

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 14th June, 2018

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Lusaka) in the Chair]

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TUMAINI
ACADEMY, BOMET COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Tumaini Academy, Bomet County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

On my own behalf and that of the Senate, I welcome them to the Senate and wish them a fruitful visit.

I thank you.

(Applause)

Sen. (Dr.) Milgo, I can see that you want to say something.

Sen. (Dr.) Milgo: Mr. Speaker, Sir, the visiting students and teachers come from my county. I join you in welcoming them to this House. I wish to encourage them to work hard. This House deals with matters of the counties and I hope that in future, they will come here as Senators.

Thank you, Mr. Speaker, Sir.

Sen. Outa: Mr. Speaker, Sir, I join my neighbour in welcoming Tumaini Academy from Bomet. I would like to inform them that my *shemeji*, who is their governor, is doing a good job there. I welcome them to this House, so that in future they can have the opportunity---

Sen. (Dr.) Zani: On a point of order, Mr. Speaker, Sir. Is the hon. Senator, next to me, in order to use different languages when making his presentation? That is against the Standing Orders.

Sen. Outa: Mr. Speaker, Sir, I am not from the Coast, but I was sending a message to Sen. (Dr.) Zani, so that she can understand that the Governor of Bomet County is my sister-in-law.

(Laughter)

Mr. Speaker, Sir, this is an opportunity for students from Tumaini Academy to learn how we debate national issues; matters that affect this nation. We are, therefore, preparing them so that when we retire, we expect some of them to be future Senators of the Republic of Kenya.

Thank you.

Sen. (Dr.) Zani: Mr. Speaker, Sir, I join you in welcoming Tumaini Academy from Bomet County. ‘*Tumaini*’ means ‘hope’ in English. You are the hope and future of Kenya and your dreams are valid. Work hard and become Senators one day, so that you can play an important role in making legislation for this country, especially on devolution which is a key area that we discuss here in the Senate. It will ensure that we have devolved our units to a place where services can get to all the people equitably.

We wish you all the best and thank you for coming here. You will listen to us this afternoon and see how we debate and articulate issues. When you go back, let the other students who did not come here know what happens in the Senate of Kenya.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Thank you, Sen. (Dr.) Zani. However, all Senators should address the Speaker.

Sen. Cherargei.

Sen. Cherargei: Mr. Speaker, Sir, I join you and my colleagues in welcoming Tumaini Academy. I have extended relatives in Bomet and specific interests there. I, therefore, wish them well as they learn all that they can. We, from Nandi County, are aware of their impressive performance and are proud of them. .

When they go back they should be ambassadors. They should learn as much as they can because, as I my colleagues have stated, they are the hope of the future. I wish them well and all the best.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Thank you Senators.

Next order!

PETITION

The Speaker (Hon. Lusaka): Hon. Senators, the Petition that is listed in the Order Paper was presented yesterday. Therefore, let us move to the next Order.

STATEMENTS

MOODY'S CREDIT RATING FOR KENYA

Sen. Halake: Mr. Speaker, Sir, pursuant to Standing Order 46 (2) (a), I rise to make a Statement on an issue of general topical concern about our credit rating as a country. Even though this seems to be overtaken by headlines in the newspapers today about anxiety as Kenya's debt load goes to Kshs5 trillion. That said, I will still go ahead and bring the attention of this House to the staggering debt burden that this country is going into. More importantly is the downgrading of our country by Moody's.

Mr. Speaker, Sir, I will explain a little bit about Moody's, just for the sake of those of us who do not understand it and our students who are in the Public Gallery. It is a bond credit rating company that provides international financial research on bonds issued by commercial and government entities. The company ranks the creditworthiness of borrowers using a standardized ratings scale which measures expected investor loss in the event of default. The purpose of this rating is to provide investors with a simple system of gradation by which future relative creditworthiness of a country or institutions may be gauged.

Our economy has been declining, even though in 2017 we had an estimation that expanded to 4.9 against 5.9 in the previous year. However, that has been attributed to the long electioneering period and other aspects such as the drought. According to the 2018 Economic Survey, the key drivers of all our economy - manufacturing, finance and agriculture - were all constrained. The financial and insurance sectors also declined in growth significantly over the said period and, therefore, dampened the overall growth of the economy.

Mr. Speaker, Sir, a few months ago, the Moody's Investors Service downgraded three of our banks. I will not mention those banks because it is in the public domain. We do not want to penalize our banks when their credit rating has suffered as a result of our sovereign debt and ratings. Three of our banks were downgraded from a B1 rating to a B2 rating. This followed the downgrading of our country's credit worthiness.

Moody's Sovereign press release asserted that the rating action was primarily driven by the potential deterioration of the Kenya Government's credit profile as captured by the Moody's recent rating action to place the B1 sovereign rating on review for downgrade. The Kenyan banks had high exposure to the Government debt, which is linked to their credit profile. Therefore, the banks were downgraded as a result of our sovereign debt burden and suffered a great loss.

Mr. Speaker, Sir, in recent fiscal years, Kenya has been forced to borrow heavily to finance infrastructure, which is a good thing. However, the source of borrowing has been a great concern for economists. Instead of borrowing from multilateral sources, we have been borrowing from commercial sources and some bilateral sources such as China. This has really ramped up our debt. Just to give some figures; our foreign debt amounted to Kshs2.63 trillion by February this year. I think it is a bit more now. The domestic debt which is a bit more recent - up to last month - is Kshs2.448 trillion, making a total of Kshs5.011 trillion debt burden for the country.

This must concern us as the Senate and the legislative arm of this country and the oversight body that oversees this. The Budget Review and Outlook Paper released showed an upward revision of the budget deficits as well. It was Kshs691.2 billion from Kshs750 billion, excluding grants from the previous year.

I, therefore, wish to draw the attention of the Senate to this matter that is likely to affect how much it costs for us to borrow from international markets, but also the debt affordability which will deteriorate as reflected by the increase in government interest repayments. That means that we will forever be paying interest rates at the expense of development financing and our recurrent expenditures will go through the roof. If the debt itself is Kshs5 trillion, the repayments on these debts--- Genghis Capital had estimated that we will be using more than 50 per cent of our revenues to finance these debts.

Mr. Speaker, Sir, this is of concern to us and should be of concern to this House whose mandate is to steward public finances as well as ensuring that our country is a going concern. If the ratio is unhealthy, it means that there will be a meltdown of our economy, going forward.

In the last financial year, our debt to the Gross Domestic Product (GDP) ratio was between 40 to 50 per cent. I am told that it is now hitting 60 per cent. Beyond 58 per cent is a cause for concern to the country. If we exceed the threshold of 58 per cent, we will not be able to finance our obligations in terms of the repayments of the principle as well as the interest rate. As a Senator, I am concerned that this country is mortgaging its future. The fact that our banks, especially the Kenyan based banks have been downgraded is a cause for concern.

I thank you, Mr. Speaker, Sir, for giving me this opportunity to highlight this issue of topical concern. Today being the day that the Budget will be read by Treasury Cabinet Secretary, this House should take this issue seriously. The committee that deals with finance and public accounts should ensure that we do not sit yet there is a meltdown in our economy.

Thank you.

The Speaker (Hon Lusaka): The Senate Majority Leader, give us the next statement.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 19TH JUNE, 2018

Sen. Dullo: Thank you, Mr. Speaker, Sir. This is the statement from the Office of the Senate Majority Leader on the business of the Senate for the week commencing 19th June, 2018, pursuant to Standing Order No. 46(2)(c). I hereby present to the Senate, the business of the House for the week commencing Tuesday 19th June, 2018.

The Senate Business Committee (SBC) will meet on Tuesday, 19th June, 2018, to schedule the Senate business for that week.

Subject to further direction by the SBC, the Senate will on that Tuesday continue with consideration of business that will not have been concluded in today's Order Paper. On Wednesday, 20th June, 2018 and Thursday, 21st June, 2018, the Senate will consider

business that will not have been concluded on Tuesday 19th May, 2018 and any other business scheduled by the SBC.

Hon. Senators, the following Bills are at the Second Reading stage: -

- a) The Office of the County Attorney Bill (Senate Bills No. 3 of 2018).
- b) The Public Participation Bill (Senate Bills No. 4 of 2018).
- c) The Disaster Risk Management Bill (Senate Bills No. 8 of 2018).
- d) The Retirement Benefits (Deputy President and Designated state officers) (Amendment) Bill (Senate Bills No. 2 of 2018).
- e) The Physical Planning Bill (National Assembly Bills No.34 of 2017).
- f) The Irrigation Bill (National Assembly Bills No. 46 of 2017).
- g) The Kenya Roads Bill (National Assembly Bills No. 47 of 2017).
- h) The Office of The County Printer Bill (Senate Bills No. 7 of 2018).
- i) The County Statistics Bill (Senate Bills No. 9 of 2018).
- j) The Local Content Bill (Senate Bills No. 10 of 2018).

Hon. Senators, the following bills are due for Committee of the Whole: -

- a) The Assumption of Office of The County Governor Bill (Senate Bills No. 1 of 2018).
- b) The County Governments Retirement Scheme Bill (Senate Bills No. 6 Of 2018).
- c) The County Boundaries Bill (Senate Bills No. 6 Of 2017).
- d) The County Governments (Amendment No.2) Bill (Senate Bills No. 7 Of 2017).
- e) The Food Security Bill (Senate Bills No. 12 of 2017).
- f) The National Flag, Emblems and Names (Amendment) Bill (Senate Bills No. 8 of 2018).

I urge hon. Senators to be available in the House to dispense the business scheduled in the Order Paper. As I conclude, I would like to wish our Muslim colleagues happy Eid ul-Fitr celebrations tomorrow.

Mr. Speaker Sir, I thank you and I hereby lay the statement on the Table.

(Sen. Dullo laid the document on the Table)

The Speaker (Hon Lusaka): Hon. Senators, due to lack of the requisite number, I wish to defer Order No. 8 that is supposed to be a division and Order No. 9 that is supposed to be the Committee of the Whole. The Sponsor of the Bill is not present.

BILL

Second Reading

THE OFFICE OF THE COUNTY PRINTER BILLS (SENATE BILLS NO. 7 OF 2018)

(Bill deferred)

COMMITTEE OF THE WHOLE

THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL
(SENATE BILLS NO.1 OF 2018)

(Committee of the Whole deferred)

(Loud consultations)

Next Order!

Sen. Ndwiga: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon Lusaka): What is your point of order, Sen. Ndwiga?

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. Sen. Abshiro raised a matter of great national importance. I am surprised that after her statement, we moved on with business of the House as usual. This country is riding on an impossible debt portfolio at the moment. I was hoping that you would ask the relevant standing committee ---

The Speaker (Hon Lusaka): Order, hon. Member! I did not see any request for intervention. We have already dispensed with what Sen. Abshiro raised. So, your worry amounts to an intervention.

Sen. Ndwiga: Mr. Speaker, Sir, this statement was not committed to a specific committee to interrogate the issues raised. The issues raised are of great magnitude. Is it in order?

Sen. Olekina: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon Lusaka): What is your point of order, Sen. Ladema?

Sen. Olekina: Mr. Speaker, Sir, I concur with my colleague, but the statement was issued pursuant to standing order 46(2)(a). It does not require to be committed to a committee. We have already proceeded to other businesses on the Order Paper. In as much as I agree with you that it is important, you are out of order to raise that now. The Standing Orders are clear.

Sen. Poghiso: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon Lusaka): What is your point of order, Sen. Poghiso?

Sen. Poghiso: Mr. Speaker, Sir, when a Member rides on a point of order, he is out of order. So, we are all out of order.

(Laughter)

I am worried that my good friend, Sen. Olekina, is taking over the Speaker's roles in determining what is in order and out of order. Is he in order? You should rule him out of order.

The Speaker (Hon Lusaka): Order, Members! The Standing Order that the Senator used to raise the statement does not require the Speaker to refer it to any committee. However, it is up to the committee concerned to pick up the matter if they feel it is a matter of national importance.

Next Order!

BILL

Second Reading

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILLS NO. 3 OF 2018)

(Sen. Cherargei on 13.6.2018)

(Resumption of Debate interrupted on 13.6.2018)

The Speaker (Hon. Lusaka): Sen. Cherargey, you still have 35 minutes to move the Bill.

Sen. Cherargey: Thank you, Mr. Speaker, Sir, for that clarification. As a Standing Committee on Justice, Legal Affairs and Human Rights, we are seeking that this Bill is passed. It will ensure that the functions of the county attorney are provided for, the discharge of duties and exercise of powers by the county attorney.

Yesterday, we agreed that the biggest challenge with our counties is the pending bills. One of them that is being misused is the outsourcing of legal services. This Bill creates the offices of the County Attorney, County Solicitor General and county legal advisor.

Clause 9 of the Bill states:

“No criminal proceeding or civil suit shall be brought against the County Attorney, the County Solicitor, County Legal Counsel or any other officer in the Office in respect of any proceedings in a court of law or in the course of discharging of the functions of the County Attorney under this Act.”

This is to ensure that they are protected from any legal proceedings when they are done with their work or no longer in office. As a Committee, we felt that it is important that we have that provision so that it does not haunt us in future.

Clause 10 is on the status of the County Attorney. I agree that we are not delocalizing the Attorney-General’s office. We are just ensuring that devolution works. So, in using the example of the Attorney-General’s office, the rules that have been provided in the Constitution is that the Attorney-General is an *ex-officio* member in the Cabinet. That is why in this Clause, we have provided that the County Attorney is in the same rank or status with a County Executive Committee (CEC) member.

However, the recruitment of the same person will be done by the County Public Service Board (CPSB) in consultation with the Governor so as to eliminate administrative issues. I know it would have been appropriate that way because these are the people that will legally advise the county.

We looked at the functions under Clause 4 and then decided that Clause 10 be deleted to avoid conflict of interest. It was also to put the office into the existing structure

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of the county government. So, we did not want to bring a competing force, superiority or other aspects that may undermine the office. We, therefore, recommended that Clause 10 be deleted.

Now that the CPSB is the one that will ensure that they advise, participate in litigation and represent the county in court, we thought that it is important to delete it so that we give time. We are giving an opportunity to the CPSB to restructure its administrative unit of the County Attorney, County Solicitor and the County Legal Advisor. I gave an overview of the entire Bill yesterday.

In Clause 11, we have ensured the common practice; that so long as you are a public servant, according to the code of ethics of any profession in this country, you are not supposed to engage in gainful employment. We agreed that sometimes counties might need to outsource legal advice or services out of necessity. This is just to ensure that there is no other gainful employment to avoid conflict of interest. We have, therefore, retained that as it is, so that we protect and ensure that these people do not misuse the office of the County Attorney.

The part reads:-

“The County Attorney, the County Solicitor and the County Legal Counsel shall not engage in other gainful employment that may result in conflict of interest.”

I think this is very important so that county attorneys, county solicitors or county legal counsel are stopped from participating in some of those processes.

Regarding the issue of resignation, we agree that the County Attorney will address his or her resignation to the Governor. This is because upon the appointment by the CPSB by competitive process, the appointing authority is the Governor. Therefore, we think we need the County Attorney, County Solicitor and the County Legal Counsel to go ahead and write to the appointing authority, and that is the Governor. As a Committee, we felt that it should remain that way so that we ensure it is proper.

It is tied with Clause 13 on the issues of removal from office. We have borrowed heavily from the common practice that even our Constitution has provided for. These are grounds such as bankruptcy, gross misconduct, being of unsound mind, among other grounds. We emphasized yesterday that Chapter Six of the Constitution on leadership and integrity is very important, going forward, given the fact that the country is now struggling with corruption and other issues. Therefore, the threshold of Chapter Six is very high and even that of the Leadership and Integrity Act.

Under Clause 16, because I wanted to highlight a few key areas for our colleagues and even us, we have provided the engagement of a consultant. We realised that there are some instances when county governments want to outsource legal services because sometimes the capacity within the legal unit of the County Attorney, County Solicitor or County Legal Counsel, becomes a challenge. So, we have provided that any person to provide legal services for the county must ensure that the County Attorney approves. Therefore, we agreed that in line with that, we put it that way.

Clause 16(3) reads:-

“An approval by the County Attorney of a request by a department or public entity to engage the services of a consultant under subsection (1) shall be in writing”

(Loud consultations)

The Speaker (Hon. Lusaka): Hon. Senators, consult in low tones.

Sen. Cherargei: Mr. Speaker, Sir, we want to caution so that we do not have a County Attorney, County Solicitor or County Legal Counsel going to bed with some of the people who are interested with consultancy services, especially on legal services. Therefore, we have tightened and ensured that ---

(Sen. Mutula Kilonzo Jnr. interjected)

One of my members in the Committee on Justice, Legal Affairs and Human Rights, Sen. Mutula Kilonzo Jnr. is happy this afternoon. I know it is just after lunch.

(Laughter)

In Clause 17 we have provided that the County Solicitor must have at least five years of experience. This was the argument that we had during public participation because we have many young lawyers in this country and we realised people who have practiced long enough no longer find far flung areas attractive. That is why we said in this Bill, that we need to make sure CPSB provides a remuneration that is attractive to even senior practicing lawyers. This way, the quality of services can be improved. It is the same with the county legal counsel and the county solicitor.

For the terms and conditions in Clause 19, we have provided the code of conduct for the County Attorney, the County Legal Counsel and the County Solicitor.

In Clause 20(1), it provides that:-

“A County Legal Counsel appointed under Section 18 shall subscribe to and observe the Code of Conduct as set out in the Second Schedule”

I have highlighted that together with the requirements. We had only indicated the County Attorney and the feeling of the Committee was that we should include the County Solicitor and the County Legal Counsel too, to ensure uniformity in the application of the law. This is to provide that even as we generate the code of ethics and leave the CPSB to generate the code of ethics or engagement. Clause 21 is straightforward.

Clause 22 provides for staff and it is very important.

It states:-

“There shall be such officers and other members of staff of the Office as the County Attorney considers necessary for proper and efficient discharge of the functions of the Office”.

As we said in Clause 4 of the Office of the County Attorney, the functions include, apart from legal advice, representation in court of law, negotiations, drafting and vetting of documents.

The Senate did not participate in passing some legislation on treaties although a county like Busia borders other countries. It was the National Assembly which debated and passed legislation on treaties. Going forward, it would be important to strengthen this office by recruiting the necessary staff. However, we are not giving county governments blank cheques to hire the way they would like. No. We will do this in consultation with the County Public Service Board (CPSB). The CPSB is key in recruiting staff of county governments. If we involve them, we will avoid conflict of interests. The County Attorney Office should function efficiently like any other office in the county government.

The reason we want to enact some of these laws is to ensure devolution works as stipulated under Article 174 of the Constitution. This is one of the vital legislations we need to enact with speed.

Mr. Speaker, Sir, Clause 23 is a straight-forward one and I do not want to belabour a lot on it. Suffice it to say we need to protect the integrity of this office by ensuring we have a non-disclosure of vital information. For example, information on vetting, advising, drafting of legal agreements and Memoranda of Understanding (MoU), among others, should be treated with the utmost confidence.

This is worth noting. We, as Senators, are worried because many counties enter into contracts, MoUs, agreements and even signing legal documents without following the laid down procedures. That is why they are taken to court, day in, day out.

In this Bill, however, we have ensured that no such vital information will be disclosed by an officer at any given time in the course of his or her duty. Officers entrusted to offices must be guided by general practices and code of conduct if they were to disclose any information they come across in the course of discharging their duties.

With regard to Clause 25 on County Seal, we agreed to delete it because the County Governments Act provides the county seal be in the custody of the county secretary. We do not want to bring the conflict of interest, especially in the transition period. A while ago, we had the second generation of governors in place. This House is lucky to have you, a former governor as the current Speaker.

We have had transitional challenges in this country with regard to assumption of office by the governors. There is a law that is in place by Sen. Kimani Wamatangi on the Assumption of the Office of the Governor. With this Bill, we want to ensure that there is an obligation or proper handing over of instruments of power within the county governments. We, as a Committee, felt that the right person to be with the seal of the country is the county secretary. That is why we unanimously agreed to delete Clause 25 of the Bill.

Mr. Speaker, Sir, Clause 26 says:

“The County Attorney shall have access to relevant records, documents, property pertaining to civil or criminal cases in the performance of the duties of the County Attorney.”

Since the county attorney is the principal legal advisor to the county government, there is need for him to access most of these documents of civil or criminal nature. We provided this because we thought a County Executive Committee (CEC) Member, a Chief Executive Officer (CEO), the governor or his office may prevent the access of

some of the records by the County Attorney. By the time they are engaging in any legal advice or court representation or hearing on behalf of the county, he has a full disclosure of what they are dealing with. It will also ensure that he has adequate access to some of these records when he is drafting, vetting or advising the county governments.

Mr. Speaker, Sir, Clause 27 says:-

“The county government shall provide adequate facilities for the efficient functioning of the Office.”

This is in line with what the CPSB will provide for. Our understanding of a county government is both county executive and county assembly. A fortnight ago, we had a Legislative Summit in Mombasa. We realised there are so many weaknesses in terms of legislation and policy framework. We, as the Senate, need to improve the capacity of the MCAs so that they come up with quality pieces of legislations in their respective county assemblies.

I urge all county governments to provide a proper County Attorney Office. We do not want to see the County Attorney working on corridors of the governor or the County Assembly Speaker’s office. We do not want to see the ugly scenes of some of the county staff being locked out office because they are not in agreement with the governor.

Clause 28 is on the funding of this very important office. It is very direct. For the office of the county attorney to discharge its duty efficiently, it must be allocated enough funds. Today, the national Budget is being read in our sister House. As counties draft their budget, they can also factor the money needed for such a critical office. I would also like to urge development partners to fund this office so that we realize the fruits of devolution in this country.

Mr. Speaker, Sir, we are proposing for annual reports to be tabled because we need to audit the performance of this office so that we get value for taxpayers’ money. This country has spent a lot of money in creating offices and yet we do not have proper audit mechanism. This annual report should give us concise, precise and timely information on what the county attorney office has done. If there are treaties that have been signed, they must be shown in the report. If there is money spent and agreements or MoUs signed, let them be shown in the report. Counties are signing Export Processing Zones (EPZs) agreements with multinational companies and international organisations and Public-Private Partnerships (PPPs). All this must be captured in the annual report.

Mr. Speaker, Sir, Article 35 of the Constitution on Access to Information is clear. Access to information is critical. We should move forward to ensure that we get value for our money. I know many people will ask how the audit of this office will be done. My answer to them is that this office must be audited because it is funded by taxpayers’ money.

Clause 29 of the original Bill has cured and ensured that the County Attorney may make regulations. We recommended that Clause 30 be amended by deleting the words ‘county attorney’ appearing immediately before the words ‘may make regulations’. We felt that the Cabinet Secretary (CS) in charge of Devolution and Planning should make these rules and regulations to ensure uniformity and legal certainty.

We appreciate that our 47 county governments across the country have their own unique needs. However, if we allow each and every county attorney to make regulations,

we will create some 'small' Attorney-Generals across the 47 counties. Therefore, to ensure legal certainty and uniformity in implementation of these rules and regulations, we should make sure that we provide for that.

I know that county assemblies have passed the law that creates county legal advisers and attorneys. That one has been cured through the transition clauses to ensure that we do not chase away the county attorneys, legal advisers and solicitors that we have in place at that level. Most counties have been struggling to ensure that their systems work. If there is any inconsistency, if this Bill becomes an Act of Parliament, it will supersede any other law.

Mr. Speaker, Sir, under Clause 32 we have agreed that upon the coming into effect if this Act, members of staff employed by the county executive to perform functions of the office under this Act shall-

- (a) be deemed to be members if staff of the office on their respective capacities;
- (b) retain any rights accrued or accruing to them as such staff or contributors; and,
- (c) be at liberty to continue to contribute to any superannuation scheme to which they were contributors.

Therefore, our County Public Service Board (CPSB) should ensure that there is a proper structure. This is not an opportunity for governors, who have a habit of suspending or removing anybody from office. Clause 32 is trying to give protection so that the governors do not have an opportunity or field day to remove officers who are now in those positions, courtesy of the legislations that we have across the counties. This is what we are trying to cure. We are aware that after the second generation of governors came into office, they went on a sacking spree across many counties in this country.

Mr. Speaker, Sir, this law is needed and urgent, so that we allow devolution to be felt at the lowest possible level envisaged under Objects of Article 174 of the Constitution. We want to ensure that Kenyans feel the effects of devolution. We have seen public participation being done across the 47 counties. Some county governments do not understand what public participation is.

Some of them imagine that it involves preparing a document and going somewhere, for example, Nandi Hills or Mosoriot, where I come from; making people sit for two hours or half a day and then buying them *mkate* and soda. That is not acceptable because people are just being told to endorse a document.

When we have county attorneys, legal advisors and solicitors, it will be very easy to implement and ensure that we fall within the law. The county budgets will be prepared after the National Budget that is being read today by the Cabinet Secretary (CS) for the National Treasury. We should, therefore, ensure that we participate in processing and expediting this Bill to become an Act of Parliament, so that county assemblies can have an opportunity of allocating funds and make sure the office of the county attorney works.

Mr. Speaker, Sir, I beg to move and call upon Sen. Mutula Kilonzo Jnr. to second.

The Speaker (Hon. Lusaka): Let us have Sen. Mutula Kilonzo Jnr. seconding.

(Loud Consultations)

Sen. Cheruiyot: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cheruiyot?

Sen. Cheruiyot: Mr. Speaker, Sir, you may have been distracted to notice this or perhaps, the proper word is that somebody else sought your attention. In concluding after making very good and elaborate remarks, the Mover of this Bill did not follow the laid down procedure in moving. I, therefore, request that you request him to come back to the Dispatch Box and follow the laid down procedure---

The Speaker (Hon. Lusaka): Debate on the Bill started yesterday, Sen. Cheruiyot.

Sen. Cheruiyot: Mr. Speaker, Sir, if that is the case, then I stand guided. It is good to respect our procedures. Thank you for your guidance.

The Speaker (Hon. Lusaka): Thank you, Senator.

Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I rise to second the Office of the County Attorney Bill (Senate Bills No.3 of 2018). I intend to be brief. Again, it is *dejavu* on this Bill because I seconded the first one that never saw the light of day.

When we conceived this Bill in 2014 the idea was to have counties get legal advice and counsel, similar to the services offered by the Attorney General. As I speak, most counties have county attorneys. However, the terms of those attorneys; who hires them, how much they are paid and whether they are hired by CPSB is not uniform.

I must commend Bomet County because it was the first one to have a county attorney. We may not have liked Governor Isaac Ruto, but he was good for many reasons. I know that he is the only governor who did not sign the medical equipment lease agreement. That is why he is the only one who appointed a county attorney in 2014. At that time, the intention was to make sure that counties do not spend a lot of money hiring lawyers.

Right now, the first observation that the County Public Accounts and Investments Committee (CPAIC) is making is that counties are spending too much money on lawyers. The statement made by the Deputy President in Mombasa about the amount of money being paid to lawyers is because when they passed this Bill in 2015, it suffered the fate of all Bills that were passed by the last Senate. It went and was kept in the shelves and the Speaker, who is your colleague, decided to sit and see whether it was a matter concerning counties. The result is the statement that one lawyer in Nairobi - and they are my colleagues - has been paid over Kshs2.8 billion and has a pending bill.

Mr. Speaker, Sir, this framework as guided by the Senate will help all counties to have uniform legislation, so that there is no question as to whether the lawyer should be five, ten, 15 or 20 years. This law gives a standard. There will be no question as to whether the lawyer or advocate who is hired to this position is an executive. This is because we have given him a higher platform than a county executive. There will be no question of the governor hiring and firing him when he is elected because we have provided for a six-year term, which is longer than the election term.

Mr. Speaker, Sir, Section 43 of the County Governments Act as drafted today – and that is the reason we came up with this legislation as the Committee on Justice, Legal Affairs and Human Rights in the last Senate - provides that the Attorney General of Kenya may offer legal services to counties. However, the correct position is that the former Attorney General, Prof. Githu Muigai, never offered any service. In fact, we disputed half of his opinions. The opinions that he gave to counties were all, I say without hesitation, legally questionable.

He is the same one who said that counties are allowed to withdraw 50 per cent of their budgets before the County Assembly passes the budget through the Controller of Budget.

Mr. Speaker, Sir, the idea behind this Bill without even getting into the details is to ensure that the county assemblies are advised. I mentioned yesterday that the County Assembly of Taita-Taveta in an attempt to deal with the question of rape drafted a Castration Bill. If this County Assembly was properly advised, they would not come up with such a legislation. If the County Government of Kisii had a legal advisor, they would not draft a Motion to exclude nominated Members of County Assembly (MCAs).

If the County of Kericho had a good County Attorney, they would have advised Gov. (Prof.) Chepkwony at the time when we were impeaching him. At that time, he made an attempt to get into a Public-Private Partnership (PPP) that would go beyond his term of about Kshs3 billion. He would have been advised that they did not have regulations covering PPPs and county governments.

Some counties are borrowing funds and getting into contracts with international donors. If we had a competent counsel, governors would not do so. Opinions to governors and county assemblies are being charged top dollar. You heard this morning that arbitrators are charging Kshs25,000 to Kshs40,000 an hour. I charge more. However, that is not the point.

(Laughter)

The point is that for purposes of legal opinions, external lawyers are charging an arm and a leg to your counties.

We have proposed in this Bill that this legal counsel will ensure that when the county governor is seeking legal opinion, by the time he hires Omogeni and Company Advocates and pays them Kshs5 million, they will have to justify the reason why they did so because they will have a county attorney. That includes Kilonzo and Company Advocates.

This point cannot be emphasized. We have done here issues in terms of the years they work, who will keep the seal, and whether they will be hired by the County Public Service Board (CPSB). In fact, if you want to see what the public has said about this, please, have a look at the report that my Chairperson presented on the functions of this office, the status of the county attorneys, the powers of the county attorney, the engagements of consultants, and the delegation of county attorneys.

At the bottom of it, you have county legal counsel. It is not only a county attorney, but you will have a county solicitor. Those who are familiar with English

practice know about solicitors. We have upgraded counties to almost international standards by providing a county solicitor. The provisions on the county solicitor are in the Bill.

Under the County Attorney, we have the County Solicitor and also a County Legal Counsel. What is the mischief? We want counties to be represented by County Counsel. If Makueni County has a High Court, why do we need a lawyer to come from Nairobi to go and represent the County Government of Makueni? The Judiciary intends to have a high court in every county, bringing the number to 47 in the country. On matters of interpretation and advice to your county government, it is envisaged under this Bill that your County Legal Counsel will appear there for both criminal and civil matters to represent county governments where necessary.

There is the performance of those functions and the appointment of service. I do not need to get into the details because my Chairperson spent a lot of time explaining the details and code of service. Some Senators have raised issues on some clauses. I refer you to Clause 14 which says:-

“A County Legal Counsel shall at all time in and outside the place of work appear smart, proper and decent dress and behave in a manner befitting both the public service and legal profession.”

Some of my colleagues have challenged this. However we do not want to rag tags. Although the Advocates Act provides for conduct of counsel, courts have thrown out lawyers over short dresses and skirts or revealing clothes. Some of these things need to be said – personal conduct of the County Legal Counsel and conflict of interest. Somebody has asked why you need to state that a member of this team shall not take part in society or have membership of which is incompatible with the functions and dignity of this office. We do not want lawyers and counsel of counties to find themselves in a matter that will conflict them.

They cannot be members of a casino or bar association. That is the conflict we are talking about. You cannot be a member of a club or a betting game because that can put you in conflict. Some of these things, although they may appear obvious, we have made sure that they are obvious in writing.

With those few remarks I beg to second.

(Question proposed)

The Speaker (Hon. Lusaka): Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir, for giving me an opportunity to make some brief comments on the importance of having a County Attorney. If you take the report of the Controller of Budget for all the 47 counties, you will realize---

(The Speaker (Hon. Lusaka) spoke off record)

As I was saying, if you take the report of the Controller of Budget and look at the last five years, you will be astonished at the amount of money which was used by

counties for litigation. In some areas, they used close to Kshs1 billion. Nairobi City County is one of the counties which has contributed to a lot of the current pending bills.

I support this Bill, but I am a little bit shocked with the way it was drafted. There are certain things which are unnecessary. Certain things are covered by, for instance, the Advocates Code of Conduct. When you look at the personal conduct, for instance, there are certain things which are a little bit vague. I would recommend to the Committee that they reread the Bill and make certain changes. There are few things that I like about the Bill which is what I will refer to. I will also request that it be expanded because certain things are a little bit vague.

Mr. Speaker, Sir, it is important for each county to control how much they can spend in litigation. By having this Office of the County Attorney, it will then be responsible in responding to all cases for or against the county. One area that will need to be reworked on this Bill is the issue of non-disclosure agreement.

I would recommend to the drafters of the Bill to be very specific that each County Attorney who is recruited must begin by signing a non-disclosure agreement. That issue must be very specific because during their tenure, they come across a lot of sensitive information relating to a county.

The other issue relates to conflict of interests, which I do not think there is anything wrong with a county being gifted. If the County Attorney is travelling and he is given a gift, that gift belongs to the people of that county. So, it would be un-African to refuse to accept a gift. He or she should accept the gift, declare it and consider it to be property of that county. This is because, if you refuse to accept gifts and yet when you have visitors you gift them, it would be playing double standards.

Mr. Speaker, Sir, when I looked at the Bill, one of the areas that I thought should be amended is with regard to the qualifications of the County Attorney. One very important thing is for us to respect our societies. Since we have got the Law Society of Kenya (LSK), the drafter should consider adding a clause in the Bill that states that for a person to qualify, he or she must be an active member of the LSK and must also have current membership status. He or she must also have practised in this country for quite some time, to be conversant with the way matters are decided here.

Another issue which I thought might be a little bit too harsh is where you give the County Attorney the power to summon any officer in the County Public Service to explain any matter. We should use a better word instead of "summon." This is because, a "summon" is an order. So, it should be to invite any officer in the County Public Service to explain any matter which is subject of litigation. However, when you summon, they might not take the order politely.

I like the fact that when you look at Clause 8(2)(c), it says:-

"The County Attorney shall comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the Office."

When you traverse this country of Kenya, you will find that a lot of orders which are given by our Judiciary to specific counties are never complied with. So, you will find someone has spent so much money fighting in court and then he or she is awarded costs.

However, when he takes it to the governor, the governor keeps it aside and says; “We do not have money to comply with this.” So, that is something very good that will help people because this County Attorney would be protecting the interests of both the people of that county and the county government.

The other issue is with regard to personal conduct. This is a matter that does not need to be in this Bill. It is unnecessary legislation since it is provided for by other legislations. You would assume that an advocate is somebody who carries himself or herself with high esteem. So, the drafters ought to change that.

Mr. Speaker, Sir, finally, we should add another Clause so that any gift which is received is declared publicly and when a matter is brought, before it is decided on who should be given, in the case of a consultant, the consultant must come from a pool of advocates who should be approved by the County Attorney. So, the role of shortlisting advocates who can act on behalf of each county must be given to the County Attorney so that he can engage a consultant from his or her pool.

With those few remarks, I support.

The Speaker (Hon. Lusaka): Proceed, Sen. Omogeni.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. First, I thank the people behind the thought of coming up with the Office of the County Attorney Bill (Senate Bills No. 3 of 2018). I also thank the Committee for the considerations they have had on this very important Bill.

I also acknowledge that the coming up of this Bill is a step towards full realisation of devolution. This is because, when we passed the Constitution of 2010, our intention was to have two governments in one country. Since the national Government has the Office of the Attorney-General that advises the Executive, it is also good that we empower our governors with a fully-fledged Office of the County Attorney that can render advice to our governors.

We have had a number of challenges in the past in terms of Bills that had been generated by our county assemblies. I have no doubt that once each county government has a fully-fledged Office of the County Attorney, we will see good quality of Bills from our county assemblies.

Mr. Speaker, Sir, I support this Bill with some reservations. This is because, if you look at the qualification of the Attorney-General that serves our country, he is somebody with enormous experience. He enjoys a lot of respect within the legal profession. I have my reservations as to what level of experience we need for somebody who should occupy the Office of the County Attorney.

I have looked at Clause 5 and we have put an experience of seven years. If you read Article 156 of the Constitution, the Office of the Attorney-General of the country is occupied by somebody who is qualified to be appointed as the Chief Justice of the Republic of Kenya. I propose that the least qualification that we should take for this very important office is to, at least, pick somebody who is qualified to be appointed as a Judge of the High Court of Kenya.

If you look at the kind of responsibilities that we have placed in this office, it requires somebody who is an all-round and well experienced Attorney. He should be somebody who will be able to advise the governor on what kind of contracts he or she

can commit the county government to. With tremendous respect to the drafters of this Bill, I am of the view that we should amend Clause 5 and replace it with an experience of, at least, somebody qualified to be appointed as a Judge of the High Court of Kenya.

This Bill should mirror the responsibilities and the privileges that are enjoyed by the Attorney-General in Article 156 of the Constitution.

Mr. Speaker, Sir, Clause 8 of this Bill is trying to place the County Attorney as somebody who can walk into court and demand to address the court without seeking the permission of the court. Even the Attorney-General of this country cannot walk into any court of law and say that he wants to be enjoined as a party in any suit. There was a time when the Attorney-General appeared before the Supreme Court and sought to be enjoined in a matter in court, but the judges of the Supreme Court denied him leave.

The experience in the Commonwealth has always been that the Attorney-General appears in court in cases where the Government is not a party as a “friend of the court.” This is what the lawyers call *amicus curiae*. We will be going contrary to the spirit of the Constitution if we create the impression that the County Attorney can walk into court any time and demand to be made a party to any proceedings. The right procedure is that he should seek the leave of the court to be allowed to appear as a friend of the court.

Mr. Speaker, Sir, it is a good thing to create the office of the solicitor general. This is addressed in Clause 17 and it gives five years experience. However, if we want to help our county governments to have people who can render professional advice without making mistakes, then we should go for somebody who possesses the necessary experience. In my very humble opinion, five years will not be the right number of years we need for that very important office.

The experience from the national Government is that a Solicitor-General has the confidence of the President. Similarly, the Solicitor-General for our county governments should also enjoy the confidence of the governors. This is because he will work with the Governor closely, advising him. The experience we have from the national Government is that the President nominates the Solicitor-General subject to approval by the National Assembly.

It will be good practice to borrow from the national Government. The Governor can nominate the Solicitor-General subject to the approval of the County Assembly. After that, he can assume office. It will not be a good thing to leave the appointment of the holder of this very key office to the County Public Service Board (CPSB).

The Office of the Attorney General serves as a very good ground for training of future lawyers. These are interns. Members of the legal profession have been growing by the day. I have not seen in this Bill whether the office of the County Attorney has been given a leeway to take interns who should be trained as they wait for their admission to the bar. It will be good if we empowered the office of the county attorney to have the discretion to take in interns in our 47 counties who can be trained to become future attorneys.

It may be possible that once they finish the internship, they may end up being attorneys in these county governments. It is good if you train somebody for two years and once they qualify, they can apply to become attorneys in the county governments. We

will be taking in freshly qualified advocates, but who have gained enormous experience on the functions of our county governments.

Mr. Speaker, Sir, I have looked at the Second Schedule, most of the issues being addressed here are already addressed by Chapter 6 of our Constitution. For example, the conflict of interest is a matter well taken care of by the provisions of Chapter Six of our Constitution. Therefore, we do not need to reproduce what is appearing in the Second schedule of this Bill which is headlined Code of Conduct because these are issues under the purview of the Ethics and Anti-Corruption Commission (EACC). The office of the Attorney general does not have an Act that has put ethical values and principles in an Act of Parliament. It is not necessary. It looks kind of superfluous.

While we are debating this Bill, we should not create the impression that a situation can never arise where county governments may need services of external advocates. Two days ago, we know the national Government, when a court order was issued barring the vetting of procurement officers, engaged services of a very senior advocate, Mr. George Oraro. He went to set those orders aside. There may be situations where a case may create some interest for the county government that may be necessary for the county government to seek services of external advocates.

Therefore, it is important that even as we create this office of the county attorney, we still need to give discretion and leeway to our county governments where it may be necessary for them to hire external advocates on cases that may not be adequately handled by the office of the county attorney.

Finally, in terms of the attorneys that should work under the office of the county attorney, I have noticed that we have not put any years of experience. In view of the fact that this office is very critical due to the functioning of the county government, it will not be right to pick fresh qualified advocates who should work under the office of the county attorney. We need people who have gained some experience.

That is the best practice even when the Attorney General advertises for various positions under his office; there is normally some minimum years of experience that these advocates should have. We will do a lot of service to our county governments if we put some minimum years of experience for people who should serve under the office of the county attorney.

With those few remarks, I support this very important Bill.

The Speaker (Hon. Lusaka): Hon. Senators, you recall I had informed you that we did not have the requisite number to proceed to a division under Order No.8. I now confirm that we do have numbers. I, therefore, direct that we suspend debate on Order No.10 and proceed on Division on Order No.8; once concluded, we shall return to the debate.

(Debate on Order No. 10 interrupted)

BILL*Second Reading*

THE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILLS NO.7 OF 2018)

(Sen. Were on 12.6.2018)

(Resumption of debate interrupted on 13.6.2018)

The Speaker (Hon. Lusaka): We shall proceed to vote and we direct that the division bell be rung for two minutes

(The Division Bell was rung)

The Speaker (Hon. Lusaka): Hon. Members, I now direct that the doors be locked and the Bar drawn.

(The doors were closed and the Bar drawn)

You can now log in and start voting.

DIVISION

ELECTRONIC VOTING

*(Question, that the Office of the County Printer Bill
(Senate Bills No.7 of 2018) be now Read a Second Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Farhiya, Nairobi County; Sen. Kajwang' M., Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orendo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Prengei, Nakuru County; Sen. Shiyonga, Kakamega County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; Sen. (Rev.) Waqo, Marsabit County; and, Sen. (Dr.) Zani, Kwale County.

NOES: Nil

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The Speaker (Hon. Lusaka): Hon. Members, the results of the Division are as follows:-

AYES: 29

NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 29 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

The Speaker (Hon. Lusaka): Hon. Senators, I now direct that the doors be unlocked and the Bar drawn)

(The doors were opened and the Bar drawn)

Hon. Senators, we will resume our debate on Order No.10

(Resumption of debate on Order No. 10)

Second Reading

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILLS NO. 3 OF 2018)

Sen. (Dr.) Zani: Mr. Speaker, Sir, I stand to support this Bill as well because nowadays all matters are legal. There is nothing you can do which does not have a legal implication and legal fees are always very expensive. So, the idea of having a county attorney is important.

The two speakers who have spoken have highlighted specific areas which are key and quite helpful in enhancing this Bill. It therefore becomes an instrumental Bill for the functioning of county governments. This is one of the Bills that will devolve functions that have been held at the national level to the county level. It therefore, becomes county governance which is very critical and one of the Bills that devolves functions that have been held at a national level to the county level.

Mr. Speaker, Sir, the County Attorney will also give legal advice to the County Executive who will have a chance to look at the issues and figure out whether those are the important legal issues and get the necessary advice. The County Attorney also represent the executives in court, because before, we had various people representing counties in court. This will also create a level of systemacy so that it become easy to follow up on a case.

I can imagine the level of chaos that must have been there when different people are representing the county; one lawyer comes with one idea, another lawyer comes with

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another idea. That can create some contradiction and disharmony in the way legal matters are addressed.

[The Speaker (Hon. Lusaka) left the Chair]

[The Temporary Speaker (Sen. Lelegwe) in the Chair]

Mr. Temporary Speaker, Sir, it will definitely cut down our legal costs of litigation in the counties because these attorneys will be employed full time. Even though this Bill suggests the possibility of having a consultant, I have heard other Members argue that maybe it is not a very good idea. But in cases where there really is just a need for a consultant, I think there should also be capping in terms of the amount of money that, that consultant should be paid. So, we could have a lower cap and an upper cap to ensure that this particular clause is not exploited.

Some of the issues that happened in Makueni County, which was almost dissolved, would not have happened if we had had such a Bill in place because I think certain legal matters at that time seemed to have been missing. The members of the county would have been advised.

This Bill not only gives the provisions for the County Attorney, but also for the County Solicitor, County Legal Counsel and other officers who will perform. So, it is an all-inclusive Bill that has all these other provisions that are very key.

In Clause 5, the County Attorney shall be appointed by the governor with the approval of the county assembly. That is important because that makes it a rigorous process. This person who is appointed will have seven years experience; I think that is a good figure. Seven years is better than the five years I have been seeing in the other Bills. There are chances that this person probably has no experience because everybody will be trying to give different ideas and versions. It is important that they are quite grounded in their legal training so that they know what is going on.

Mr. Temporary Speaker, Sir, there is also a code of conduct in the Second Schedule. This is to ensure that apart from the qualifications, this person is able to do the job properly. I have heard other Senators who presented before me say that this can be removed because it is part of what is essentially already entrenched in Cap. 6 of the Constitution. I think it is very key and detailed. They have up to almost 16 provisions including 15 which is a conflict of interest that needs to be declared that is usually the beginning of impropriety.

The County Attorney's roles are classified in Clause 6 very clearly:-

- (a) shall be the principal legal advisor to the county executive;
- (b) shall also attend the meetings of the county executive as an *ex-officio* member of the executive committee;
- (d) shall advise departments in the county executive on legislative and other legal matters;
- (f) shall be responsible for the revision of the county laws.

That clarity of what is expected is very key.

Clause 9 is very important. It gives the protection from personal liability so that this person is actually acting in their capacity as a public officer and not an individual and that is also very key.

Clause 10 states that the County Attorney shall have the status and rank of a member of the county Executive committee. I think some sort of rationale needs to be given for that. Arbitrarily deciding that the CEC and the County Attorney are at the same level is not right. At Committee stage, we need to justify why the County Attorney should be at par with a member of the CEC. If they are the same rank, what level of authority does this person have over the CECs?

Clause 11 states that the County Attorney, County Solicitor and County Legal Counsel shall not engage in any other official gainful employment. That is also very standard.

Clause 12 states that the County Attorney may resign from office, that is wise. There is a possibility that he can refuse to resign, then what will the county do? I think that is addressed by Clause 13 and therefore, gives the governor power to remove him from office. It reads: "The Governor may with approval of the county assembly---" "So, the Governor and the county assembly can trigger a process for the resignation.

This is a good clause because then we do not have an over-confident County Attorney who just decides to refuse to leave office even when he is dysfunctional within that particular county.

Clause 16 is a mis-representation. The small title on the side gives the title as engagement of consultant. It should be non-engagement of consultant. It says: "A department or public entity established within a county executive shall not engage the services of a consultant to render any legal services relating to the functions. It is actually disregarding and discouraging the engagement of the consultant. But the side title reads "engagement". I would suggest that it reads "non-engagement" for it to flow.

Part IV of the Bill is critical because it gives the various details for the other categories apart from the County Attorney, the Solicitor, the County Legal Counsel and the other workers in terms of the provisions of what is expected.

One thing in the Miscellaneous provisions is the Penalty Clause. If an officer discloses any information, the punishment is a fine of up to Kshs200,000 and less than two years imprisonment. I think the fine of Kshs200,000 is low in terms of penalty. It is very easy for somebody to raise that amount and give information that is very key and critical and create disharmony within the county. I think that clause needs to be re-looked at. I know in various legislations especially where there is a provision for imprisonment, people take it more seriously. So, it should be "a fine and imprisonment", then we will get people to adhere more easily.

Mr. Temporary Speaker, Sir, my worry is with Clause 28. As I was reading this Bill, what came to my mind was how will this office be funded? In Clause 28(a) it says "monies that may be" I think there we are really getting into a very dangerous area because we are saying "money that may". It is a guesswork that money may be allocated by the county assembly for the purpose of the office.

I think it needs to be very precise to read "money that shall be allocated from the county assembly". This Bill will collapse if the interpretation of that clause is given to

mean; may is “I can or I cannot; at my own discretion.” Then we have that problem. By doing that, it has avoided to be a money Bill and therefore, the monies will be allocated at the county level. It is important that that provision for the funding for this is certain. So, Clause 28(a) definitely needs more concrete wording so that that can happen.

Clause 29(c) states that the copy that should be given to the county assembly shall submit to the clerk of the county assembly a copy of the report. As much as we have devolved, it is important to have some sort of connection with the national Government. I suggest that a copy should be given to the Attorney-General and also to the Senate so that the Senate can also keep track of what is going on in the counties and be able to arrest a matter that might come up at any one time.

I support and congratulate the provisions that this Bill brings on board and the Committee that has prepared and brought this Bill on the Floor of the House with those specific areas for recommendation and especially Clause 28(a) is mandatory for the provision of the survival of this Bill within the counties.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Pareno: Thank you, Mr. Temporary Speaker. I rise to support this Bill. From the outset, I will support any Bill or any move that seeks to devolve offices, services and money to the people. This is one such Bill that intends to devolve the services of the Attorney General, which is in line with our devolution goals.

We had an eye-opener when we visited Trans Nzoia, Busia and Bungoma counties as the Committee on Delegated Legislation. We had a discussion with the relevant committees on delegated legislation and they told us that they do not understand their mandate as committees on delegated legislation. It came to our mind that if we had attorneys in the counties, it would be so easy for them to give them legal guidance and interpretation as to their mandate as provided for by the law. Therefore, the need to have legal advice and chief legal officers in the counties is something that we cannot overlook. It is a requirement that is very important to the counties.

Mr. Temporary Speaker, you can imagine what happens when they do not have somebody to oversee the enforcement of the by-laws and the laws that they pass. Legal minds within the counties would give advice with regard to where the law is good and where it is not good. In fact, legal counsels will also help them in terms of the quality of the laws that they pass as assemblies.

Therefore, this is important as it will help them to draft good laws that are of good quality and pass the test of time if we have that kind of law. You are aware that we have had county assemblies passing laws that are contrary to natural justice and even the supreme law of the land. This is because of the lack of necessary legal guidance within the assemblies.

So, this Bill will ensure that they have the necessary backup for them to do the drafting. We have drafters in the National Assembly and the Senate. In fact, some of our clerks are lawyers. This has an impact on the quality of the service that we get from our own secretariat and the legal directorate. We have a directorate which helps with legal issues and drafting. This helps in shaping the law into what you want it to be and serve the people. The same set up should be replicated in the county. Therefore, this particular

Bill will bring some sense of sanity in terms of drafting and passing quality laws within the counties.

Madam Temporary Speaker, the other issue is the cost. I am a lawyer by profession and know that we have a Remuneration Order when charging for our services. However, when you look at the bills that we have within the counties for lawyers, they are very high. I do not advocate that they do not send their matters to lawyers, because those lawyers are also there to do their work. However, if we had an attorney or a legal office within the county, they would determine which cases need external lawyers and which ones can be handled by the attorneys themselves; the in-house lawyers. For me, this will cut down the cost of legal services that are provided to the counties assemblies, as much they will still need external lawyers.

The county attorneys will also initiate the suits themselves. If we have a unit that is able to defend the county assemblies, then they can initiate what they think is a law that can defend the interest of the assembly. They can sue and act on behalf of the assemblies. Therefore, they do not have to outsource everything; the internal unit within the legal department can actually defend.

The counties also need legal guidance with regard to the contracts and memoranda of understanding they enter into. They need to draft their contracts in a manner that does not compromise their interests. They need people to review and look at the regulations that they pass. After passing the laws they need to pass regulations. Who helps them to come up with those regulations? Who helps the executive arm to come up with regulations? The review of contracts and advice on contracts and memoranda of understanding require a legal unit within the county.

Mr. Temporary Speaker, if you look at Clause 6, it provides for a county attorney to sit in the county executive. That will help them to give them guidance even as they do their work. At the national level we have the Attorney General and an office that helps them with legal advice. If we have the county attorneys sitting in the meetings of the executive, then of course, we will expect that they do the right thing within the law.

Some counties have been taken to court for violating labour laws and regulations that govern employment and even cover procurement. Right now in this country we have an outcry over violation of procurement laws. We even thought there would be a standstill in the procurement departments because of the directive that was given requiring all heads of procurement to step aside to allow for investigations.

Yesterday, none other than the President issued a directive that all tenders and awards should be published. We can arrest this kind of a situation when it comes to the county assemblies if we have an office of the attorneys. They will guide the procurement officers on the procurement laws and how not to violate them. There are times when our county assemblies have overstepped their mandate. A legal mind would guide them not to overstep their mandate or act *ultra vires*. They would ensure that they serve the interest of the citizens.

From the records and practices that we have, some of the county assemblies already have county attorneys. However, under which system have they been employed? What is their security of tenure? Which law allows them to have a unit and how do they operate without a law? This Bill will help---

(Loud consultations)

Sen. Wambua: On a point of order, Mr. Temporary Speaker, Sir. Can you kindly call this House to order? We cannot hear what the Senator, who is contributing, is saying. We want to follow debate on this important Bill.

The Temporary Speaker (Sen. Lelegwe): Order! Order, Hon. Senators. You need to consult in law tones.

Continue, Sen. Pareno.

Sen. Pareno: Mr. Temporary Speaker, Sir, sometimes we address empty seats and when they are not empty, there is too much noise. Thank you for protecting the integrity of this House, so that Members can address people who are listening when they are around. Sometimes, many of them are not around and you end up talking to yourself.

I was submitting that sometimes county assemblies act in excess of their powers and overstep their mandate. We saw laws that touch on chicken and what we think is the very basics of humanity. Therefore, with a unit that helps in legal guidance and attorneys in the counties, we will have quality service for the people in the counties.

Already, some counties have attorneys, for they have hired lawyers but when one visits the counties, they realize that the lawyers feel so insecure. This is because they are hired with no security of tenure or no proper terms that are under any structure. In fact, the counties are unable to attract quality services because the lawyers feel that they are in today but when the next governor comes in, he brings in a new lot of people and those who do not have security of tenure have to leave for their home.

It is good that we create a structure and a law that governs the office of attorneys so as to have quality lawyers being attracted to the counties. I have seen cases where they have been put at a good grade and if that is done, the office of the attorney will be equivalent to the office of the executive and that is not bad. This law will definitely guarantee and attract lawyers to sit in the county assemblies.

The lawyers will also help in development of their policies. We need a legal mind when developing policies that govern our people. We also need to look at proper remuneration for you cannot create an office of the County Attorney and then fail to remunerate them. Lawyers are on high demand in this country and if you do not remunerate them well, even if we have this law, they will shift and go for greener pastures. The remuneration bit should be looked into. A good package will attract them and that will help the counties to be run in a better way.

This law will also guarantee that we protect the offices of the County Attorney from political interference because at the moment, an elected governor brings his team and walks out with them as the other person comes in with his team. This kind of law will guarantee that these offices are created by law and not on an individual's whims. Therefore, you cannot walk in and walk out the way you want. This law will be some sort of security of tenure. It will give some semblance of security as the officers are appointed.

Clause 8 allows the County Attorney to be enjoined in a suit that the county is interested in, other than being ambushed. We have had a lot of cases where one finds

auctioneers by their door who have come to attach their property in a case where they have not even been told about yet the case has gone all the way. The person only comes to know about the case at the time of execution. Allowing the attorneys to be enjoined and sue on behalf of the counties is good and it is provided for. This will make the counties secure for they will be defended accordingly, thus they will be some sort of watchman for these counties. They will also watch out for cases that are there, defend the counties and be able to respond on behalf of the counties.

Clause 7 allows the County Attorney to collect evidence. They can direct the departments to give evidence and supply materials that touch on a particular case that involves the counties. Most of the cases in our courts are thrown out because there is no evidence or no witnesses. I am happy that this particular provision is there because the County Attorney will be able to defend the entire county from attacks and from shoddy proceedings. He will also be able to take them through the processes of the law.

I thank you.

The Senate Majority Leader (Sen. Murkomen): Thank you Mr. Temporary Speaker, Sir. I do not know the reason as to why Sen. Wambua is protesting. He should read the Standing Orders regarding the office of the Senate Majority Leader and the entitlements of the same office. I know that I have 60 minutes to speak but because of the interest that my colleagues have, I will only speak for about 10 minutes.

This is a very important Bill that was developed by and now adopted by the Committee on Justice, Legal Affairs and Human Rights for purpose of equipping the counties. For the sake of the new Senators, the history of this Bill was as a result of what happened in Kericho County and I hope that the Senator of Kericho County will listen to this very keenly. The Governor of Kericho County faced impeachment in this House and the basis of that impeachment was because he had bad legal advice on public-private investment agreements that he entered into which was with regard to solar panels and so forth.

The Senate and the Committee that was chaired by Sen. Murungi established that the Governor of Kericho was culpable for committing acts of omission and commission. The only reason as to why the Senate left him scot-free was because the Committee came to the conclusion that the threshold for removal of governor was not met. The Committee came to the conclusion that there is weakness in the counties in so far as legal advice is concerned and that most of the counties do not have qualified in-house lawyers who can advise the county executive to perform its functions as per the law.

As a result, the Committee on Legal Affairs and Human Rights that was chaired by Sen. Wako and had Sen. Murungi together with myself, came up with this Bill to the extent that we must create and institutionalize a proper legal framework known as the Office of the County Attorney.

This is a very important office when it comes to protection of the interests of the people of each of our counties at the county level. It mirrors the office of the Attorney-General and that is why it is called the County Attorney. The job of the Attorney-General at the national level is to give advice to the Presidency including advice on the viability and constitutionality of legislation that is passed in the Senate and National Assembly. By the time the President is assenting to a Bill, the Attorney-General will have played a very

important role in advising the President in the same way the County Attorney will be playing a very important role in so far as advising the county government and the governor before he can assent to any Bill.

It is good that it be known that we are not creating one office because when people hear the office of the County Attorney, they must understand that it will operate in the same way as the office of the Attorney-General which is not the office of the Attorney-General alone but the whole state law office. The office of the County Attorney will comprise the whole county law office which comprises the County Attorney himself just like the Attorney-General at the national level and all the other lawyers below them who will be assisting the counties to ensure that there is proper legal compliance.

In the meeting that we had this morning with the arbitrators and the Center for Dispute Resolution, as a Senate, we are pursuing the new desire that counties depart from litigation to arbitration, reconciliation and mediation as a means of solving their disputes for us to do away with the run-away legal cost.

I have said in this House - many Senators agree with me, including lawyers who are in this House - that there are situations in our counties that we are worried about such as the legal fees that are being paid to lawyers. The remuneration order makes it clear that one should not charge below a certain amount of money but it does not say up to how much. Unscrupulous, corrupt individuals and people who want to fleece our counties are using rogue lawyers as a conduit for corruption where they give somebody legal work yet when you measure the quality and the quantity of that work, it does not reach the extent that it would say that he should have paid a lawyer.

If you give somebody work and measure the quantity and quality of that work, it cannot amount to what this lawyers demand. Governor Sonko of Nairobi County intercepted a payment of Kshs200 million to a lawyer. After taxation, it was reduced to Kshs3 million. The county was to be fleeced Kshs197 million. Therefore, the office of the County Attorney will be important to cure this malpractice and maladministration at the county level. The counties will reduce the amount of legal work that they will delegate to lawyers who are not working within the County Attorney's office.

This Bill is critical in as far as our responsibilities are concerned. I believe we can pass this Bill by next week if we vote in the Second Reading, take it through the Committee of the Whole. The good thing with it is that it was published after it had been tidied up. Contributions on it were made in both the last and this Parliament and the Committee did public participation. I believe we will have a good and solid law that will help our counties to have an institutionalised office of the County Attorney and the staff therein.

Mr. Speaker, Sir, I believe that the National Assembly will act expeditiously to pass all the legislation. However, there is something that worries me a lot; whereas we are pursuing mediation, conciliation, negotiation and all the good things that are related to the "hand shake", Bills that go to the National Assembly from this House can even take a year before they are tabled. That is sad and discouraging.

I can say with confidence that since the inception of the National Assembly, it has never reached the number of Private Members Bills that the Senate has generated in its last term and this term. It is a shame to stifle Bills that are being generated and passed by

Members of this House. They work hard to think through the issues that they want to be passed for the purpose of their counties. I talked to my colleague, Hon. Duale and I was disappointed. Yesterday I was sad because he asked on the Floor of the House why the Senate is given a budget. This kind of thinking must cease.

People should not think that because I am diplomatic and I pursue a diplomatic approach, it makes this House weak. We have a serious wild card with Sen. Orengo as leaders of this House. The moment we will put that card on the table, people will listen. At the moment, in the spirit of the hand shake, conciliation, mediation and all the good spirits, I am giving the National Assembly the last chance so that we can pursue a process that can accept and obey the constitutional status of this office.

This House needs to agree with the National Assembly to have timeframes within which a Bill can be introduced in either Houses. We do not have a problem if a Bill fails; it is not a must that it has to be passed. What it is important is that, it must not be inordinately delayed by a small group of people at the expense of the whole House having an opportunity to debate and come to a conclusion of either passing it or not, or take it to the Mediation Committee or not.

As I have said before, those who are shortsighted must be reminded that the Senate is here to stay. The Members who are here are temporary, but the Senate is permanent. It is as permanent as the Constitution. Those who doubt what I am saying need to look at the constitution of this House. They will realise that five to six Members were Members of the National Assembly in the last Parliament. In the National Assembly, we also have five to six Members who were Senators in the last Parliament.

We are all transient. We can change where we want to serve if we are given an opportunity to serve the people of Kenya, but we must continue to respect the Constitution. In the leadership tenure of Sen. James Orengo and I, we will not allow this House to be put to shame. We will call this House for another *Kamukunji* to update Members on the next steps. If we realise that there are people who cannot listen to Sen. Haji, Sen. Beth Mugo and Sen. (Prof.) Sam Ongeru who are elders here, we will pursue other legal and constitutional processes as we did in the year 2013. It restored the integrity and constitutional responsibility of this House in as far as the finance Bills that are related to counties are concerned.

Mr. Speaker, Sir, I beg to support this Bill and congratulate Sen. Cheragei, the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights, for bringing this Bill and doing a fantastic job with his colleagues.

The Temporary Speaker (Sen. Lelegwe): Sen. Enock Wambua, you have the Floor.

Sen. Wambua: Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this Bill. First of all, I thank the Chairperson and Members of the Standing Committee on Justice, Legal Affairs and Human Rights for bringing this Bill on the Floor of the House for debate. It is true as other Senators have pronounced themselves on his matter that the Auditor-General has found many county governments culpable for huge spending on bills arising from procurement of legal services.

This Bill is good for two important reasons. One, the establishment of the office of the County Attorney will help to reduce and manage the costs that county governments

across this country continue to accrue in relation to legal services. Two, the creation of this office will help us build institution memory on where each county stands in relation to legal matters; as opposed to the touch and go approach that is being used today where different lawyers are called to offer legal services in the counties.

This morning there was a meeting on the alternative dispute resolutions mechanisms. On this Bill, I will urge the Committee to look for possibilities of encouraging the office of the County Attorney to exercise available alternative dispute resolution mechanisms which are found in almost all the communities in this country. That will help to reduce the cost and measure the quality and quantity of the output in as far as the legal services are concerned.

Clause 5 of this Bill is on the appointment and qualifications for appointment of County Attorney. The expectation of this Bill is that the County Attorney shall bring to the executive and the governments in the counties requisite competence in legal matters, experience and respect among colleagues in the legal profession. The qualification of at least seven years experience as an Advocate of the High Court of Kenya is too low.

There is a need to relook at the qualification of the person who shall sit in the office of the County Attorney. This is because that person is supposed to look at employees' contracts and contractual agreements between county governments and development partners. Therefore, that person should be one who is qualified, commands respect and has the right experience.

Part (IV), Clause 18(1) says:-

“The county public service board shall appoint such County Legal Counsel as may be necessary for the proper and efficient discharge of the functions of the Office.”

That clause is too open ended. I think the intention is to manage costs and ensure efficiency in the operation of that office. The drafter of this Bill should consider proposing a minimum and maximum number of legal counsel to serve in the Office of the County Attorney.

With those few remarks, I support.

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir, for finally giving me this chance.

From the outset, I support this Bill although I have many reservations not extremely material to the content of this Bill but generally about many things that I will elaborate. Let me put to context my line of thought but I mean no offence to my friends and colleagues who are lawyers. I have a lot of respect for them and some of my best friends are lawyers. However, I have never found a line of profession so self-preserving and self-absorbed as the legal profession.

In many of our constitutional commissions, out of the maybe 15 or 16 provisions, you will find that the chairperson must be from a legal background. This is even for commissions that have absolutely no legal work that they do. The Independent Electoral and Boundaries Commission (IEBC) is a perfect example and we spoke about it here when we were amending the electoral laws earlier on this year. Where they find that it is clearly stated that the chairperson, despite the fact that most of his work is of arithmetic

and not legal nature, they still put a provision that the chairperson ought to be an advocate of the High Court having served x number of years and so forth.

Mr. Temporary Speaker, Sir, it is the same with many of our constitutional commissions. There is little wonder then that when we put together the Committee on Justice, Legal affairs and Human Rights, they thought through about the many things that they want to consider in matters devolution, justice and legal affairs. They then decided that the first Bill that they want to bring to this House is to create employment for fellow lawyers. That worries me but what do I do? I have to support them because I know the history. The Senate Majority Leader spoke well and said that it is in relation to what happened in the county that I represent in this Senate, that the Senate thought it wise to have the Office of the County Attorney and the rest of the offices that are created by this Bill.

This Bill is brilliantly drafted and well thought out in my opinion. It will save us. You will remember that in the last Parliament, there was tabled an extremely damning report before this Senate of colossal amounts of money that counties continue to send to that organisation that sits in Delta House – otherwise known as the Council of Governors (CoG) – to the tune of Kshs1 billion at that time. Out of this amount, almost Kshs300 million had been used to pay for legal services. Many of those cases were not against the county governments but the governors and their persons but county funds continue to be used by lawyers during allocations and payments from CoG.

With the enactment of this Bill, I want to believe that such issues will cease to exist in our counties. One of the principle and cardinal duties of this House is to ensure that we protect devolution and continue to clean it up and ensure that on areas where there are inefficiencies, we put our foot down and draw a clean road map.

Mr. Temporary Speaker, Sir, let me now go into the contents of this Bill and on to Clause 5. I have listened to colleagues contribute and give reservations about the number of years of experience that are expected of a county attorney. Some feel that seven years is perhaps too junior an advocate to sit in this office. However, I totally agree with the Committee that for a brilliant mind, seven years in a profession is enough for you to determine the very nature of work. After all, if there are issues that will be so complex in their nature that your experience as a lawyer will not guide and give you the clarity of mind that you need to execute some of these things---

Later on, it is provided in this Bill that there shall be cooperation between the office of the County Attorney and that of the Attorney-General of the Republic. Therefore, I support this particular provision especially on behalf of the young people of this country, many of whom continue to be denied employment opportunities based on this “giant” they call “experience”.

It is later on provided under Clause 7(c) that the county attorney, amongst the powers that they wield in a county, is to summon any officer in the public service to explain a matter. I would wish that is stated more elaborately whether this summoning should be in writing or verbally. This being an extremely litigant nation, it is very possible that if the county attorney gives only verbal summons to a member of staff in the County Public Service, they may choose to ignore it or it will be used to prove that this particular officer did not live up to the summons.

Therefore, it should be expressly written and provided that the summons should be in writing. If it is verbally, then let those powers be.

Mr. Temporary Speaker, Sir, Clause 8(2)(a) says:-

“In the exercise of the powers of the County Attorney under subsection (1), the County Attorney shall –

(a) Notify any other court or administrative body of the intention to be enjoined in the suit, inquiry or administrative proceedings.”

This is important because if at a particular point either a CEC member has been sued for work that they have done in the line of duty, it is important the county attorney be given a line of entry and a position where they may be able to seek, get the attention of the court and provide the necessary legal services. Therefore, starving what we continue to see, is this wanton spendthrift nature of our county governments, where they want to hire legal services at any given point and where the fees – we have been told by lawyers who have spoken before us – vary. This is extremely important, and I agree with the wisdom of the Committee that has thought this through.

In terms of issues on compliance, the county attorney is also expected to comply with directions of the court and this is important. We have found county governments that continue disrespecting court orders, orders of environmental tribunals and things of that nature. With the coming into effect of the county attorney, I want to believe that this being a properly schooled advocate of the High Court, when they see such directions, they shall live up to the oath of office and respect such advice or compliance that is needed of them.

I also find it crucial that under Clause 8(3), the County Attorney shall have a right of audience. This is important because of the many occasions where county governments have been sued and county attorneys– for those counties that have these offices – have sought to be enjoined, they have been asked to consider on what basis or grounds they are seeking the court to grant them an audience. However, with the coming into effect of such provisions, you will now be given a basis as the county attorney, you can quote that these are the provisions of an Act of Parliament that directs me as a county attorney to always be given audience.

They will not be pleading. It will be a direct guarantee that each and every time a county government is sued, the county attorney is given notice of the same and gives attention to the pleadings that are being made before the court on behalf of the county government and its residents.

Mr. Temporary Speaker, Sir, Clause 11 speaks to the nature of the conflict of interest where the county attorney is not expected to participate in any other gainful employment within the county government that may result in conflict of interest. This is extremely important because, as a country, we are determined to fight corruption. Therefore, even in our legislation, it is good to see that we are becoming express and descriptive to a point that we are saying that once a person is appointed as a county attorney, they should forget doing any other legal work in the county. I find that to be extremely important.

Moving on, Clause 15 states 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.” This gives strength to the thought that the county attorney’s office and his or her directorate shall have officers under him or her who shall be serving the various departments of the county government. Therefore, it is expected that a particular department of a county government will not say that they have run into difficulty or headwinds with the law because they did not have sound legal advice. This should bring down the costs. The county governments are losing money because of the nature of some of the decisions that County Executive Committee (CEC) Members continue to make. Counties are sued and forced to pay.

An example is where a CEC in charge of roads goes ahead to construct roads in areas that they should not. They ignore court orders and counties are forced to pay a lot of money. Sometimes, one wonders whether it is intentional or a collusion to destroy someone’s property so that they are paid a higher amount and share the loot. This is Kenya and nothing is impossible. Some of these things are choreographed.

However, this will be cured with the coming into effect of a directorate. These officers need to know that they are acting on behalf of residents of a particular county. Therefore, there should not be acts of negligence. I believe that they will be serving under an oath that I have seen at the end of this Bill. They will uphold their call of office and give sound legal advice. Therefore, it will bring down legal costs and other costs in the counties.

Part III of the Bill is on the performance of functions of the County Attorney. Clause 16 says that before each department makes a decision and finalizes on the programmes and agenda they have for a particular county, they must seek approval in writing from the Office of the County Attorney. This speaks to the same point that I have spoken before and, therefore, there is no need to repeat it.

Clause 16 (3) states that:-

“An approval by the County Attorney of a request by a department or public entity to engage the services of a consultant under subsection (1) shall be made in writing.”

Maybe, we need to add the words “and justified,” because we do not want to leave it open that for every particular request that is made, it is granted by the Attorney. There must be a justification that the reason the office of the County Attorney cannot be used in this office is because of A, B, C and D. That has happened.

[The Temporary Speaker (Sen. Lelegwe) left the Chair]

[The Temporary Speaker (Sen. Pareno) in the Chair]

In my county, there is a particular case and matter of great interest, where the county government has decided to sue the British Government for atrocities and historical injustices committed against the citizens of Kericho County. It is a case of great concern to the people and they continue to ask whether they could have done it using the office of the County Attorney. Therefore, based on that experience, I believe that Clause 16 will be

neater if we add the words “and justified,” after the words “shall be made in writing.” There will be need to give a justification as to why a particular department does not want to use the County Attorney’s Office.

Madam Temporary Speaker, Clause 17 speaks to the qualifications of a person to be appointed as a county solicitor, who is another lawyer that employment has been created for. He or she needs to be an advocate of the High Court, with at least five years of experience. This is brilliant and I agree with it because of the earlier thoughts that I shared.

Clause 18 (3) states that:-

“Despite subsection (2), nothing in this Act shall be construed to entitle any officer who is not qualified in law to perform legal functions in the county public service”

This is another classic by lawyers, which ensures that only lawyers can do this particular work. There is no problem about it, but it is worth noting.

Madam Temporary Speaker, Clause 22 is extremely interesting. I wish my colleague, Sen. M. Kajwang’, was here because he ran into headwinds during the Legislative Summit when he tried to speak, before our colleagues from the county assemblies, on the prescriptive and descriptive nature of lawmaking.

Clause 22 (2) states that:-

“The County Attorney may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the County Attorney in the performance of the functions of the County Attorney.”

This is prescriptive of our nature, as the Senate, which gives more room for county assemblies. It is now upon the county assemblies of Bomet, Kisii or Nandi to sit down and bring a legislation of a descriptive nature, for example, through their committees on justice and legal affairs. For example, if the County Attorney wants to procure the legal services of another entity, what are some of the things that need to be considered? What will be the amount of money that can be charged and the nature of the cases allowed?

That is the kind of description that the Senator was speaking about at that particular time. Therefore, each particular county assembly should develop interest and consider this. For example, what might be important to Kericho County may not be considered important in another county. Therefore, this is for the county assemblies to think through.

Madam Temporary Speaker, Clause 29 (1) states that:-

“The County Attorney shall as soon as practicable after the thirtieth of June in each year, prepare and furnish to the governor a report of the operations of the Office during the year that ended on thirtieth June.”

I want to challenge the Chair of the Committee on Justice, Legal Affairs and Human Rights, my friend, Sen. Cherargei, to think through with his Committee why they have thought it wise that this office will only present a report to the governor and the county assemblies, but none to the office of the Senator. Oversight is important. We cannot legislate ourselves out of work as a Senate and say that we are on duty.

I have established a tradition that I look forward to find a way of having it legislated. As the Senator, I have written to the speaker of my county to send to my office a copy of each and every report my county assembly passes. It is important to be kept abreast with the happenings.

There is nothing in the doctrine of separation of powers that we will be violating if we say that the County Attorney sends a report of the operations of his or her office to the office of the Senator. That is the first place they should send it to before thinking of the office of the governor.

Madam Temporary Speaker, with very many remarks, I support this Bill. Thank you.

The Temporary Speaker (Sen. Pareno): Let us have Sen. Shiyonga.

Sen. Shiyonga: Thank you, Madam Temporary Speaker, for giving me this opportunity to support this Bill on the creation of the Office of the County Attorney at the county level.

Just as my colleagues have said, creation of employment in this country is wanting. The creation of this function, with the combination of the County Attorney, the County Solicitor and a member of the legal counsel in all the 47 counties is a large number of people that will contribute to employment opportunities in this country. With these skilled minds being employed at the county level where they are going to work and deliver services that we need, it will be of great importance to our country. We look forward to this Bill going through, so that this employment can be achieved.

Hiring, especially the standardised legal services that we need in these counties, is very expensive. The passage of this Bill will salvage a large amount of money that has gone to unnecessary and short-term measure of hiring these services. It is my plea that we support this Bill fully so that we can limit the expenses of hiring these services in our counties as it currently is.

Madam Temporary Speaker, there is so much money that has been deviated that needs to go to the development of services and projects in our counties. With the passage of this Bill, the money being allocated to this service will be put on the projects that are really wanting in our counties; hence development will be experienced. We shall achieve optimum services which will build the economy of this country through the services and functions of the county governments.

Prevention is better than cure. We have seen cases come from the county level to the Senate, some of which are wanting, especially when it comes to impeachment of governors. It is with this in mind that quick and efficient services that will guide the county governments, especially in the legal sector, will be facilitated to avoid such being brought to the Senate, in spite of us doing the oversight role. Some of these disputes will be sorted out at the county level with these expert offices that we are creating. Hence, we shall have better service provision at the county level.

Madam Temporary Speaker, I request the mover of this Bill to look at the issue of nepotism. With such functions being created at the county level, there is a great opportunity for nepotism to take place. It is important for us to put a caveat in this Bill to avoid nepotism. When we are creating this service at the county level, we need to put a stern warning so that those who will be involved in the recruitment of these officers will

avoid nepotism and tribalism, so that this function can be without malice that I have just mentioned.

Thank you. I fully support the Bill.

The Temporary Speaker (Sen. Pareno): Let us have Sen. (Prof.) Ongeru.

Sen. (Prof.) Ongeru: Thank you, Madam Temporary Speaker. First of all I want to lend my weight on the Office of the Attorney County Bill (Senate Bills No.3 of 2018), because I am a strong believer in devolution.

People have not appreciated that there are two levels of government-the national and the county. All the activities that are rendered by the national Government are a mirror of what is being done at the county governments. The institution of the Attorney-General in this Republic has been there since Independence to date. The institution of the County Attorney that we are trying to create today will only be an institution for the last few months if we pass this Bill. There is, therefore, a tremendous need for capacity building to enable the County Attorney to perform services which are equivalent to what the Attorney- General does at the national Government.

I thank the Senate Committee on Justice, Legal Affairs and Human Rights for seeing it fit that one of the major functions of the County Attorney will be one of advising the governor on various issues as enumerated in Clause 6 (a), (b) and (d) of this Bill. It says-

“The County Attorney-

(a) Is the principal legal advisor to the county executive committee;

(b) shall attend meetings of the county executive Committee as an *ex officio* member of the executive committee;

(d) shall advise the departments in the county executive on legislative and other legal matters.”

Madam Temporary Speaker, I am a Member of the Senate Committee on County Public Accounts and Investment. One of the things I am seeing is the huge expenditure that is being incurred by the county executive on legal services. Some of it has formed part of the pending bills and is going to be very difficult to clear from the books of the county governments. The establishment of this service to the county governments will be a critical element in ensuring that whatever legal services may be required, either from within or hired, are in such a measure that is commensurate with the resources available within the county governments. There have been runaway costs in legal services. As a Senate, we must clump down on what happens in these areas.

I have some difficulty in Clause 7(c) on the word “summon”. I remember there was a time when we had a situation in this country where we had special District Officers (Dos) who became more powerful than the District Commissioners (DCs). I hope we are not creating another monster through this legal framework, where we will get people summoning others at will and when they feel like. It is a good thing to summon people for purposes of explaining issues. I hope the Senate Committee on Justice, Legal Affairs and Human Rights will go back and look at the regulations that govern this summoning and read them jointly with the Standing Orders of the county assemblies. That will make a lot of meaning so that the word “summon” is clearly defined; how it should be done,

how people should be respond and the next action-legal or *quasi-judicial*, in the event that they fail. It is important that we make this distinction clear. Otherwise, it remains to be a point of contention all along and throughout this period of time.

Madam Temporary Speaker, I am grateful and happy that you managed to sneak this in and put it as substantive element of this Bill. That he or she will be substantive and have the same status and rank of the County Executive Committee. Otherwise, he or she will never have a point of reference when trying to advise the governor on what he or she should do. I have noticed over a period of time a number of issues when I was in the Cabinet. Sometimes in the Cabinet meetings, we used to discuss issues and before we arrive at a conclusion we always sought the opinion of the Attorney-General. This is because he would look at it from a legal perspective. We may have been looking at it from a political perspective and how we would achieve the means of politics in terms of goods and services that we wanted to offer the population we were serving.

The legal framework would help us to achieve the same objective if it is put in the context of how it must be handled and implemented within the realms of that county assembly. Not all the time the laws may be together. One of the things that we have not done properly and is giving us a lot of difficulties is the assets and liabilities that were inherited from the defunct county councils. There is a lot of *lacuna* in that element of transfer of services. Even with the Intergovernmental Technical Relations Committee (ITRC) which is currently in force, there are a lot of missing links in terms of assets in millions and billions of shillings that the defunct county councils were supposed to hand over to the county governments that are unaccounted for. These are the ones that are finding their way through corruption. We need to be careful.

This afternoon we have visited one of the schools where we had a big problem in Ruaraka. When you listen to the story going on there, you see the board reading the City Council of Nairobi. However, the happenings are completely different. In order to safeguard the county governments from litigations of such nature, it is important that the County Attorney is put in place to carry out this responsibility without any hindrance.

I support the earlier speakers that the Senate plays an oversight role. You require the County Attorney to send the annual reports to both the governor and county assembly. The Senator is left in limbo yet he or she is supposed to oversee this element. I hope Sen. Cherargei, who is the Chairperson of the Justice, Legal Affairs and Human Rights Committee, will look again at Clause 29 of this Bill and see how best we can innovate it to serve the interests of the public.

I am quite satisfied that the Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms that we have taken so long to win. I am also quite satisfied that this office will be instrumental to the functioning of the county governments and do away with the current *lacuna* with regards to legal representation of county executives.

I hope that our learning institutions and legal schools where Sen. Murkomen went through will include in their curriculum part of the elements of governance structures within the county governments. We hope this will be one of the topics to be taught. We do not have to start struggling that he or she should have seven or ten years' experience. Once they emanate from these universities with proper legal teaching and training, they

should handle issues of such magnitude. County governments are there to stay. Whoever thinks otherwise, he or she is daydreaming. Once you scrap the county governments, you are scrapping out the wards. They are all hinged in the Constitution. There is no way we will separate them from the constitutional dispensation that we have today.

Madam Temporary Speaker, I am quite happy that this is one Bill that I support fully. It is beginning to organize the manner in which counties must handle their businesses. Kenya is a country of the rule of law. Therefore, we must do our duties and functions in accordance with the laws of the land. Disregard to the law of the land is impunity. One of the problems we had to deal with during the Post-Election Violence (PEV) of 2007/2008 was impunity. I still see the ugly head of that impunity coming through to an extent that people can ignore this Senate as a creature of the Constitution of this country.

Therefore, the Senate Majority Leader, if you have any gun smoking, you can count us in so that we can help you achieve that objective together with the Senate Minority Leader. We need to put things in order for posterity. We need to get the governing systems of this country moving properly for posterity. We need a nation that consults each other. If there is a crisis, there are mechanisms like the one of arbitration, which you have not included here. I am sure it will come in the way of rules and regulations - maybe I have not read it through. We should go for mediation and arbitration so that some of the thorny issues need not to have their ugly heads sticking out in newspapers or in this House. We can do it quietly and settle the minds of people without disturbing their peace.

I support this Bill.

The Temporary Speaker (Sen. Pareno): Proceed, Sen. (Dr.) Langat Christopher Andrew.

Sen. (Dr.) Langat: Thank you very much, Madam Temporary Speaker, for giving me this opportunity. I had really waited for it. I waited for it yesterday and it never came. However, I thank you that I have an opportunity to add my voice to this particular Bill.

First, I agree with Clause 5(2)(a) on the number of years that will make the requirement for the office bearer of the County Attorney. This is the seven years that somebody had said is not enough. The current paradigm shifts in the places of work no longer rely on experience so much. Experience is today questioned because some people are experienced in doing the wrong things. What the world relies on today is innovation, research and consultation more than experience. I tend to think that in order to also develop our young people in the field of legal matters, that seven years is important.

I add my voice on the functions of this County Attorney. When we were in the Third Annual Legislative Summit in Mombasa, there was an outcry. The Deputy President noted that most of our counties are unnecessarily spending a lot of money on the payment of advocates who are exploiting them. It is our mandate in Article 96 (1) of the Constitution to protect our counties. This particular Bill is timely because it is in line with our mandate of protecting our counties. If we allow our counties to keep on hiring anybody to intervene on their issues, they will be exploited. This Bill will save our counties on the matters of being exploited by the advocates who are overcharging them.

Secondly, another function of the County Attorney is in Clause 6(b). It provides that he or she shall attend the meetings of the county executive committees as an *ex-officio* member of the executive committee. This is important.

Our County Executive Committees (CECs) are almost stagnating because most of them are not aware of the legal frameworks and guidelines on what they are supposed to do. So, this will be a great intervention to ensure that the work of our CECs is smooth.

On top of all these other functions, we have seen some counties suffering because of poor transition of issues that were pending in courts. These were issues that were being handled by immediate former governors. This particular office will ensure smooth transition of issues that would be pending in courts from a given term of a governor to another.

As Sen. (Prof.) Ongeru was saying, Clause 29(1) says that-

“The County Attorney shall, as soon as practicable after the thirtieth of June in each year, prepare and furnish to the Governor a report of the operations of the Office during the year that ended on thirtieth June.”

It should also furnish the same to the county assemblies and the Senate. This will ensure that we are part of it so that we are not just a rubberstamp of legislative things that do not come to us for oversight. So, Sen. Cherargei, I propose that this one be included so that the Senate gets information on what is happening. It will also help us to see on how we can improve on it every now and then.

It will also assist us when it comes to legislation on matters of this House. Being on the ground, it will be able to establish gaps through research that requires our intervention in effective legislation on matters of this House.

I also support Sen. Murkomen when he mentioned that nobody should think that the Senate is a temporary organ of the Government. We are here to stay. Our mature way of handling things should not be misconstrued by anybody that we are irrelevant in any way. So, I support the sentiments of Sen. Murkomen that if you think that some people in any quota are doing anything to intimidate this House, bring it to us and we shall handle it effectively.

(Applause)

Thank you, Madam Temporary Speaker. I support this Bill.

The Temporary Speaker (Sen. Pareno): Proceed, Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Thank you, Madam Temporary Speaker. I also rise to support this Bill. From the word go, it shows that there has been lack of legal advice in the various counties. In any case, this has led to what we have been observing in our counties, particularly, in the first county governments.

I wish to support this Bill because of a number of issues. First, this Bill, whose objective is to set the Office of the County Attorney, provides for the standards and the framework for recruiting qualified staff. I have an imagination that, because of this framework throughout the 47 counties, all the county attorneys shall have the same qualifications.

I also wish to support this Bill because the County Attorney shall be a person of high qualifications. While I was looking at the qualifications, I saw a requirement of seven years' experience which is very high. I support my colleagues in the sense that the county government is a devolved unit of the national Government where we should have a very qualified person to advise the governor.

Madam Temporary Speaker, the governor and the County Executive Committees (CECs) are the main managers of what is going on in the counties. Therefore, a reflection of the development that is going on in the various counties had to have problems because of lack of legal advice.

If I can talk about the past, you do realise that we had a number of issues. In most cases, when it comes to the procurement of either human resource, recruitment, separation, deployment and even the management, there have been a lot of problems right now. Right from the first county governments, problems have been fed into the second county governments because of illegal ways of carrying out those particular issues in the counties.

Right now, I am sure many of the governors are having problems of having to visit the legal institutions. In addition to that, a lot of money is being spent, just as my colleagues have said and as was underscored by the Deputy President when we were in the Legislative Summit in Mombasa. This morning, we realised that the legal staff normally charge for their services based on the abilities of their clients. I realised that they charge you for their services by looking at the way you dress and the amount of money you have. There are many counties that are suffering right now as a result of that.

With this Office of the County Attorney, the governor and the CECs will have the right advice to carry out things in the best ways. Therefore, we expect to have better county governments in the future.

I also support this Bill because of the fact that there are issues which are touching on various offices in the counties. A few minutes ago when I was walking in here, I met somebody and she complained about certain issues. She had even asked for permission to go for a three month leave because she was taken away from her job and sent to another area that is not her field of expertise. This is because of a poor legal framework in terms of recruitment.

I was happy when I learnt that this Bill is going to enable the Office of the County Attorney to offer legal support in solving criminal issues or civil matters that are affecting the counties. By doing so, we will prevent the counties from losing a lot of money that we have been seeing for many years.

Madam Temporary Speaker, last time when we were in the Legislative Summit, we witnessed a very ugly case that came up just because of a small word in English. This means that Members of the County Assemblies (MCAs) who are the first point of contact in terms of oversight are not very sure on how to conduct issues. If we have this Office of the County Attorney, the MCAs will be advised when it comes to legal matters. In addition to that one, I hope that the Members who were drafting this Bill will also add issues of arbitration that we learnt this morning that can be part of the various laws to assist in dispensing many cases that will come up.

As I stand here today, I am glad that one of the counties in the first county governments that was able to put up the Office of the County Attorney was my county, that is, Bomet County. I am so proud and I will go back to find out how it is fairing on. This time round with this Bill, all the counties will not have any reason not to have this particular office in place.

I also support this Bill because of Clause 23 which talks about ethical issues concerning the place of work as well as what an individual is supposed to divulge outside the place of work. If we have such a special legal framework, it will ensure that anybody who has worked in any office, in this case, the Office of the County Attorney, will not divulge confidential issues. We shall prevent what we have been getting of late from the various counties over what has been happening around.

As my colleagues have already said, once this Office of the County Attorney is established, we hope that whatever report that shall come out from those offices should not only go to the MCAs who are the first point of conduct in terms of oversight, but also to the Senate. If that happens, the Senate in this case will have their work properly conducted or rather made very easy.

Madam Temporary Speaker, with those few points, I beg to support.

The Temporary Speaker (Sen. Pareno): Yes, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, I rise to support this Bill. Before I say anything on the Bill directly, I want to repeat what the Senate Majority Leader said here earlier; that the Senate is an institution which is recognised by the Constitution. Its powers, functions and mandate are clearly spelt in the Constitution. But, more importantly, any Act which emanates from any of the Houses does not have the force of law, unless it is enacted by Parliament.

There is nothing in the Constitution that talks about an Act, which has got the force of law that is enacted by the National Assembly. There is nothing like that in the Constitution. Just like in the Constitution, we cannot enact a law until there is a Presidential assent although we are Parliament. The constitutional requirement for an assent is not a matter which was invented recently by constitution makers. It is something which has characterised all modern constitutions, including constitutions which emerge from monarchies. There cannot be an Act of Parliament that is not assented to by the President.

Similarly, it is the Constitution itself which says that for an Act or Statute to have the force of law it must be passed by Parliament; not the National Assembly or the Senate. The reason I am talking about this issue is that if we do not respect institutions and the Constitution, then we have no business being lawmakers. We must live by the laws that create us and the institution that we serve in.

Secondly, we must also respect the procedures which are well established in the Constitution and the Standing Orders. It is for this reason that there is some co-relation and harmony between the Standing Orders of the National Assembly and the Senate. We cannot act separately; there must be constitutional harmony in the conduct of our work as components of the legislature. I join the Senate Majority Leader in saying that this is the matter that we may not push, for the moment, intensively, but there may be a time when we have to put our foot down. When we put our foot down, as the Senate, and decided to

go to the Supreme Court, it made a decision and it is binding on all organs of State and institutions, in so far as the process of legislation is concerned. That case has not been varied or reviewed; it is still the law of the land. I believe that if we continue to have unnecessary fights between the two Houses, then we will be not serving the people.

Madam Temporary Speaker, representation of the people and setting out of the institutions of the legislature comes in one chapter, just like the courts. Some harmony and synergy is created through this architecture that is adapted by the Constitution. Having said that, I hope we will not continue to whine about this issue. There must be a moment when we have to cross the Rubicon and face the dragon, demon or whatever the animal is.

On the Bill, it is important to create the Office of the County Attorney. In law, including the Constitution and the County Governments Act, it is quite clear that the functions of the devolved units require consideration of the law all the time. The institutions of the counties must be advised on the law of the land all the time. Just imagine a situation where we do not have the Office of the Attorney-General, and every time there needs to be a decision, the national Government has to run to lawyers who are in private practise. In fact, at the national level it is so important that the Attorney-General sits in the Cabinet, so that he or she is available, at the highest level, to advise the national Government on matters to do with the law. The law is not just a statutory law or the Constitution; there are matters that involve application of the law in contracts and treaties that the counties may enter into in accordance with the law and the Constitution.

In fact, in application of financial regulations, the law of the land generally is - and the National Treasury is often advised - that on any matter concerning the law they must always consult with the office of the Attorney-General, just like many of the institutions of the Government. Even when there are in-house lawyers in Government departments, there is always a final word from the Office of the Attorney-General. This practice need to be replicated and devolved at the county level. This is not only good for good governance, but also for purposes of ensuring that the resources we send to the counties are not spent on matters which can be done by in-house lawyers, but who have got specific functions such as those spelt out in the County Attorneys Bill.

Madam Temporary Speaker, I would agree with the Senate Majority Leader and we are practitioners of law, but it is true that sometimes no private institution would be prepared to pay the kind of fees that public institutions pay to lawyers. They are only paid through public institutions. In fact, I am afraid to say that some of the lawyers' fees sometimes are loaded, so that the beneficiaries are not just the lawyers. A lawyer with integrity, most often, will not be given some of these briefs because they will not share some of the fees which are paid to lawyers.

If you look at the audits that have been carried out, you will see that a lot of money was paid to lawyers. I think I have done some of the most complicated cases in this country and I cannot imagine that I could charge obscene fees that I have seen very junior counsels being paid, including those that have been done by the County Government of Nairobi.

In the counties, this is one of the areas where money is paid. In order to seal the loophole, I think this Office is important. At some point, we must have some kind of

regulations which will set conditions under which county governments, just like the national Government, will justify sourcing or procuring services of a lawyer who is not part of the county government although there may be provisions in the County Governments Act which probably we will look at later but generally this is good. The only thing I would urge the counties to do is that if the Office is created, let them choose competent lawyers because they are now available. There are lawyers out there who are competent and it is important to choose competent people.

There is a time we formed a committee co-chaired by the Senate Majority Leader and Sen. Mutula Kilonzo Jnr. and we said that vetting of appointments of officers in constitutional offices should be brought to the Senate because they are so important. Unless you get the right people through the process of vetting by Parliament, you may not get the kind of services that you require. Later on we complain about some of the constitutional commissions.

What I am trying to say is that this is one of the things that the Senate is doing to enable counties get the right people. However, at the end of the day you may need to have regulations not only in relation to how a County Attorney will perform his or her functions but also if in the unlikely event that services are required from outside the county, because they may not have the skills or there could be areas where they need special professional advice, then that should be put clearly in the regulations.

Without taking too much time, I hope that we will look at this Bill thoroughly at the time we will be considering clause by clause.

I commend the Chairman who has been very active because his committee meets every day and I encourage him to continue with the good work. I think his is one of the committees that are portraying a good image out there. Initially, I felt that being my junior in the profession, I cannot be an ordinary Member in that committee but now I found him competent but as long as he does not enter into battles in Nandi and call for meetings when his is not there. Otherwise I congratulate him.

I beg to support.

Sen. Were: Thank you, Madam Temporary Speaker, for the opportunity to contribute to the Bill. This is a very important Bill. At the national level, the head of the Executive is the President and at the county level, the head of the executive is the governor. The President has the Attorney-General as the chief legal advisor and a county governor also needs a legal advisor. So, this Bill has come at the right time having been long overdue.

Counties have been paying exorbitant fees in legal bills. Some of the pending bills we have heard that counties owe are because of the huge legal fees that have to be paid to the lawyers. With the Office of the County Attorney, the amount will be reduced and some of that money could be channeled to development projects.

With the Office of the County Attorney, we will also see an improvement in the kind of legislation that comes from the county assemblies and that is laudable.

County policies will also be checked by the Office of the County Attorney, so that as policies are implemented, they will be sure to have adhered to the Constitution and the clogs in the development process will be reduced.

There are too many lawyers in Nairobi and other cities. Once we put the County Attorney Office in place, there will be need for some of the lawyers to go to the counties and, therefore, this will create jobs.

The Office of the County Attorney will be working hand in hand with the Office of the County Printer whose Bill we passed this afternoon. This linkage will go towards strengthening devolution. As we proceed towards coming up with legislation to move services to the counties, we will be strengthening devolution, which is the core mandate of this Senate.

With those few remarks, Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Pareno): Hon. Senators, I see no further request. I, therefore, call upon the Mover to reply.

Sen. Cherargei: Madam Temporary Speaker, I thank all Senators who have contributed. We have noted their concerns and we will ensure---

(Sen. Olekina consulted with Sen. Orengo)

I do not know why Sen. Olekina is excited. Is it because the World Cup is about to begin or because the opening match is a few minutes away?

We have noted all concerns that have been raised by my colleagues. Since we want to improve the quality of legislative framework, we will endeavour to do our best.

I agree largely with what most Senators have said concerning this Bill. As I indicated earlier that under Article 174 of the Constitution whose Part 1 is about Objects and Principles of Devolved Government, we should ensure that we always move with speed and assist the counties. I think one of the challenges counties are facing, apart from corruption and mismanagement of resources, is weak legislative and policy framework.

I want to talk about the issue of experience. I know there are diverse opinions when it comes to experience that they need but the Committee proposed that it should be five years and not seven years.

Secondly on the issues of money, we should put it that it “shall” and not “may” so that we protect the House.

Another point that has been raised is that Senators should be included during presentation of annual reports. I agree that Senators are a key pillar because this will essentially form the basis of oversight that Members of County Assemblies (MCA) and Senators undertake at any given point.

Madam Temporary Speaker, I want to agree that there are many important guidelines, comments or input that most of the colleagues have indicated. This Bill will go a long way. I want to agree with Members like Sen. Ledama ole Kina who is a member of the CPAIC and has said that counties are incurring a lot of expenses in outsourcing legal services and litigation fees. We are very grateful that the Chair is chairing the session very well and we are very impressed.

One of the pending bills, and we discussed this during the Fifth Annual Devolution Conference and the Legislative Summit, and agreed that one of the most common ways in which money is misused in our counties is on legal fees and legal services. We do not have a proper law that guides such matters. I agree with the Senator

for Narok regarding what should be done in instances where a county is involved in an international matter or issues that have an international aspect in nature. I am happy that my committee has a number of senior counsel like the Attorney-General *Emeritus* and Sen. Orengo, my senior. I want to thank him for that endorsement. I hope that endorsement will go a long way in ensuring that we become efficient and effective in the discharge of the mandate of this House and even politically that in future people will refer to those very kind words. So, I agree we need to look at that aspect.

There were Senators who were wondering why it appears to be a closed shop for lawyers. The Chair is a long-term practitioner in the legal profession; Sen. Orengo is also one of the longest practising senior counsel in this country. I agree because of the nature of the work that we deal with. This is a very critical office where you cannot just bring in anybody. I am not trying to disparage or demean other professions; the profession of Sen. Ledama ole Kina, Sen. Were, among other professionals that assist us in this House or even elected Senators. What we are saying is critical, that involves the legal aspects of the on goings in the county governments.

Madam Temporary Speaker, another issue that was raised was on the status of the County Attorney. It should be at the county government apex because most of the deliberations that are done by the CECs, governor and the county assembly need an informed legal advice or legal direction; even in the vetting and drafting of documents. I want to agree that it is important to have them as part of it.

As a Committee, we had proposed that they require experience of seven years but when we deliberated with the Law Society of Kenya (LSK), because of the interest of ensuring a progressive growth within the legal profession, it came down to five years. As young people in this country, we are always interested in creating more opportunities for young people. We have another caucus with young lawyers associations across this country and their feeling has been that we need to ensure that we open other legal areas so that they can grow. I agree that experience sometimes is not good because once can be experienced in some bad things. I agree that we need to ensure that young people also have an opportunity.

I know Senators who are here are always challenged by the issue of young people who do not have opportunities. This is one of the opportunities that we will have going forward. With regard to all those comments and proposals for amendments, I want to assure my colleagues that, as a Senate Committee, we will sit down and have a look at them. I have a well-balanced Justice and Legal Affairs Committee with Members who have serious legal experience in this country and who have served in various fields in the legal profession. Going forward, we will ensure that we factor in all that.

Now that the national Budget has been read, I know county assemblies are now working on their county budgets upon the request from the county executives across country. It is important that I request and kindly call upon all my colleagues that we vote for this Bill so that we ensure it becomes an Act of Parliament. This will ensure we can allocate money as early as now so that we do not move to another financial year where we will be asking the CPAIC to summon county governments. One of the major pending bills has been outsourcing of legal services. I, therefore, request my colleagues that we

expedite this process and vote for it so that county governments can allocate money for the same.

The law is very clear on the issue of gifts and this is contained in the Anti-Corruption and Economic Crimes Act and the Leadership and Integrity Act. We want to put safeguards in place so that people are not given gifts like a nice car or house and land into problems. This Bill will ensure that the governor is given proper advice especially when investors come and they sweet talk the County Attorney so that they mislead the governor in some instances. There are many proposals; there is also a proposal to look into the gifts that State officers receive. I think the law has taken care of it.

Finally, on the issue of leadership and integrity, my learned senior, Sen. Okong'o Omogeni, said that we do not need to reproduce it in the Second Schedule. I want to suggest that we look into that and factor all those proposals.

Madam Temporary Speaker, finally the Senate is not going anywhere. All of us will be here. We might change professions; some might go back to farming, private practice or any other profession but the Senate is an institution that will outlive all of us. So anybody who in their wildest dreams and imaginations imagines that the Senate can be scrapped or sidelined - the moment you touch the Senate, you touch devolution. According to Article 96 one of the roles of the Senate is to protect the interests of counties and their governments. When you touch the Senate in any aspect, you are threatening devolution which has continued to pick momentum and made gains.

Madam Temporary Speaker, I want to assure the Senate Majority Leader, who was my law lecturer way back, that if there is any way we will stand up for the Senate, we will do so until the last minute. During the retreat, the hon. Speaker said this is not the time to engage in supremacy battles between the National Assembly and the Senate. We want to tell our brothers that we are not interested in supremacy battles between the Senate and the National Assembly. What is important is service delivery to Kenyans, quality legislation, playing the oversight role, the protection of the counties interests and representation.

Our people did not elect us to come to the Senate or the National Assembly to discuss who should be supreme or which direction Bills should go. We are now trying to profile the Senate so that Kenyans can appreciate the good work we are doing. In September, 2018, we will go to Uasin Gishu County which is my neighbouring county whereby we will tell Kenyans that the Senate has the interests of Kenyans at heart and will ensure devolution will go a long way.

I urge my colleagues in the National Assembly that they do not need to sensationalize anything, run around and try to demean Senators and frustrate the agenda of the Senate because this Constitution is there to stay with us.

Finally, the reason why some of us opposed the handshake at some given point in time is because there was talk of a referendum that was going to touch on the Constitution. We want to use this Constitution until we agree that by the time we are going for a referendum, we have agreed on many issues so that we do not need to amend it day in, day out. Therefore, in the spirit of the handshake, we want to tell our brothers in the National Assembly to allow us to work together for the benefit of all of us and the country.

I beg to reply and request that you defer the vote.

Thank you.

The Temporary Speaker (Sen. Pareno): Hon. Senators, I order that the putting of the question be deferred.

(Putting of the Question on the Bill deferred)

I also order that further business be deferred to the next Order Paper.

MOTIONS

REGISTRATION OF PERSONS WITH DISABILITIES

THAT, AWARE that the National Council for Persons with Disabilities was established through the Persons with Disabilities Act, 2003;

FURTHER AWARE that registration of persons living with disabilities is a function of the National Council for Persons with Disabilities;

ALSO AWARE that persons living with disabilities are estimated to be about 10 per cent of any given population;

COGNIZANT that for purposes of registration of persons living with disability, it is a mandatory requirement for one to undergo medical examination by a registered medical officer in a registered and certified health facility;

CONCERNED that of the nearly four million Kenyans living with disabilities who reside in Kenya, there is a very small fraction of the number which is duly registered;

AWARE that medical services are now a devolved function;

FURTHER CONCERNED that without proper registration, many persons living with disabilities are denied services because they lack the necessary proof of disability;

ALSO CONCERNED that owing to lack of accurate data on persons living with disabilities, the government at both levels cannot plan properly for this category of people;

NOW THEREFORE, the Senate calls upon the National Council for Persons with Disabilities in collaboration with Ministry of East African Community, Labour and Social Protection and county governments, to carry out a nationwide registration of all persons living with disabilities in order to determine their exact population to facilitate effective service for this marginalized group of our society.

(Motion deferred)

SITTING OF THE SENATE OUTSIDE PARLIAMENT
BUILDINGS, NAIROBI

THAT AWARE that the Senate of Kenya is established by Article 93 of the Constitution and its main role, as set out in Article 96 of the Constitution, is to represent and serve the interests of the counties and their governments;

FURTHER AWARE that the Senate plays a critical role in the linkage of the devolved governments and the national government;

NOTING that since its inception the Senate has held its sittings in Nairobi with its committees occasionally visiting the devolved governments on fact finding missions;

COGNIZANT of the need to enhance the interaction between the Senate and county governments as a means of bringing the Senate closer to the counties and the general public;

APPRECIATING the recommendation of the Senate Business Committee that a Sitting of the Senate be held away from the traditional premises in Parliament Buildings, Nairobi, in order to-

(i) provide an opportunity to members and staff of county assemblies to learn and borrow best practices from the Senate;

(ii) promote the role and work of the Senate;

(iii) highlight existing opportunities for people to get involved in the work of the Senate; and

(iv) develop and strengthen partnerships at the county level and enhance public awareness regarding the Business of the Senate.

NOW THEREFORE, pursuant to Article 126 (1) of the Constitution and standing order 31(1) of the Senate Standing Orders, the Senate resolves that its plenary and committees sittings be held in Uasin Gishu County from 24th to 28th September, 2018.

(Motion deferred)

FRAMEWORK TO PERMANENTLY ADDRESS
EFFECTS OF FLOODS

THAT, aware that several days of heavy rains recently have caused severe flooding in many parts of the country, resulting in multiple deaths and devastating damage to property and infrastructure;

NOTING with concern that, whenever Kenya experiences periods of severe drought, torrential rains usually follow;

CONCERNED that year in year out, the challenge of floods continues to recur, leading to loss of human and animal life, displacement of people and wanton destruction of property;

COGNIZANT that the number of Kenyans needing emergency food aid as a result of displacement caused by the current floods continues to rise by the day, and that the floods have also washed away many bridges and destroyed roads in many parts of Kenya;

ALSO CONCERNED that no effective measures, such as improved storm water harvesting, proper drainage infrastructure and preventing the destruction of riparian reserves and natural water courses, to mitigate and/or provide a lasting solution to the menace of flooding, have been taken;

NOW THEREFORE, the Senate calls upon the National Government to develop a lasting framework to permanently address the challenge of effects of floods by, among other things-

(i) developing and enforcing regulations for preventing the obstruction of riparian reserves and natural water courses; and

(ii) preventing and regulating the construction of informal settlements and ensuring prevention of construction on low lying areas and flood plains.

And further that the relevant Government agency to execute this task submits a report to the Senate within three months of the adoption of this Motion

(Motion deferred)

MANAGEMENT OF CONSTRUCTION CONTRACTORS

THAT, AWARE that Section 15 of the National Construction Authority (NCA) Act prescribes the requirements for registration as a contractor;

ALSO AWARE that Section 18 of the Act mandates the NCA Board to accredit firms incorporated outside Kenya to carry out construction works in Kenya for a prescribed period;

CONCERNED that a large number of registered local contractors cannot perform up to the expected standard leading to collapsed buildings, poor county roads and infrastructure and incomplete contracts;

APPRECIATING that there is still a good number of local contractors that has demonstrated capacity to perform and deliver projects as required;

DEEPLY CONCERNED that foreign contractors are now engaging in projects that local contractors have equal capacity and skill to perform, especially in the counties;

RECOGNIZING THAT there is need to grow our local industries by giving job opportunities to Kenyan citizens and building their technical capacities;

NOW THEREFORE, the Senate calls upon the Government through the NCA to-

1. conduct a fresh registration drive of all building and infrastructure contractors in order to weed out all non-performing ones and to identify those who demonstrate compliance;

2. enforce strict oversight on foreign contractors and institute a mechanism to handle complaints raised against contractors;

3. ensure that foreign contractors are only awarded contracts that local contractors cannot handle and require them to include technology transfer to locals; and,

4. require both local and foreign contractors to undertake corporate social responsibility activities in the counties where they operate.

(Motion deferred)

THE STATUS OF EDUCATION IN NORTHERN KENYA

THAT, AWARE that Article 43 (f) of the Constitution of Kenya stipulates that every person has the right to education, and Article 53(1)(b) provides that every child has the right to free and compulsory basic education;

ALSO AWARE that education is a basic need and a tool for intellectual empowerment and social-political development;

FURTHER AWARE that education is a shared function between the national and the county levels of Government with the national Government being responsible for Primary, secondary and Higher education while the County Government is responsible for preprimary education, village polytechnics and home craft centers;

COGNISANT that both levels of Government complement each other in promoting sustainable education;

CONCERNED that the intake, uptake and quality of education in the Northern Kenya have adversely been affected owing to discrepancies in public resources allocation, insecurity, skewed staffing and teacher training in the region;

FURTHER CONCERNED that both the school completion rate and the national examination outcomes in region are poor and that the number of students from Northern Kenya who qualify for core courses in universities, colleges, technical schools and village polytechnics is minimal compared to other parts of the country;

NOTING WITH CONCERN that due to insecurity and other related concerns, the Teachers Service Commission (TSC) which is the body responsible for the employment and deployment of teachers, has in the recent past, taken steps to transfer non-local teachers from the northern region of Kenya to other parts of the country;

CONCERNED THAT, the transfers have led to shortage of skilled teachers which has been a major cause of the dismal performance in examinations in schools in the region;

NOW THEREFORE, the Senate resolves to task the Standing Committee on Education to conduct an inquiry into the challenges facing the education sector in Northern Kenya with a view to-

1. evaluating the effect of the teacher transfers from the region and recommending to the Ministry of Education, policy measures to address the challenge;

2. evaluating the status of the education infrastructure in the region and proposing solutions to mitigate the current and looming challenges;

3. proposing mechanisms for enhanced resource allocation at both levels of government to facilitate improved education facilities; and

4. assessing school intake compared completion levels in the region in order to ascertain the impact of the challenges facing the schools and how these disadvantages the region compared to other parts of Kenya and proposing ways of addressing the challenges.

And that the Committee submits a report to the Senate within three months of adoption of this Motion by the Senate.

(Motion deferred)

ADOPTION OF REPORT ON THE FIRST EXTRAORDINARY SESSION OF
THE FP-ICGLR IN KINSHASA, DRC

THAT, this House adopts the Report of the proceedings of the First Extraordinary Session of the Plenary Assembly of the Forum of Parliaments of Member States of the International Conference on the Great Lakes Region (FPICGLR) held in Kinshasa, Democratic Republic of Congo from 19th – 20th March, 2018, laid on the Table of the Senate on Tuesday, 15th May, 2018.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, having concluded the business of the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 19th June, 2018, at 2.30 p.m.

The Senate rose at 6.05 p.m.