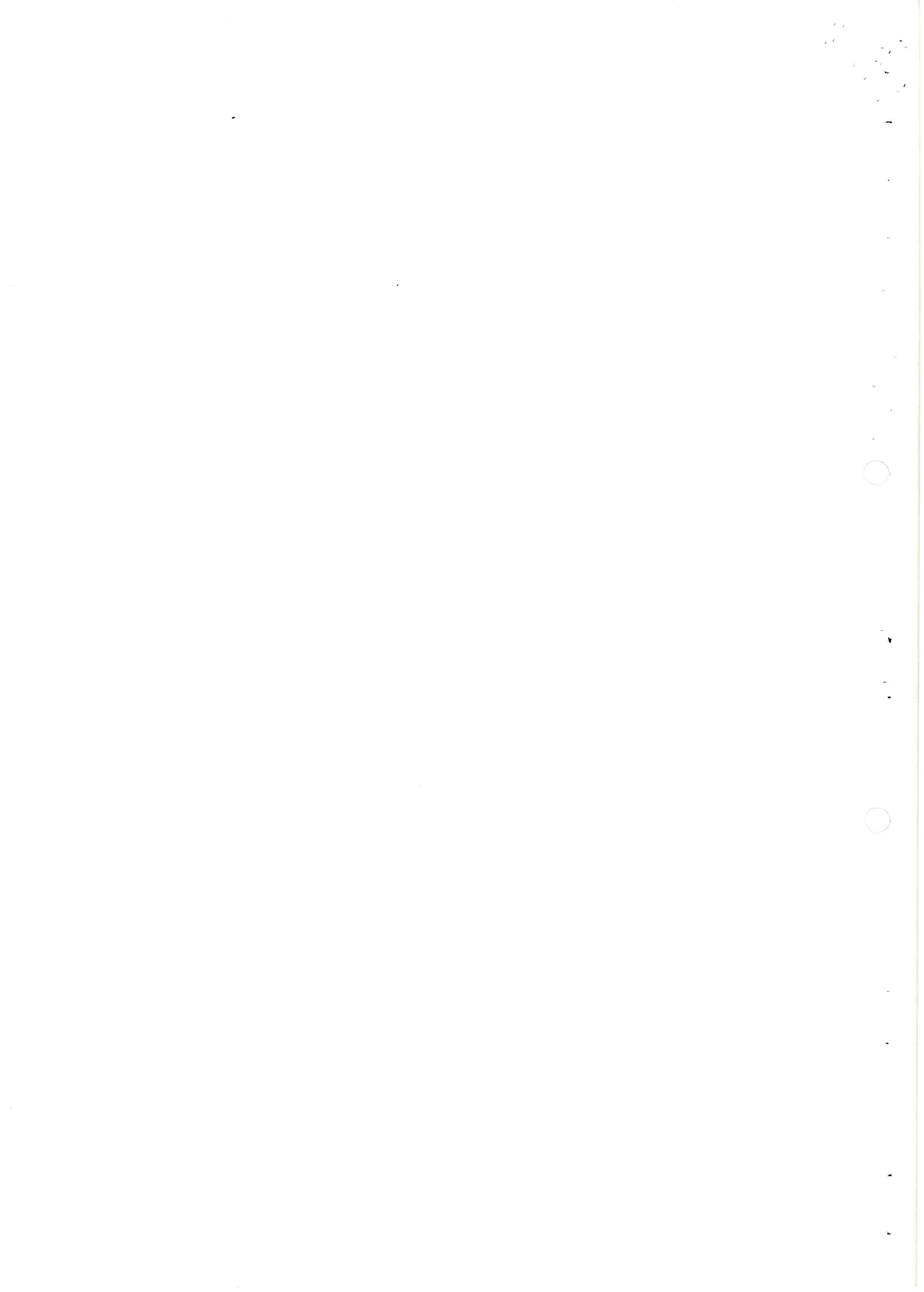
**Chairperson, Departmental Committee on Justice and Legal Affairs**





# ANNEXUTURE 1

**Minutes of Committee sittings on  
consideration of the Bill**



**MINUTES OF THE ONE HUNDRED AND TWENTIETH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, 26<sup>TH</sup> MARCH, 2019 AT 11:54 A.M. IN BOARDROOM, 2<sup>ND</sup> FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDING**

**PRESENT-**

- |  |   |                         |
|--|---|-------------------------|
| 1. Hon. William Cheptumo, M.P.         | - | <b>Chairperson</b>      |
| 2. Hon. Alice Muthoni Wahome, M.P.     | - | <b>Vice Chairperson</b> |
| 3. Hon. William K. Mwamkale, M.P.      |   |                         |
| 4. Hon. Peter Kaluma, M.P.             |   |                         |
| 5. Hon. George G. Murugara, M.P.       |   |                         |
| 6. Hon. Anthony G. Kiai, M.P.          |   |                         |
| 7. Hon. Gladys Boss Shollei, CBS, M.P. |   |                         |
| 8. Hon. Beatrice Adagala, M.P.         |   |                         |
| 9. Hon. Jennifer Shamalla, M.P.        |   |                         |
| 10. Hon. John M. Wambugu, M.P.         |   |                         |

**ABSENT WITH APOLOGIES**

1. Hon. John Olago Aluoch, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. Zuleikha Hassan, M.P.
6. Hon. Charles Gimose, M.P.
7. Hon. John Kiarie Waweru, M.P.
8. Hon. Adan Haji Yussuf, M.P.
9. Hon. Japheth Mutai, M.P.

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                       |   |                           |
|-----------------------|---|---------------------------|
| 1. Mr. Denis Abisai   | - | Principal Legal Counsel I |
| 2. Ms. Halima Hussein | - | Third Clerk Assistant     |
| 3. Ms. Roselyn Ndegi  | - | Serjeant-at-Arms          |
| 4. Mr. Hakeem Kimiti  | - | Audio Officer             |
| 5. Mr. Simon Maina    | - | Support Staff             |

**MIN No.473 /2019:-**

**PRELIMINARIES**

The meeting commenced at 11.54 a.m. with a word of prayer from the Chairperson

**MIN No. 467/2019:-**

**CONFIRMATION OF MINUTES OF  
PREVIOUS SITTINGS**

Confirmation of Minutes was deferred.

**MIN No. 468/2019:-**

**CONSIDERATION OF LEGISLATIVE  
PROPOSAL TO AMEND ARTICLES 107,  
108, 117, 151 OF THE CONSTITUTION OF  
KENYA BY HON. JOSHUA KUTUNY, MP.**

The Meeting was informed that Hon Joshua Kutuny who was scheduled to appear before the Committee to prosecute his proposal has requested for rescheduling of the meeting to a later date. The Committee acceded to the request and resolved to meet the Member on Thursday, 28<sup>th</sup> March, 2019.

**MIN No. 469 /2019:-**

**CONSIDERATION AND ADOPTION  
THE DRAFT REPORT ON THE  
OFFICE OF THE COUNTY ATTORNEY  
BILL (SENATE BILL NO. 3 OF 2019)**

The Committee considered and adopted its report on the Office of the County Attorney Bill (Senate Bill No. 3 of 2019) with the following amendments;

1. **Clause 2** on interpretations of the terms used in the Bill
  - (a) The Committee observed that there is no Cabinet Secretary responsible for matters relating to justice and legal affairs in the current government structure that would perform the functions contemplated in the substantive Part of the Bill.
  - (b) The Committee therefore recommended that the definition of the term “Cabinet Secretary” be deleted and be substituted with the following new definition;  
*“Attorney-General” means the Attorney-General appointed under Article 156 of the Constitution;*
  - (c) **Rationale:** The Attorney General is responsible for matters relating to justice and legal affairs in the current government structure. The Attorney-General is also the titular head of the bar as provided for in section 6 (2) of the Office of the Attorney General Act, No. 49 of 2012 and has the requisite qualifications and experience to review the Code of Conduct applicable to the County Attorney, the County Solicitor and the County Legal Counsel.

2. **Clause 5** provides for the procedure for appointment and the qualifications for appointment expected of a person seeking the Office of the County Attorney. Clause 5 (2) provides that the persons should have at least five years' experience as an Advocate of the High Court of Kenya and meet the requirements of Chapter Six of the Constitution.
  - (a) The Committee further observed that admission as an advocate brings the County Attorney within the purview of the statutory body responsible for the professional regulation of advocates (the Law Society of Kenya). The LSK has a duty to ensure that all advocates uphold high standards of professional integrity and the person to be appointed as County Attorney should not be exempted from these standards.
3. **Clause 6** provides for the tenure of office of the County Attorney which is a term of six years.
  - (a) The Committee observed that the County Attorney requires security of tenure and resolved to amend the clause by inserting the word "renewable" immediately before the word "term".
  - (b) **Rationale:** The amendment will provide security of tenure and ensure ease in transition whenever a new Governor takes office.
  - (c) The Committee was of the view that it is important to give the County Attorney the status and terms of service enjoyed by the members of the county executive committee in order to attract a high calibre of advocates to the position and retain the ones currently serving in those offices, if they have the stipulated qualifications. The Committee thus recommends that a new sub clause (2) be inserted in Clause 2, to read as follows-
  - (d) The County Attorney shall have the status and rank of a member of the county executive committee.
4. The adoption of the report on the Office of the County Attorney Bill (Senate Bill No. 3 of 2019) was proposed by Hon Boss Shollei MP and seconded by Peter Kaluma MP.

**MIN No. 470/2019:-**

**CONSIDERATION AND ADOPTION OF  
DRAFT REPORT ON THE LAW OF  
CONTRACT (AMENDMENT) BILL, 2019**

The Committee considered and adopted its report on the Law of Contract (Amendment) Bill, 2019. The adoption of the report was proposed by Hon Alice Wahome MP and seconded by Hon Jennifer Shamalla MP.

**MIN No.471 /2019:-**

**CONSIDERATION AND ADOPTION OF  
DRAFT REPORT ON THE LEGISLATIVE  
PROPOSAL ON PUBLIC PARTICIPATION  
BY HON. CHRIS WAMALWA, MP.**

The adoption of the report on the legislative proposal on public participation by Hon Chris Wamalwa was deferred to the next meeting.

**MIN No. 472 /2019:-**

**ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at ten minutes past One O'clock.

Signed.....  
  
Chairperson

Date.....  
28.03.19.

**MINUTES OF THE ONE HUNDRED AND TENTH SITTING OF THE  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
HELD ON TUESDAY, 12<sup>TH</sup> MARCH, 2019 AT 10.20 A.M. IN THE  
BOARDROOM ON 9<sup>TH</sup> FLOOR, HARAMBEE CO-OPERATIVE PLAZA**

**PRESENT-**

- |                                    |   |                         |
|------------------------------------|---|-------------------------|
| 1. Hon. William Cheptumo, M.P.     | - | <b>Chairperson</b>      |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | <b>Vice Chairperson</b> |
| 3. Hon. John Olago Aluoch, M.P.    |   |                         |
| 4. Hon. William K. Mwamkale, M.P.  |   |                         |
| 5. Hon. Charles Gimose, M.P.       |   |                         |
| 6. Hon. Jennifer Shamalla, M.P.    |   |                         |
| 7. Hon. John M. Wambugu, M.P.      |   |                         |
| 8. Hon. George G. Murugara, M.P.   |   |                         |
| 9. Hon. Adan Haji Yussuf, M.P.     |   |                         |
| 10. Hon. Anthony G. Kiai, M.P.     |   |                         |

**ABSENT-**

1. Hon. Johana Ng'eno, M.P.
2. Hon. Zuleikha Hassan, M.P.
3. Hon. John Kiarie Waweru, M.P.
4. Hon. Gladys Boss Shollei, CBS, M.P.
5. Hon. Ben Momanyi, M.P.
6. Hon. Roselinda Soipan Tuya, M.P.
7. Hon. Japheth Mutai, M.P.
8. Hon. Peter Kaluma, M.P.
9. Hon. Beatrice Adagala, M.P.

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                       |   |                              |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Denis Abisai   | - | Principal Legal Counsel I    |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant        |
| 4. Roselyn Ndegi      | - | Serjeant-at-Arms             |
| 5. Mr. Hakeem Kimiti  | - | Audio Officer                |



**MIN No. 425/2019:-**

**PRELIMINARIES**

The meeting commenced at 10.15 a.m. with a word of prayer by the Chairperson.

**MIN No. 426/2019:-**

**CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Confirmation of Minutes of the 109<sup>th</sup> Sitting held on Thursday, 7<sup>th</sup> March, 2019 in the Boardroom on 2<sup>nd</sup> Floor, Continental House, Parliament Buildings and 108<sup>th</sup> Sitting held on Tuesday, 5<sup>th</sup> March, 2019 in the Commonwealth Parliamentary Centre (CPA) Room in the Main Parliament Buildings was deferred to the next sitting.

**MIN No. 427/2019:-**

**CONSIDERATION OF THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILL No. 3 OF 2018)**

The Committee considered the Office of the County Bill (Senate Bill No. 3 of 2019) clause by clause as follows;

**1. Clause 2 on definition**

The Committee resolved to amend the Clause by inserting the words "*Attorney General as the case may be*" after the words "*Cabinet Secretary*"

**Rationale** – To provide for instances where there is no Cabinet Secretary for Justice and Constitutional Affairs in the Cabinet like is the case now.

**2. Clause 6 on Tenure of office**

The Committee agreed to amend the clause to introduce 6 years term of office renewable once.

**Rationale:** to provide the office holder with security of tenure and make the job attractive to young Advocates and ensure ease of transition whenever a new Governor assumes office.

**3. Clause 7 sets out the functions of the County Attorney.**

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

4. **Clause 8** sets out the powers of the County Attorney which include appearing at any stage of any proceedings before any courts or tribunals, requiring any officer in the county public service to furnish the Office with information, summoning officers within the county public service and issuing of directions to officers within the county public service.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

5. **Clause 9** provides for the right of audience for the County Attorney on matters of public interest

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

6. **Clause 10** protects the County Attorney, the County Solicitor, County Legal Counsel or any other officer in the Office from criminal proceedings or civil suits in respect of any proceedings in a court of law or in the course of discharging their official duties.

7. **Clause 11** prohibits the County Attorney, the County Solicitor and the County Legal Counsel from engaging in any other gainful employment that may result in a conflict of interest.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

8. **Clause 12** provides the procedure for resignation which shall be in writing addressed to the Governor.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

9. **Clause 13** provides for the procedure and grounds for the removal of the County Attorney from Office. It provides that the County Attorney may only be removed from office for serious violation of the Constitution, gross misconduct, physical or mental incapacity, incompetency or bankruptcy.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

10. **Clause 14** provides delegation of powers and functions by the County Attorney

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

11. **Clause 15** provides that all County Legal Counsel in any department in the county executive shall be officers of the Office and shall be answerable to the County Attorney.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

12. **Clause 16** provides for the engagement of legal consultants to provide legal services to the county. It states that where the legal services relate to the functions of the County Attorney, the County attorney must approve. The request by a department of public entity to that effect must be done in writing and the approval by County Attorney will also be made in writing.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

13. **Clause 17** establishes and provides for the qualifications of a County Solicitor who shall have at least five years' experience as an Advocate of the High Court of Kenya and meet the requirements of Chapter Six of the Constitution.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

14. **Clause 18** provides for the appointment and the qualifications of County Legal Counsel who shall be Advocates of the High Court of Kenya, meet the requirements of Chapter Six of the Constitution and such other qualifications as the county public service board may require.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

15. **Clause 19** sets out the terms and conditions of service for the County Attorney, County Solicitor and County Legal Counsel which shall be set by

the county public service board, in consultation with the Salaries and Remuneration Commission.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate

16. **Clause 20** requires the County Attorney, the County Solicitor and the County Legal Counsel to observe the Code of Conduct set out in in the Second Schedule.

The Committee noted that it had already recommended that the definition of the term "Cabinet Secretary" needed to be amended to provide for a possible future situation where there may be appointed a Cabinet Secretary responsible for justice and legal affairs and who may not be the Attorney General at the time. As such, the Committee observed that the clause is in order and resolved to retain it as passed by the Senate.

17. **Clause 21** sets out the terms for Secondment of County Legal Counsel

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

18. **Clause 22** provides for the staff of the Office of the County Attorney.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

19. **Clause 23** prohibits the unauthorized disclosure of information by an officer or member of staff of the Office.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

**Clause 24** provides that the Office shall be the depository of all laws and legal documents and agreements signed for or on behalf of the county executive.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

20. **Clause 25** provides that the County Attorney shall have access to persons, relevant records, documents and property pertaining to civil or criminal cases in the performance of the duties of the County Attorney.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

21. **Clause 26** requires the county government to provide adequate facilities for the efficient functioning of the Office.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

22. **Clause 27** provides for the source of funds for the office of the County Attorney and stipulates that the funds shall be used for the administrative expenses of the Office and such other purposes as may be necessary.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

23. **Clause 28** provides that the County Attorney shall prepare and furnish an annual report to the Governor on the operations of the Office and that a copy of that report shall be submitted to the county assembly within fifteen days of submission to the Governor.

24. **Clause 29** empowers the Cabinet secretary to make regulations for matters required to give further effect to the Act.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

25. **Clause 30** provides that the Act will prevail in case of inconsistencies with county legislation in accordance with the provisions of Article 191(3)(b) of the Constitution (Conflict of Laws)

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate

26. **Clause 31** provides for the transition for members of staff employed by the county executive performing the functions of the Office.

The Committee observed that the clause was in order and resolved to retain it as passed by the Senate.

27. **The First Schedule** to the Bill sets out the Oath of Office to be taken and subscribed to upon assuming office as the County Attorney.

The Committee observed that the First Schedule was in order and resolved to retain it as passed by the Senate.

28. **The Second Schedule** to the Bill sets out the Code of Conduct to be adhered to by the County Attorney, County Solicitor and County Legal Counsel.

The Committee observed that the clause is in order and resolved to retain it as passed by the Senate.

**MIN No. 428/2019:-**

**CONSIDERATION AND ADOPTION  
OF REPORT ON THE LEGISLATIVE  
PROPOSAL BY HON GEORGE  
KARIUKI TO AMEND ARTICLE 97 OF  
THE CONSTITUTION OF KENYA**

The Committee considered and adopted its report on the Legislative Proposal by Hon. George Kariuki to amend Article 97 of the Constitution of Kenya. The adoption of the report was proposed by Hon. John Olago Aluoch and seconded by Hon Adan Haji Yussuf.

In its report, the Committee recommended that the Legislative Proposal should not be proceeded with for publication for the main reason that financial contribution to the economy could not be a ground for nominating persons to Parliament as contemplated under Article 97 of the Constitution of Kenya.

**MIN No. 429/2019:-**

**CONSIDERATION AND ADOPTION  
OF REPORT ON THE LEGISLATIVE  
PROPOSAL BY HON CORNELLY  
SEREM TO AMEND ARTILCE 79 OF  
THE CONSTITUTION OF KENYA**

The Committee considered and adopted its report on the Legislative Proposal by Hon. Cornelly Serem to repeal Article 79 of the Constitution of Kenya. The adoption

of the report was proposed by Hon. John Olago Aluoch and seconded by Hon Adan Haji Yussuf.

In its report, the Committee observed that the non-performance of the Ethics and Anti-Corruption Commission (EACC) established pursuant to the provision of Article 79 of the Constitution of Kenya to ensure compliance with the provisions of chapter 6 on leadership and integrity could not be a reason for disbandment of the Commission. The Committee therefore recommended that the Publication of the Legislative Proposal should not be proceeded with.

**MIN No. 430/2019:-**

**CONSIDERATION AND ADOPTION  
OF REPORT ON THE LAW OF  
CONTRACT BILL**

The Committee considered the Law of Contract (Amendment) Bill, 2019 but deferred adoption of the report to enable the Legal Counsel seek clarification from the Kenya Private Sector Alliance (KEPSA) on its proposed amendments which were not legible. The Counsel would then advise the Committee at the next meeting for decision making.

**MIN No. 431/2019:-**

**CONSIDERATION AND ADOPTION  
OF REPORT ON THE LEGISLATIVE  
PROPOSAL ON THE PUBLIC  
PARTICIPATION BILL BY HON  
CHRIS WAMALWA**

The Committee consideration and adoption of the report was deferred to the next meeting awaiting for the comments and views of the Kenya Law Reform Commission and the Office of the Attorney-General and Department of Justice on the Legislative Proposal.

**MIN No. 432/2019:-**

**ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at twenty-five minutes to noon past noon till Thursday, 14<sup>th</sup> March, 2019 at ten in the morning at a venue to be advised.

Signed.....  
Chairperson

Date.....14.03.19.....



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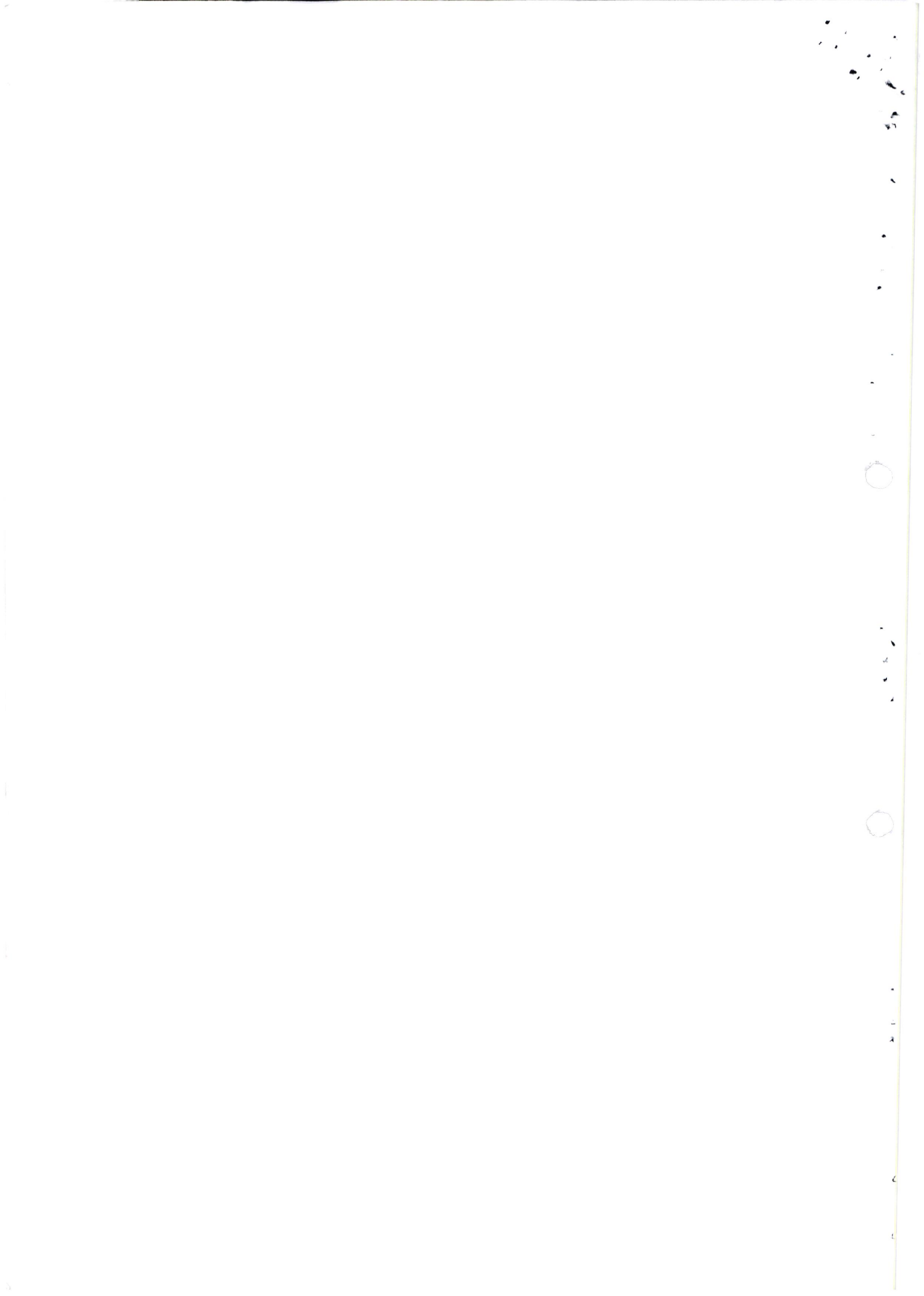
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# ANNEXUTURE 2

**List of Members who attended the sitting that adopted the report.**



KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ATTENDANCE REGISTER FOR MEMBERS

DATE 26/3/19..... TIME 11:54 AM

VENUE 4<sup>th</sup> floor Protection House

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. – Chairperson	
2.	Hon. Alice Wahome, MP. - Vice Chairperson	
3.	Hon. John Olago Aluoch, MP.	
4.	Hon. Roselinda Soipan Tuya, MP.	
5.	Hon. Ben Momanyi, MP.	
6.	Hon. Mwamkale William Kamoti, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Charles Gimose, MP.	
9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Zuleikha Hassan, MP.	
11.	Hon. John Kiarie Waweru, MP.	
12.	Hon. George Gitonga Murugara, MP.	

13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	<i>Kiai</i>
16.	Hon. Jennifer Shamalla, MP.	<i>Jennifer Shamalla</i>
17.	Hon. Beatrice Adagala, MP.	<i>Beatrice</i>
18.	Hon. John Munene Wambugu, MP.	<del><i>John</i></del> <i>me</i>
19.	Hon. Boss Shollei, CBS, MP.	<i>Bosshollei</i>

*For: [Signature]*

**GEORGE GAZEMBA, ACI Arb**  
**For: CLERK OF THE NATIONAL ASSEMBLY**