

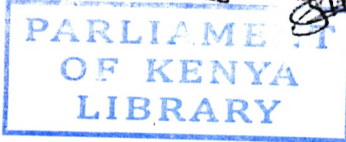
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REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE CONSIDERATION OF THE IMPEACHMENT PROCEDURE BILL  
(SENATE BILL NO. 15 OF 2018)

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

OCTOBER, 2020

**Contents**

LIST OF ANNEXURES..... 3

CHAIRPERSON’S FOREWORD..... 3

**CHAPTER 1**..... 5

    1.0 PREFACE ..... 5

    1.1 Establishment and Mandate of the Committee ..... 5

    1.2 Committee Membership..... 6

    1.3 Committee Secretariat..... 8

**CHAPTER 2** ..... 9

    2.0 INTRODUCTION AND BACKGROUND..... 9

**CHAPTER 3** ..... 13

    3.0 OVERVIEW OF THE RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS ON IMPEACHMENT PROCEDURE ..... 13

    3.1 Constitutional provisions ..... 13

    3.2 The County Governments Act No. 17 of 2012..... 16

**CHAPTER 4**..... 19

    4.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL ..... 19

    4.1 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL ..... 19

    4.2 PART 1- PRELIMINARY..... 20

    4.3 PART II – PROCEDURE FOR REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE PRESIDENT AND THE DEPUTY PRESIDENT ..... 20

    4.4 PART III- PROCEDURE FOR REMOVAL FROM OFFICE OF A CABINET SECRETARY ..... 23

    4.5 PART IV – PROCEDURE FOR REMOVAL FROM OFFICE, BY IMPEACHMENT, OF A GOVERNOR AND A DEPUTY GOVERNOR..... 26

    4.6 PART V ON PROCEDURE FOR REMOVAL FROM OFFICE OF A COUNTY EXECUTIVE COMMITTEE MEMBER..... 33

    4.7 PART VI-MISCELLANEOUS ..... 36

**CHAPTER 5** ..... 39

    5.0 COMMITTEE RECOMMENDATIONS ..... 39

## **LIST OF ANNEXURES**

- Annexure 1:** Minutes of Committee sittings on consideration of the Bill
- Annexure 2:** Adoption list
- Annexure 3:** Newspaper Advertisement dated Wednesday March 11, 2020
- Annexure 4:** Stakeholders Submissions

## **CHAIRPERSON'S FOREWORD**

The Impeachment Procedure Bill (Senate Bill No. 15 of 2018) underwent First Reading in the National Assembly on 26<sup>th</sup> June, 2019 and was immediately committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 127(1) of the National Assembly Standing Orders..

The Bill seeks to provide a general legal framework for the procedure for the removal from office, by impeachment, of the President, the Deputy President, a Cabinet Secretary, a Governor, a Deputy Governor, and a member of a county executive committee. The Bill further seeks to give effect to the constitutional principles of democracy and participation of the people in impeachment proceedings as set out in Articles of 145, 150,152 and 181 of the Constitution and section 33 of the County Governments Act, No. 17 of 2012.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3) the Committee through an advertisement in the local daily newspapers of Wednesday March 11, 2020 invited the public to make representations on the Bill and further resolved to seek the views of the following institutions; Office of the Attorney-General and Department of Justice, Kenya Law Reform Commission, Law Society of Kenya (LSK), Council of Governors and the County Assemblies Forum. The Committee received submissions from the Council of Governors and the County Assemblies Forum.

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

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House the report of the Committee on the Impeachment Procedure Bill (Senate Bill No. 15 of 2018).

**Hon. Clement Muturi Kigano, M.P.**

## CHAPTER 1

### 1.0 PREFACE

#### 1.1 Establishment and Mandate of the Committee

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

## 1.2 Committee Membership

3. The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017. The current membership is as follows-

### Chairperson

Hon. Clement Muturi Kigano, M.P.  
**Kangema Constituency**  
**Jubilee Party**

### Vice Chairperson

Hon. (Dr.) Paul Otiende Amollo, M.P.  
**Rarieda Constituency**  
**ODM Party**

Hon. Emmanuel Wangwe, M.P.  
**Navakholo Constituency**  
**Jubilee Party**

Hon. Junet Sheikh Nuh Mohamed, M.P.  
**Suna East Constituency**  
**ODM-Party**

Hon. John Olago Aluoch, M.P.  
**Kisumu West Constituency**  
**FORD-Kenya**

Hon. George Peter Kaluma, M.P.  
**Homa Bay Town Constituency**  
**ODM-Party**

Hon. Roselinda SoipanTuya, M.P.  
**Narok County**  
**Jubilee Party**

Hon. Josephine Naisula Lesuuda, M.P.  
**Samburu West Constituency**  
**KANU-Kenya**

Hon. W. Kamoti Mwamkale, M.P.  
**Rabai Constituency**  
**ODM-Party**

Hon. Zuleikha Hassan, M.P.  
**Kwale County**  
**ODM-Party**

Hon. Jennifer Shamalla, M.P.  
**Nominated MP**  
**Jubilee Party**

Hon. Adan Haji Yussuf, M.P.  
**Mandera West Constituency**  
**Economic Freedom Party (EFP)**

Hon. John MuneneWambugu, M.P.  
**Kirinyaga Central**  
**Jubilee -Party**

Hon. George Gitonga Murugara, M.P.  
**Tharaka Constituency**  
**Democratic Party (DP)**

Hon. Anthony Githiaka Kiai, M.P.  
**Mukurueni Constituency**  
**Jubilee-Party**

Hon. Japheth Mutai, M.P.  
**Bureti Constituency**  
**Jubilee-Party**

Hon. John Kiarie Waweru, M.P.  
**Dagoretti South Constituency**  
**Jubilee-Party**

Hon. Anthony Oluoch, M.P.  
**Mathare Constituency**  
**ODM-Party**

Hon. Robert Gichimu Githinji, M.P.  
**Gichugu Constituency**  
**Jubilee-Party**

### **1.3 Committee Secretariat**

4. The Committee secretariat staff is as follows--

**Mr. Abenayo Wasike  
Senior Clerk Assistant  
Lead Clerk**

**Mr. Denis Abisai  
Principal Legal Counsel I**

**Ms. Halima Hussein  
Clerk Assistant II**

**Mr. Ahmed Hassan Odhwa  
Principal Research Officer**

**Mr. Omar Abdirahim  
Fiscal Analyst III**

**Ms. Roselyne Ndegi  
Serjeant-at-Arms I**

**Mr. Joseph Okongo  
Media Liaison Officer**

5. Minutes of sittings of the Committee on the consideration of the Bill. (**Annexure 1**).

## CHAPTER 2

### 2.1 INTRODUCTION AND BACKGROUND

6. The Bill seeks to provide a general legal framework for the procedure for the removal from office, by impeachment, of the President, the Deputy President, Cabinet Secretary, Governor, Deputy Governor, and member of a county executive committee.
7. The Bill further seeks to give further effect to the constitutional principles of democracy and participation of the people in impeachment proceedings as set out in-
  - (a) Article 145 of the Constitution which provides for the removal of the President by impeachment;
  - (b) Article 150 of the Constitution which provides for the removal of the Deputy President by impeachment;
  - (c) Article 152 which provides for the impeachment of Cabinet Secretaries;
  - (d) Article 181 which provides for the removal of a County Governor.
8. **Clause 2** of the Bill provides that the President may be removed from office by impeachment in accordance to Article 145 of the Constitution and the provisions of the Bill.
9. **Clause 3** of the Bill provides for an impeachment motion to remove the President supported by at least one third of the members of the National Assembly on the grounds of: gross misconduct, gross violation of the Constitution or any law or where it is believed that the President has committed a crime under national or international law.
10. **Clause 4** of the Bill sets out the procedure of removal of the President by impeachment in the National Assembly. The Motion must be signed by the member and must be supported by at least one third of the members. Once forwarded to the Speaker, the Speaker may reject the motion if it does not meet the required threshold. The motion must be disposed off within 7 days by the National Assembly. At least two thirds of the members must support the motion. It should then be forwarded to the Speaker of the Senate.
11. **Clause 5** of the Bill sets out the procedure in the Senate in impeachment proceedings against the President. The Speaker of the Senate will convene a meeting for the hearing of the charges against the President. A special committee may be appointed to investigate the matter and report on whether the allegations are substantiated. If no committee is appointed the Senate plenary may decide on the impeachment. Both the

President and the Member may be called by the Senate to be heard. At least two thirds of the members have to be in support of the impeachment.

12. **Clause 6** of the Bill provides that the President has the right to appear and be represented in person or by advocate before the Senate or the Special Committee.
13. **Clause 7** of the Bill provides that the removal of the Deputy President by impeachment shall apply as for the President except with a few modifications.
14. **Clause 8** of the Bill provides that a Cabinet Secretary may be removed from office as provided for under Article 152 of the Constitution.
15. **Clause 9** of the Bill provides for the procedure for the removal of a Cabinet Secretary by Members of the National Assembly. It requires at least a quarter of the members to support the motion and the removal must be on the grounds of gross misconduct, gross violation of the Constitution or of any law or where it is believed that the Cabinet Secretary has committed a crime under national or international law.
16. **Clause 10** of the Bill provides for the Report of the Select Committee pursuant to Article 152 of the Constitution. If the allegations against the Cabinet Secretary are unsubstantiated no proceeding will be taken. If substantiated, the Committee shall give the Cabinet Secretary an opportunity to be heard or make a resolution to dismiss the Cabinet Secretary.
17. **Clause 11** of the Bill provides for the delivery to the President of a resolution of the majority of the Members of the National Assembly in pursuance to section 10 of the Act.
18. **Clause 12** of the Bill provides for the right of a Cabinet Secretary to appear in person or by an advocate before the Select Committee.
19. **Clause 13** of the Bill provides for a motion to remove a Governor. A motion is moved by a member of the county assembly supported by at least a third of the members.
20. **Clause 14** of the Bill provides for the proceedings for the removal of a Governor in a county assembly, from the submission to the Speaker of the County Assembly to the forwarding of the Speaker of the Senate.
21. **Clause 15** of the Bill provides that the Speaker of the County Assembly shall submit to the Speaker of the Senate a certificate of compliance of the procedure under Clause 14 of the Bill.

22. **Clause 16** of the Bill provides for the procedure to be followed during proceedings for the impeachment of the Governor in the Senate. There may be; Convening of the Senate to hear the charges against the Governor or appointing of a special committee to investigate the matter. If the Senate finds that the County Assembly did not comply with section 14 of the Bill the impeachment is to be voided.
23. **Clause 17** of the Bill provides for investigations by the Special Committee and it may invite the Governor to appear before the Committee. The Committee is to subsequently make a report after conducting its investigation.
24. **Clause 18** of the Bill provides for proceedings without appointing a special committee will follow the procedure under section 16 but conducted by a committee sitting in plenary.
25. **Clause 19** of the Bill provides for the decision of the Senate and if they uphold the impeachment the Governor will cease holding office and they would notify the Speaker of the County Assembly accordingly.
26. **Clause 20** of the Bill provides for the right of the Governor to appear and be heard before the Senate, special committee or the county assembly in person or be represented.
27. **Clause 21** of the Bill provides for the reintroduction of a motion in the county assembly after the expiry of 180 days from the date the Senate takes a vote.
28. **Clause 22** of the Bill provides for the arising of a vacancy under this Act which shall be filled subject to article 182 of the Constitution.
29. **Clause 23** of the Bill provides for the procedure of removal of the Deputy Governor which is similar to the Governor's but modified.
30. **Clause 24** of the Bill provides for a vacancy in the office of the Deputy Governor and that the 14 day timeline a governor has to nominate a person to fill the vacancy with the approval of the office.
31. **Clause 25** of the Bill provides for simultaneous vacancies in the office of both the Governors and the Deputy Governor which are to be dealt with under Article 182 of the Constitution.

32. **Clause 26** of the Bill provides for questioning the validity of the impeachment with the option of appeal or review.
33. **Clause 27** of the Bill provides for a motion for the impeachment of a member of the county executive committee which is to be supported by at least a third of the members of the county assembly.
34. **Clause 28** of the Bill provides for the procedure of the impeachment from submitting the motion in writing to the speaker to the appointment of a committee to investigate the allegations against them, conducting of a vote by the members of the County Assembly to the effecting of the dismissal by the Governor.
35. **Clause 29** of the Bill provides for the right of the Member of county executive committee to appear in person or be represented before the Committee.
36. **Clause 30** of the Bill provides for the substantiation of allegations which is to be guided by the Constitution or this Act.
37. **Clause 31** of the Bill provides for effecting of service to appear before any House of Parliament, its committee or County Assembly or its Committee for the purposes of this Act is through personal service, through an agent or through notice of a newspaper of nationwide circulation.
38. **Clause 32** of the Bill provides for a publication of a notice giving access to the public to attend the proceedings.
39. **Clause 33** of the Bill provides for the consequential amendments to the County Governments Act, No. 17 of 2012.
40. **The Schedule** provides for the form of the motion and the list of members supporting an impeachment motion.

## CHAPTER 3

### **3.0 OVERVIEW OF THE RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS ON IMPEACHMENT PROCEDURE**

#### **3.1 Constitutional provisions**

##### *41. Article 145-Removal of the President by impeachment*

- 1) A member of the National Assembly, supported by at least a third of all the members, may move a motion for the impeachment of the President-*
  - a) on the ground of a gross violation of a provision of this Constitution or of any other law;*
  - b) where there are serious reasons for believing that the President has committed a crime under national or international law; or*
  - c) for gross misconduct*
- 2) If a motion under clause (1) is supported by at least two-thirds of all the members of the National Assembly-*
  - a) the Speaker shall inform the Speaker of the Senate of that resolution within two days; and*
  - b) the President shall continue to perform the functions of the office pending the outcome of the proceedings required by this Article.*
- 3) Within seven days after receiving notice of a resolution from the Speaker of the National Assembly-*
  - a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the President; and*
  - b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter*
- 4) A special committee appointed under clause (3)(b) shall-*
  - a) investigate the matter; and*
  - b) report to the Senate within ten days whether it finds the particulars of the allegations against the President to have been substantiated*
- 5) The President shall have the right to appear and be represented before the special committee during its investigations.*

- 6) *If the special committee reports that the particulars of any allegation against the President-*
  - a) *have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation; or*
  - b) *have been substantiated, the Senate shall, after according the President an opportunity to be heard, vote on the impeachment charges.*
- 7) *If at least two-thirds of all the members of the Senate vote to uphold any impeachment charge, the President shall cease to hold office.*

#### **42. Article 150-Removal of the Deputy President**

- 1) *The Deputy President may be removed from office-*
  - a) *on the ground of physical or mental incapacity to perform the functions of the office; or*
  - b) *on impeachment-*
    - (i) *on the ground of a gross violation of a provision of this Constitution or any other law;*
    - (ii) *where there are serious reasons to believe that the Deputy President has committed a crime under national or international law; or*
    - (iii) *for gross misconduct.*
- 2) *The provision of Articles 144 and 145 relating to the removal of the President shall apply, with necessary modifications, to the removal of the Deputy President.*

#### **43. Article 152- The Cabinet**

- 1) *The Cabinet consists of—*
    - a) *the President;*
    - b) *the Deputy President;*
    - c) *the Attorney-General; and*
    - d) *not fewer than fourteen and not more than twenty-two Cabinet Secretaries.*
  - 2) *The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.*
  - 3) *A Cabinet Secretary shall not be a Member of Parliament.*
  - 4) *Each person appointed as a Cabinet Secretary—*
    - a) *assumes office by swearing or affirming faithfulness to the people and the Republic of Kenya and obedience to this Constitution, before the President and in accordance with the Third Schedule; and*
    - b) *may resign by delivering a written statement of resignation to the President.*
  - 5) *The President—*
    - a) *may re-assign a Cabinet Secretary;*
- 14 | Page *Report on the Impeachment Procedure Bill (Senate Bill No. 15 of 2018)*

- b) may dismiss a Cabinet Secretary; and*
  - c) shall dismiss a Cabinet Secretary if required to do so by a resolution adopted under clauses (6) to (10).*
  
- 6) A member of the National Assembly, supported by at least one-quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary—*
  - a) on the ground of a gross violation of a provision of this Constitution or of any other law;*
  - b) where there are serious reasons for believing that the Cabinet Secretary has committed a crime under national or international law; or*
  - c) for gross misconduct.*
  
- 7) If a motion under clause (6) is supported by at least one-third of the members of the National Assembly-*
  - a) the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and*
  - b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.*
  
- 8) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.*
  
- 9) If the select committee reports that it finds the allegations—*
  - a) unsubstantiated, no further proceedings shall be taken; or*
  - b) substantiated, the National Assembly shall-*
    - (i) afford the Cabinet Secretary an opportunity to be heard; and*
    - (ii) vote whether to approve the resolution requiring the Cabinet Secretary to be dismissed.*
  
- 10) If a resolution under clause (9)(b)(ii) requiring the President to dismiss a Cabinet Secretary is supported by a majority of the members of the National Assembly-*
  - a) the Speaker shall promptly deliver the resolution to the President; and*
  - b) the President shall dismiss the Cabinet Secretary.*

**44. Article 181-Removal of a county governor**

- 1) A county governor may be removed from office on any of the following grounds—*

- a) *gross violation of this Constitution or any other law;*
  - b) *where there are serious reasons for believing that the county governor has committed a crime under national or international law;*
  - c) *abuse of office or gross misconduct; or*
  - d) *physical or mental incapacity to perform the functions of office of county governor.*
- 2) *Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).*

### **3.2 The County Governments Act No. 17 of 2012**

#### **45. Section 11-Removal of speaker from office**

*(1) A speaker of a county assembly may be removed from office by the county assembly through a resolution supported by not less than seventy five percent of all the members of the county assembly.*

*2) A notice of the intention to move a motion for a resolution to remove the speaker shall be given in writing to the clerk of the county assembly, signed by at least one third of all the members of the county assembly stating the grounds for removal.*

*(3) A motion for a resolution to remove the speaker shall be presided over by a member of the county assembly elected under section 9(4).*

*(4) Before the debate and voting on a motion under subsection (3), the speaker shall be accorded an opportunity to respond to the allegations on the floor of the county assembly*

#### **46. Section 33-Removal of a governor**

- 1) *A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.*
- 2) *If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—*
- a) *the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and*
  - b) *the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.*
- 3) *Within seven days after receiving notice of a resolution from the speaker of the county assembly—*

- a) *the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and*
  - b) *the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.*
- 4) *A special committee appointed under subsection (3)(b) shall—*
  - a) *investigate the matter; and*
  - b) *report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.*
- 5) *The governor shall have the right to appear and be represented before the special committee during its investigations.*
- 6) *If the special committee reports that the particulars of any allegation against the governor—*
  - a) *have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or*
  - b) *have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.*
- 7) *If a majority of all the members of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.*
- 8) *If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the speaker of the concerned county assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.*
- 9) *The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.*
- 10) *A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.*

**47. Section 40-Removal of a member of executive committee**

*(1) Subject to subsection (2), the Governor may remove a member of the county executive committee from office on any of the following grounds—*

- (a) incompetence;*
- (b) abuse of office;*

- (c) gross misconduct;*
- (d) failure, without reasonable excuse, or written authority of the governor, to attend three consecutive meetings of the county executive committee;*
- (e) physical or mental incapacity rendering the executive committee member incapable of performing the duties of that office; or*
- (f) gross violation of the Constitution or any other law.*

*(2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the grounds set out in subsection (1).*

*(3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—*

*(a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and*

*(b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.*

*(4) The county executive committee member has the right to appear and be represented before the select committee during its investigations.*

*(5) If the select committee reports that it finds the allegations—*

*(a) unsubstantiated, no further proceedings shall be taken; or*

*(b) substantiated, the county assembly shall vote whether to approve the resolution requiring the county executive committee member to be dismissed.*

*(6) If a resolution under subsection (5)(b) is supported by a majority of the members of the county assembly—*

*(a) the speaker of the county assembly shall promptly deliver the resolution to the governor; and*

*(b) the governor shall dismiss the county executive committee member.*

## CHAPTER 4

### **4.0 PUBLIC PARTICIPATION IN REVIEW OF THE BILL AND CLAUSE BY CLAUSE CONSIDERATION BY THE COMMITTEE**

48. Through an advertisement on Wednesday March 11, 2020 the Committee pursuant to the provisions of Article 118 (1) (b) of the Constitution as read together with Standing Order 127 (3) invited the public to make submissions regarding the Impeachment Procedure Bill (Senate Bill No.15), 2019. (**Annexure 3**).
49. The Committee further sought the views of the following key institutions. Copies of the submissions are attached for reference. (**Annexure 4**).
- (a) Office of the Attorney-General and Department of Justice
  - (b) Kenya Law Reform Commission
  - (c) Law Society of Kenya (LSK)
  - (d) Council of Governors
  - (e) County Assemblies Forum
50. The Committee extensively considered the contents of the submissions and details of the deliberations, the Committee's observations and resolutions are contained in this chapter.

### **4.1 CLAUSE BY CLAUSE CONSIDERATION OF THE BILL**

51. This part deals with the clause by clause consideration of the Bill by the Committees after taking into consideration the views of the aforementioned stakeholders.

#### **Long Title**

52. The long title of the Bill provides that the Bill seeks to set out the procedure for the removal from office, by impeachment, of the President, the Deputy President, Cabinet Secretary, Governor, Deputy Governor and member of a county executive committee.

#### **Stakeholder views**

53. **The County Assemblies Forum (CAF)** proposed that the long title of the Bill to be amended so that the Bill also provides for the impeachment of the speaker of a county assembly and the deputy speaker of a county assembly.
54. **Committee observations:** The Committee observed; **THAT;**
- (a) The long title of the Bill properly captures the purpose of the Bill. The Bill seeks to set out the impeachment procedure for the President, the Deputy President, a

Cabinet Secretary, a Governor, a Deputy Governor and a member of a county executive committee.

- (b) The Bill had deliberately left out the speakers and their deputies from the envisaged impeachment procedures. In this respect, the Committee resolved to uphold the original purpose of the Bill.
- (c) There is no lacuna in the law as speakers of county assemblies will continue being removed from office in accordance with the procedure set out in section 11 of the County Governments Act, 2012.

## **4.2 PART 1- PRELIMINARY**

### **Clause 1-Short Title.**

55. Clause 1 relates to the short title of the Bill.

#### **Stakeholder views**

56. **The Kenya Law Reform Commission (KLRC)** submitted that Clause 1 of the Bill be amended to read Impeachment Procedure Act, 2020 to reflect the current date.

57. **Committee comments:** The Committee noted that the short title of the Bill, the Impeachment Procedure Bill, 2018 reflects the year the Bill was published in the Kenya Gazette. The Committee further observed that the prevailing practice in the Parliament of Kenya is that Bills retain their title as published until final passage when the title is changed to reflect the year of actual enactment.

58. The Committee further observed that changing the short title of the Bill before final passage as proposed by the KLRC may lead to confusion in the records of the two Houses of Parliament since sometimes more than one Bill are published in the same year with the same title but different dates of publication in the Kenya Gazette.

59. **Committee recommendations:** The Committee recommends that Clause 1 of the Bill be agreed to as it appears in the Bill.

## **4.3 Part II – Procedure for Removal from office, by Impeachment, of the President and the Deputy President**

### **Clause 2-Removal of the President by impeachment**

60. This clause outlines the procedure for removal from office by impeachment of the President and the Deputy President.

61. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

### **Clause 3-Impeachment motion for removal of the President**

62. This Clause provides for an impeachment motion to remove the President supported by at least one third of the members of the National Assembly on the grounds of: gross misconduct, gross violation of the Constitution or any law or where it is believed that the President has committed a crime under national or international law.

63. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

### **Clause 4-Procedure for the removal of the President in the National Assembly**

64. This clause sets out the procedure of removal of the President by impeachment in the National Assembly.

### **Stakeholder views**

65. **The Kenya Law Reform Commission (KLRC)** proposed that Clauses 4(3) of the Bill should not make provision for the Clerk of the National Assembly to “confirm” that a proposed impeachment motion complied with the requirements relating to the validity of a proposed motion for the removal of the President or the Deputy President. The KLRC was of the view that the Clerk’s role in the Legislature is purely administrative in nature.
66. **Committee observations:** The Committee noted the submissions by the Kenya Law Reform Commission that the Bill should not give the Clerk of the National Assembly substantive power to reject the proposed motion for the impeachment of the President or the Deputy President. The Committee further observed that the use of the words “confirm that the proposed motion” in Clause 4(3) implied that the Clerk can reject a motion that did not comply with the requirements set out in that section. The Committee was of the view that the Clerk of the National Assembly may abuse the apparent discretion granted by that provision and frustrate some members seeking to move a motion to impeach the President. The Committee resolved that Clause 4(3) of the Bill be deleted and that the power to verify whether a proposed impeachment motion meets or does not meet the requirements of Article 145(1) of the Constitution be vested in the Speaker of the National Assembly.

67. **Committee recommendations:** The Committee recommends that Clause 4 of the Bill be amended-
- (a) by deleting sub-clause (3);
  - (b) in sub-clause (4) by inserting the word “immediately” after the word “shall”;
  - (c) by deleting sub-clause (5) and substituting therefor the following new sub-clause-
- (5) The Speaker shall examine and confirm that the proposed motion-
- (a) specifies the grounds and particulars upon which the proposed motion is made;
  - (b) is signed by the Member; and
  - (c) is signed by at least a third of all the Members of the National Assembly.
- (a) by inserting the following new sub-clause immediately after the proposed new sub-clause (5)-
- (6) If the Speaker is satisfied that the proposed motion-
- (a) complies with sub-section (5), the Speaker shall approve the motion and inform the Member within three days; or
  - (b) does not comply with sub-section (5), the Speaker shall refuse to approve the motion and inform the Member within three days giving reasons for the refusal.
- (b) By renumbering the other sub-clauses accordingly.

68. **Justifications:** The Committee observed that

- (a) The use of the words “confirm that the proposed motion” in Clause 4(3) implied that the Clerk of the National Assembly can reject a proposed impeachment motion that did not comply with the requirements set out in that section. The Committee also agreed with the submissions by the KLRC that the Bill should not give the Clerk substantive power to reject motions as the nature of the Clerk’s work is generally administrative. The Committee resolved that Clause 4(3) of the Bill be deleted and that the power to verify whether a proposed impeachment motion meets or does not meet the requirements of Article 145(1) of the Constitution be vested in the Speaker of the National Assembly.
- (b) The proposed amendment to sub-clause (4) requires the Clerk of the National Assembly to ‘immediately’ submit the proposed motion to the Speaker thus clearing the uncertainty over the period within which the Clerk must submit the motion to the Speaker.

#### **Clause 5-Proceedings in the Senate for removal of President by Impeachment**

69. This Clause sets out the procedure in the Senate in impeachment proceedings against the President.

70. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 6-President's right to appear and be represented**

71. This Clause provides that the President has the right to appear and be represented in person or by advocate before the Senate or the Special Committee.

72. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 7-Removal of a Deputy President by impeachment**

73. This Clause provides that the removal of the Deputy President by impeachment shall apply as for the President except with a few modifications

74. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

### **4.4 Part III- Procedure for Removal from office of a Cabinet Secretary**

#### **Clause 8-Removal of a Cabinet Secretary from office**

75. This Clause provides that a Cabinet Secretary may be removed from office as provided for under Article 152 of the Constitution.

76. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill

#### **Clause 9-Procedure for the removal of a Cabinet Secretary**

77. This Clause provides for the procedure for the removal of a Cabinet Secretary by Members of the National Assembly

#### **Stakeholder views**

78. **Kenya Law Reform Commission (KLRC)** proposed that Clause 9 be amended to make a provision for the motion against a Cabinet Secretary to be heard by the whole House or a select Committee to align it with parliamentary procedures and the Standing Orders on how matters before the House are heard and determined. Matters laid before

the House may be heard by a Committee of the whole house or a select committee. The Commission submitted that the proposed amendment will ensure consistency.

79. The KLRC further submitted that Clauses 9(4) of the Bill should not make provision for the Clerk of the National Assembly to advise the Speaker of on the validity of the proposed motion for the removal from office of a Cabinet Secretary. The KLRC was of the view that the Clerk's role in the Legislature is purely administrative in nature.

80. **Committee observations:** The Committee observed that;

(a) Article 152(6) of the Constitution provides that a motion for the impeachment of a Cabinet Secretary should not be proceeded with unless it is supported by at least one-quarter of all the members of the Assembly. In this respect, it is not possible for such a motion to be heard before a select committee of the House as proposed by the Kenya Law Reform Commission. The membership of a select committee is regulated by the Standing Orders of the House and no such committee may have a membership of one-quarter of all the members of the Assembly as required under Article 152(6) of the Constitution.

(b) The Committee further observed that the use of the words "confirm that the proposed motion" in Clause 9(4) implied that the Clerk can reject a motion that did not comply with the requirements set out in that section. The Committee was of the view that the Clerk of the National Assembly may abuse the apparent discretion granted by that provision and frustrate some members seeking to move a motion to impeach a Cabinet Secretary.

(c) The Committee resolved that Clause 9(4) of the Bill be deleted and that the power to verify whether a proposed impeachment motion meets or does not meet the requirements of Article 152(6) of the Constitution be vested in the Speaker of the National Assembly. It is only the Speaker of the National Assembly who should have the power to approve or reject a proposed motion for the impeachment of a Cabinet Secretary.

81. **Committee recommendations:** The Committee recommends that Clause 9 of the Bill be amended-

(a) by deleting sub-clause (4) ;

(b) in sub-clause (5) by inserting the word "immediately" after the word "shall" appearing immediately after the word "Clerk of the National Assembly";

(c) by deleting sub-clause (6) and substituting therefor the following new sub-clause-

(6) The Speaker shall examine and confirm that the proposed motion-

(a) specifies the grounds and particulars upon which the proposed motion is made;

(b) is signed by the Member; and

(c) is signed by at least one quarter of all the Members of the National Assembly.

(d) by inserting the following new sub-clause immediately after the proposed new sub-clause (7)-

(6) If the Speaker is satisfied that the proposed motion-

(a) complies with sub-section (6), the Speaker shall approve the motion and inform the Member within three days; or

(b) does not comply with sub-section (6), the Speaker shall refuse to approve the motion and inform the Member within three days giving reasons for the refusal.

(e) by renumbering the other sub-clauses accordingly

**82. Justifications:** The Committee observed that

(a) The use of the words “confirm that the proposed motion” in Clause 9(4) implied that the Clerk can reject a motion that did not comply with the requirements set out in that section. The Committee was of the view that the Clerk of the National Assembly may abuse the apparent discretion granted by that provision and frustrate some members seeking to move a motion to impeach a Cabinet Secretary.

(b) The Committee also noted the submissions by the KLRC that the Bill should not give the Clerks substantive power to reject motions as the nature of their work is generally administrative. The Committee resolved that Clause 9(4) of the Bill be deleted and that the power to verify whether a proposed impeachment motion meets or does not meet the requirements of Article 152(6) of the Constitution be vested in the Speaker of the National Assembly. It is only the Speaker of the National Assembly who should have the power to approve or reject a proposed motion for the impeachment of a Cabinet Secretary.

(c) The proposed amendment to sub-clause (5) requires the Clerk of the National Assembly to ‘immediately’ submit the proposed motion to the Speaker thus clearing the uncertainty over the period within which the Clerk must submit the motion to the Speaker.

#### **Clause 10-Report of the select Committee of the National Assembly**

83. This Clause provides for the Report of the Select Committee pursuant to Article 152 of the Constitution.

84. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 11-Resolution of the National Assembly**

85. This Clause provides for the delivery to the President of a resolution of the majority of the Members of the National Assembly in pursuance to section 10 of the Act.

86. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 12- Cabinet Secretary's right to appear and be represented**

87. This clause provides for the right of a Cabinet Secretary to appear in person or by an advocate before the Select Committee.

88. **Committee comments:** The Committee observed that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **4.5 Part IV – Procedure for Removal from office, by Impeachment, of a Governor and a Deputy Governor**

89. The County Assemblies Forum (CAF) proposed an amendment to PART IV of the Bill to introduce a New Part V that provides for the procedure for the “Removal from office of a County Assembly Speaker”. The procedure should be similar to the process for removal from office of a county Governor as set out in the Bill. The Procedure for the removal of County Assembly Speakers to be a two-tier system. The procedure of removal should be in the form that once a notice of motion is approved and passed by 75% of the Members of a County Assembly, the resolution should be submitted to the Speaker of the Senate. The Speaker shall then present the charges to the Senate and form a special committee to address the legality and viability of the grounds of removal.

90. **Committee comments:** The Committee did not consider this submission and resolved that the Bill should not provide for the impeachment procedure of the speakers of county assemblies and their deputies.

#### **Clause 13-Motion for removal of a Governor**

91. This Clause of the Bill provides for a motion to remove a Governor. A motion is moved by a member of the county assembly supported by at least a third of the members.

92. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 14-Proceedings in a county assembly for the removal of a Governor.**

93. This Clause provides for the proceedings for the removal of a Governor in a county assembly, from the submission to the Speaker of the County Assembly to the forwarding of the Speaker of the Senate.

#### **Stakeholder views**

94. **The Council of Governors (CoG)** proposed the following amendments to Clause 14 of the Bill-

- (a) Amend Clause 14 (9) (b) of the Bill to expand the period within which written memoranda from the public in relation to the charges against the Governor may be received from seven days to thirty days;
- (b) Amend Clause 14(9) and include advertisement of the impeachment motion in radio stations in every ward in addition to the newspapers of national circulation;
- (c) Amend Clause 14(9) and insert a new sub-clause 9 (c) to require the Clerk of a County Assembly to call for oral submissions from the public or any interest group in relation to the charges against the governor within 30 days;
- (d) Amend Clause 14(9) and include new sub-clauses (d) (e) (f) to provide that-
  - (i) the motion for impeachment shall be supported by at least 30% of the registered voters in all the wards;
  - (ii) the list of the names of the registered voters shall contain the voter card number, national ID card or passport number and signature or thumb prints of the voters who supported the motion;
  - (iii) the IEBC shall verify the finger prints of the names of the persons who support the motion”
- (e) Amend Clause 14(10) and insert a new sub-clause 10 (c) to provide that the dates for the hearing of an impeachment motion may be altered based on mutual consent of both parties but may not exceed a period of 14 days after lapse of the first hearing date.

95. **Council of Governors justifications for the proposed amendments.**

- (a) The advertisement of the impeachment motion in radio stations in every ward seeks to ensure that everyone in the counties and wards are aware of the public participation since they are the people who elected the governor and it is important for them to participate.
- (b) The 7 days’ timeline for submitting the written memoranda is very short hence the need to give members of the public at least 30 days to submit the same in accordance with the principles of public participation as set out in Civil Appeal No. 21 of 2014 in the case of *Martin Wambora Vs. Senate and 6 others.*
- (c) The alteration of the dates for the hearing of the impeachment motion seeks to give flexibility depending on the availability of both parties. The reasons for impeachment may require adequate preparation from the Governor hence the dates may be altered based on the scope of the evidence required.

96. **Committee observations:** The Committee observed THAT;

- (a) The proposal by the Council of Governors that Clause 14 (9) (b) of the Bill be amended to expand the period within which written memoranda from the public in relation to the charges against the Governor may be received from seven days to thirty days was untenable and the current seven days were sufficient;
  - (b) The proposal to extend the window period for submission of written memoranda on the impeachment of the Governor will conflict with other timelines in Clause 14 of the Bill including Clause 14(8) which provides that the impeachment motion be moved within 14 days of giving notice;
  - (c) The proposal that Clause 14(9) of the Bill be amended to include advertisement of the impending impeachment motion in radio stations in every ward was impractical as radio stations are not based in wards. The Committee was also of the view that it was unnecessary to advertise the impeachment motion in radio stations since the issue of the removal of a Governor are usually a matter of local and national notoriety and the advertisement in a newspaper of national circulation as currently provided for in the Bill gives the public adequate notice of the impeachment motion.
97. **Committee recommendations:** The Committee recommends that Clause 14 of the Bill be amended-
- (a) by deleting sub-clause (3);
  - (b) by deleting sub-clause (5) and substituting therefor the following new sub-clause-  
(5) The Speaker of the county assembly shall examine and confirm that the proposed motion-
    - (a) specifies the grounds and particulars upon which the proposed motion is made;
    - (b) is signed by the member; and
    - (c) is signed by at least a third of all the members of the county assembly.
  - (c) by inserting the following new sub-clause immediately after the proposed new sub-clause (5)-  
(6) If the Speaker is satisfied that the proposed motion-
    - (a) complies with section 13, the Speaker shall approve the motion and inform the member within four days; or
    - (b) does not comply with section 13, the Speaker shall refuse to approve the motion and inform the member within four days giving reasons for the refusal in writing.
  - (d) by renumbering the other sub-clauses accordingly

### **Justifications**

- (a) The Committee observed that the use of the words “confirm that the proposed motion” in Clause 14(3) implied that the Clerk of a county assembly can reject a motion that did not comply with the requirements set out in that section. The Committee also noted the submissions by the KLRC that the Bill should not give the Clerks substantive power to reject motions as the nature of their work is generally administrative.
- (b) The Committee resolved that Clause 14(3) of the Bill be deleted and that the power to verify whether a proposed impeachment motion meets or does not meet the requirements of Article 181(1) of the Constitution be vested in the Speaker of the county assemblies. It is only the Speakers who should have the power to approve or reject a proposed motion for the impeachment of a Governor.

#### **Clause 15-Transmission of Certificate and report to the Senate**

- 98. This Clause provides that the Speaker of the County Assembly shall submit to the Speaker of the Senate a certificate of compliance of the procedure under Clause 14 of the Bill.
- 99. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 16-Proceedings before the Senate**

- 100. This Clause provides for the procedure to be followed during proceedings for the impeachment of the Governor in the Senate.
- 101. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill

#### **Clause 17-Investigation by the special committee of the Senate**

- 102. This Clause provides for investigations by the Special Committee and it may invite the Governor to appear before the Committee

#### **Stakeholder views**

- 103. **The County Assemblies Forum (CAF)** proposed the following amendment to Clause 17 of the Bill to provide for the Senate to hear representations from the MCA who moved the motion in the County Assembly and any other such members of the concerned County Assembly as it may consider necessary. *“The Senate or the special committee, as the case may be, may hear representations from the Member who moved the motion for removal by impeachment in the County Assembly and such other members of the County Assembly as it may consider necessary for the proper determination of the matter.”*

104. **Justification for the amendment** for is Similar to Clause 5(5) of the Bill in the case of impeachment of the President. This shall also afford the Senate with an opportunity to assess the issues motivating the impeachment motion, and should it fail, allow other means of resolution.

105. **Committee comments:** the Committee did not consider this submission and resolved that the Bill should not provide for the impeachment procedure of the speakers of county assemblies and their deputies.

#### **Clause 18-Proceedings without a special committee**

106. This Clause provides for proceedings without appointing a special committee will follow the procedure under section 16 but conducted by a committee sitting in plenary.

107. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill

#### **Clause 19-Decision of the Senate**

108. This Clause provides for the decision of the Senate and if they uphold the impeachment the Governor will cease holding office and they would notify the Speaker of the County Assembly accordingly.

#### **Stakeholder views**

109. **The Council of Governors (CoG)** proposed that Clause 19 of the Bill be amended to provide that an impeachment threshold of two thirds (2/3) of the county delegations in the Senate is required to impeach a Governor. The Council of Governors stated that it is important to raise the threshold required at the Senate for removal of a Governor due to the gravity of the matter at hand. The COG was of the view that the proposed amendment seeks to mirror section 33(2) of the County Government Act which provides that a motion to impeach a governor must supported by at least two-thirds of all the members of the county assembly.

110. **Committee observations:** The Committee observe; THAT;

(a) The proposal to amend Clause 19(1) of the Bill to escalate the impeachment threshold of a governor from simple majority to two-thirds of the delegations in the Senate would make it unjustifiably difficult to remove a governor from office.

(b) Whereas Article 145(7) of the Constitution was clear that a majority of two-thirds of all the members of the Senate was required to impeach the President, Article 181 of the Constitution does not provide a similar threshold for the removal of a governor. Article 181(2) gives Parliament the discretion to determine the proper threshold for the removal of a governor and the committee was of the view that the current requirement of a majority of the county delegations in the Senate should be retained.

#### **Clause 20-Right of the Governor to appear and be heard**

111. This Clause of the Bill provides for the right of the Governor to appear and be heard before the Senate, special committee or the county assembly in person or be represented.

112. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 21-Reintroduction of the motion**

113. This Clause of the Bill provides for the reintroduction of a motion in the county assembly after the expiry of 180 days from the date the Senate takes a vote.

#### **Stakeholder views**

114. **The Council of Governors (CoG)** proposed that Clause 21 of the Bill be amended to include a new sub-clause to provide that-“A re-introduction of an impeachment motion shall only be initiated twenty four (24) months after election of a Governor and not later than twelve (12) months immediately preceding the next general election”. This is to avoid MCAs taking advantage of impeachments and to allow Governors to work without constant interference. The role of MCAs is to provide oversight and not to frustrate the County Executive when they have ulterior intentions.

115. **Committee comments:** The Committee observed that

(a) The proposal by the COG that the motion for impeachment should only be reintroduced after 24 months (two years) of the election of the Governor would defeat the purpose of Article 181(1) of the Constitution which provides that a Governor may be removed from on any of the specified grounds. The Committee noted that Clause 21 of the Bill sought to protect Governors from “ceaseless” impeachment proceedings by prohibiting the re-introduction of such motions before the expiry of a period of 180 days (six months) from the date of a vote in the Senate.

(b) The Committee further observed that the use of the word “re-introduce” in the current provision makes it ambiguous as whether the motion which failed to result in the removal of a governor is the same one being introduced again after 180 days. This ambiguity opens the door for members of the county assemblies to bring a ‘different’ motion for the removal of the Governor before the expiry of the 180 days. The Committee was of the view that the provision be redrafted to clarify that no motion for removal of the Governor should be heard by the Senate until after the expiry of at least six months from the date of the vote.

116. **Committee recommendations:** The Committee recommends that the Bill be amended by deleting Clause 21 and substituting therefor the following new Clause-

*Introduction of motions      21. Where a vote in the Senate under section 19 fails to result in*

*the removal of a Governor, the Senate shall not hear any motion for the removal of the Governor until after the expiry of a period of at least six months from the date of the vote in the Senate.*

#### **Justification**

- (a) The Committee observed that the use of the word “re-introduce” in the current provision made it ambiguous as whether the motion which failed to result in the removal of a governor is the same one being introduced again after 180 days. This ambiguity opens the door for members of the county assemblies to bring a ‘different’ motion for the removal of the Governor before the expiry of the 180 days. The Committee was of the view that the provision be redrafted to clarify that no motion for removal of the Governor should be heard by the Senate until after the expiry of at least six months from the vote. This limitation on impeachment proceedings is intended to give the Governor ample time to deliver services to the county residents.
- (b) The Committee was also of the view that it was unnecessary to limit a new motion only to different facts from those which formed the subject of the failed impeachment proceedings. The Committee was of the view that the first vote may have failed due to insufficient evidence and the MCAs should be allowed to move the motion again after six months if by that time they may have now obtained the required evidence.

#### **Clause 22-Vacancy in the office of governor**

117. This Clause of the Bill provides for the arising of a vacancy under this Act which shall be filled subject to article 182 of the Constitution

#### **Stakeholder views**

118. **Kenya Law Reform Commission (KLRC) proposed that Clause 22 of the Bill** be deleted and redrafted to read as follows: *“A vacancy in the office of the President, Deputy President, Cabinet Secretary, Governor, Deputy Governor or County Executive Committee Member, arising under this Act, shall be filled as provided for in the Constitution or this Act.”*
119. **Committee comments:** The committee observed that the current provision made no reference to the manner of filling of vacancies arising under the Act in the office of the President, the Deputy President, a Cabinet Secretary and a deputy Governor. The Committee thus agreed with the proposals by the KLRC that the Clause be redrafted to include all the other impeachable offices in addition to the office of the Governor.
120. **Committee recommendations:** The Committee recommends that the Bill be amended by deleting Clause 22 and substituting therefor the following new Clause-  
*Vacancies arising under the Act*      22. *A vacancy in the office of the President, Deputy President, Cabinet Secretary, Governor or Deputy Governor arising under this Act shall be filled as provided for in the Constitution or this Act.*

121. **Justification:** The committee observed that the current provision made no reference to the manner of filling of vacancies arising under the Act in the office of the President, the Deputy President, a Cabinet Secretary and a deputy Governor. The Committee thus agreed with the proposals by the KLRC that the Clause be redrafted to include all the other impeachable offices in addition to the office of the Governor.

#### **Clause 23-Removal of a Deputy Governor**

122. This Clause of the Bill provides for the procedure of removal of the Deputy Governor which is similar to the Governor's but modified.

123. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 24-Vacancy in the office of Deputy Governor**

124. This Clause of the Bill provides for a vacancy in the office of the Deputy Governor and that the 14 day timeline a governor has to nominate a person to fill the vacancy with the approval of the County Assembly.

125. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 25-Simultaneous vacancies**

126. This Clause of the Bill provides for simultaneous vacancies in the office of both the Governors and the Deputy Governor which are to be dealt with under Article 182 of the Constitution.

127. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill

#### **Clause 26-Questions on as to validity of removal of Governor or Deputy Governor**

128. This Clause of the Bill provides for questioning the validity of the impeachment with the option of appeal or review.

129. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill

#### **4.6 Part V on Procedure for Removal from office of a County Executive Committee**

##### **Member**

#### **Clause 27-Impeachment of a county executive committee member**

130. This Clause of the Bill provides for a motion for the impeachment of a member of the county executive committee which is to be supported by at least a third of the members of the county assembly.

**Clause 28-Procedure for the impeachment of a county executive committee member**

131. This Clause of the Bill provides for the procedure of the impeachment from submitting the motion in writing to the speaker to the appointment of a committee to investigate the allegations against them, conducting of a vote by the members of the County Assembly to the effecting of the dismissal by the Governor.

**Stakeholder views**

132. **County Assemblies Forum (CAF)** proposed to amend Clause 28(1) of the Bill to read as follows-

- (a) A Member of the County Assembly who proposes to move a motion under section 27 shall submit to the Clerk of the County Assembly the motion together with a list of at least one-third of the Members of the County Assembly who support the motion, in the form prescribed in the schedule.*
- (b) The Clerk of the County Assembly shall confirm that the proposed motion—*
  - (i) states the grounds and particulars upon which the proposed motion is made;*
  - (ii) is signed by the Member; and*
  - (iii) is signed in support by at least one third of all the Members of the County Assembly.*
- (c) The Clerk of the County Assembly shall submit the proposed motion to the Speaker who shall examine the proposed motion and the list of supporting members submitted under subsection (2).*
- (d) The Speaker shall examine the proposed motion and the list containing the names of the supporting members submitted under subsection (2), and if satisfied that the motion— (a) complies with subsection (1), approve it and inform the Member within three days; or (b) does not comply with subsection (1), decline to approve the motion and inform the Member within three days giving reasons for the refusal.*

133. **CAF justification for the amendments:** The proposed amendments correspond with Clause 9(2) of the Bill as relates to the removal from office of a Cabinet Secretary. Similarly, excluding the head of the technical arm from the process risks having the entire proceedings perceived as being politically motivated.

134. **Committee comment:** The Committee did not consider this submission having resolved that the Bill should not provide for the impeachment procedure of the speakers of county assemblies and their deputies.

135. **The Kenya Law Reform Commission (KLRC)** proposed that Clause 28(4) of the Bill be amended to use the word “informing” instead of the word “Advising”.

136. **Committee comments:** The Committee did not consider this submission having resolved that the Bill should not provide for the impeachment procedure of members of county executive committees.

#### **Clause 29-Rights of the county executive committee member to appear and be heard**

137. This Clause of the Bill provides for the right of the Member of county executive committee to appear in person or be represented before the Committee.

#### **Stakeholder views**

138. **Kenya Law Reform Commission (KLRC)** proposed that Clause 29 be amended by deleting the letter “s” at the end of the word “rights” in the marginal note for correction of a typographical error

139. **Committee comments:** The Committee noted the typographical error in the marginal note to clause 29 of the Bill as pointed out by the KLRC. The Committee was of the view that the Speaker of the originating House (the Senate) has the power to correct the formal mistake in accordance with the mandate granted by the Standing Orders of the Houses.

140. The Committee observed that the stature of the office of a member of the county executive committee did not warrant the invocation of a statutory impeachment procedure. The Committee resolved that members of the county executive committee should not be ‘impeached’ but may be ‘removed’ from office in accordance with the procedure set out in section 40 of the County Government Act, No. 17 of 2012.

141. **Committee recommendations:** The Committee recommends that the Bill be amended by deleting Part V-Procedure for Removal from Office of a County Executive Committee Member (Clauses 27, 28 And 29)

#### **Justifications**

(a) The Committee was of the view that the stature of the office of a member of the county executive committee did not warrant the invocation of a statutory impeachment procedure. The Committee resolved that members of the county executive committee should not be ‘impeached’ but may be ‘removed’ from office in accordance with the procedure set out in section 40 of the County Government Act, No. 17 of 2012.

(b) The Committee observed that the concept of impeachment originated in the United Kingdom in the 14th century as a means of Parliament to exercise some measure of control over the King. An impeachment proceeding in England was a direct method of bringing into account the King's ministers and favourites-men who might have otherwise

been out of reach. Impeachment, at least in its early history, has been called "the most powerful weapon in the political armoury, short of civil war."<sup>1</sup> It played a continuing role in the struggles between the King and Parliament that resulted in the formation of the unwritten English constitution. In this respect, impeachment was one of the tools used by the English Parliament to create more responsive and responsible government and to redress imbalances when they occurred.

(c) The Committee further observed that the framers of the United States Constitution adopted the United Kingdom impeachment process in the United States government model. The United States Constitution provides that the House of Representatives "*shall have the sole Power of Impeachment*" (Article I, section 2) and that "*the Senate shall have the sole Power to try all Impeachments...[but] no person shall be convicted without the Concurrence of two-thirds of the Members present*" (Article I, section 3). The president, vice president, and all civil officers of the United States are subject to impeachment. Through the impeachment process, Congress charges and then tries an official of the federal government for "*Treason, Bribery, or other high Crimes and Misdemeanors.*" The definition of "high Crimes and Misdemeanors" was not specified in the Constitution and has long been subject to debate.

(d) The Committee thus resolved that a statute that provided for the impeachment procedure of the President, the Deputy President, Governors and Cabinet Secretaries should not include members of the county executive committee whose office is of a different stature. The members of county executive committees should be removed from office in accordance with the procedure set out in section 40 of the County Government Act, No. 17 of 2012.

#### **4.7 Part VI-Miscellaneous**

##### **Clause 30-Substantiation of allegation**

142. This Clause of the Bill provides for the substantiation of allegations which is to be guided by the Constitution or this Act.

143. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill

##### **Clause 31-Service**

144. This Clause of the Bill provides for effecting of service to appear before any House of Parliament, its committee or County Assembly or its Committee for the purposes of this Act is through personal service, through an agent or through notice of a newspaper of nationwide circulation.

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<sup>1</sup> Plucknett, "Presidential Address" reproduced in 3 *Transactions, Royal Historical Society*, 5th Series, 145 (1952).

145. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that the clause be agreed to as it appears in the Bill.

#### **Clause 32-Public notice and access to proceedings**

146. This Clause of the Bill provides for a publication of a notice giving access to the public to attend the proceedings.

147. **The Kenya Law Reform Commission (KLRC)** submitted that Clause 32 implies that the Clerks of Senate and National Assembly may make invitations to the public to submit memoranda for impeachment of the President and Cabinet Secretary as is the case with the impeachment procedure against the Governor or Deputy Governor. The KLRC proposed that the provision be aligned for consistency throughout the whole Bill.

148. **Committee observations:** The committee observed that

(a) The submissions by the KLRC was of the view that nothing in Clause 32 of the Bill empowered the Clerks of the Houses to invite the public to submit memoranda for or against the impeachment of the President or a Cabinet Secretary as alluded to by the KLRC. The Clause only requires the Clerks to publish notices in newspapers of nationwide circulation informing the public of the date, place and time of impeachment hearings.

(b) The Committee was of the view that the provision seeks to implement Article 118 of the Constitution which requires Parliament to conduct its business in an open manner and should not be mistaken as an invitation to the public to submit memoranda.

#### **Clause 33-Transition**

149. This Clause of the Bill provides for court proceedings; a matter filed under this Act is to be heard within 30 days from filing. An appeal is to be heard within 45 days from appeal

150. **Committee comments:** The Committee noted that there were no stakeholder comments received on this clause and recommends that Clause 33 of the Bill be amended by deleting paragraph (b).

151. **Justification:** This is a consequential amendment to the Committee's decision to delete Part V of the Bill. It is imperative that section 40 of the County Governments Act, 2012 is not deleted since that is the provision that provides the procedure for the removal from office of members of the county executive committees.

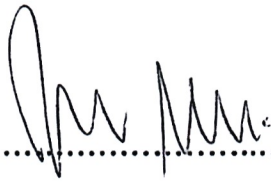
152. **The Schedule** provides for the format of the motion and list of members supporting an impeachment

153. **Committee comments:** The Committee noted that there were no stakeholder comments received on the schedule and recommends that the provision be agreed to as it appears in the Bill.

CHAPTER 5

5.0 COMMITTEE RECOMMENDATIONS

154. The Committee, having considered the Bill clause by clause and submissions by the various stakeholders recommends that the Bill be passed with amendments as proposed in chapter 4 of the report.

Signed..........Date.....1<sup>st</sup> October, 2020.....

Hon.Muturi Kigano, M.P.

Chairperson, Departmental Committee on Justice and Legal Affairs

# ANNEXURES

**ANNEXURE 1**  
**MINUTES**

**MINUTES OF THE TWENTY SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY 10<sup>TH</sup> SEPTEMBER, 2020 AT 9:00 A.M IN OAK ROOM, WINDSOR GOLF AND CLUB HOTEL**

**PRESENT-**

1. Hon. Clement Muturi Kigano, M.P. - Chairperson
2. Hon. (Dr.) Paul Otiende Amollo, M.P - Vice Chairperson
3. Hon. John Olago Aluoch, M.P.
4. Hon. Peter Opondo Kaluma, M.P.
5. Hon. William K. Mwamkale, M.P
6. Hon. Zuleikha Hassan, M.P.
7. Hon. Robert Gichimu Githinji, M.P
8. Hon. Adan Haji Yussuf, M.P
9. Hon. Jennifer Shamalla, M.P.
10. Hon. George G. Murugara, M.P
11. Hon. Anthony G. Kiai, M.P.
12. Hon. Japheth Mutai, M.P.
13. Hon. Anthony Oluoch, M.P.
14. Hon. John M. Wambugu, M.P.

**ABSENT WITH APOLOGIES-**

1. Hon. Junet Sheikh Nuh Mohamed, M.P
2. Hon. Emmanuel Wangwe, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Josephine Naisula Lesuuda, M.P.
5. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Mr. Abenayo Wasike | - | Senior Clerk Assistant  |
| 2. Ms. Halima Hussein | - | Second Clerk Assistant  |
| 3. Mr. Denis Abisai   | - | Principal Legal Counsel |
| 4. Mr. Job Owaga      | - | Audio Officer           |

**COMMITTEE SECRETARIAT-**

**MIN No. 01/2020:-**

The meeting commenced at 9:30 a.m with a word of prayer from Chairperson and the agenda was adopted as filed.

**PRELIMINARIES**

**MIN No.02/2020:-**

Agenda was deferred.

**CONFIRMATION OF MINUTES**

MIN No.03/2020:-

REPORT ON THE STATUTE LAW  
MISCELLANEOUS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY NO.15 OF 2020)

The Committee considered and unanimously adopted its draft report on the Statute Law Miscellaneous (Amendment) Bill, 2020 with the following recommendations. The adoption was proposed by Hon. William Kamoti and seconded by Hon Anthony Kiai.

1) **The Political Parties Act 2011 (No. 11 of 2011)**

The Committee recommended that the proposed amendment to section 24(1) of the Political Parties Act, No.11 of 2011, be deleted from the Bill.

**Justification:** the amendment would lead to reduced allocations to the Political Parties Fund and should be rejected

2) **The Kenya National Commission on Human Rights Act 2011 (No. 14 of 2011)**

- a) The Committee recommended that the proposed amendment to section 8 of the Kenya National Commission on Human Rights Act 2011, No. 14 of 2011, be deleted from the Bill.

**Justification:** The Committee was of the view that the Kenya National Commission on Human Rights had a wide mandate under section 8 of the Act and there was, therefore, no need for them to seek to perform a function bestowed on the Attorney-General by existing law.

- b) The Committee further recommended that the proposed amendment to section 11(14) of the Kenya National Commission on Human Rights Act 2011, No. 14 of 2011, be deleted from the Bill.

**Justification:** The Committee was of the view that the proposal to remove Public Service Commission was not justifiable since the Commission has the mandate to promote the values and principles of public service under Article 232 of the Constitution

3) **The Kenya Law Reform Commission Act, 2013 (No. 19 of 2013)**

- a) The Committee recommended the proposed amendment be amended to read as follows:

Section 8(1)(b): Delete and substitute therefor the following new paragraph-“(b) *One member appointed by the Attorney-General through a competitive process*”

**Justification:** The Committee was of the view the amendment will reduce the number of members the Attorney-General was to appoint competitively from two to one since the current voting members of the Kenya Law Reform Commission are six and they need to be reduced to five for effective decision making, in case of a tie during the voting process.

- b) Proposed amendment to section 8(1)(c) : Delete and substitute therefor the following new paragraph- “(c) *a representative of the Law Society of Kenya*”

**Justification:** The Committee noted that it was important for the provision to clarify that the representative of the Law Society of Kenya should be an advocate of the High Court of Kenya to avoid the possibility of an unqualified person being appointed to represent the society in the Commission.

- c) Proposed amendment to section 8(3): Delete and substitute therefore the following new sub-section- *“(3) the representatives of the Attorney-General, the Director of Public Prosecutions and the Chief Justice, respectively shall be ex officio members of the Commission”*

**Justification:** The amendment sought to clarify that the public officers appointed as members of the Commission under those provisions are the ones being designated as ex officio members.

**4) The Court of Appeal (Organization and Administration) Act, 2015 (No. 28 of 2015)**

The Committee recommended that the proposed amendments to section 26 (1) of the of the Court of Appeal (Organization and Administration) Act, 2015, be deleted from the Bill.

**Justification:** The Committee observed that the proposed amendment sought increase the duration during which the Judges serving in the Court of Appeal shall be in statutory recess in addition to their normal leave days. The Committee was of the view that increasing the duration of the Court recess will lead to increased case backlog in the judiciary leading to additional costs to litigants and other stakeholders in the law and justice sector.

**MIN No. 04/2020:**

**REPORT ON IMPEACHMENT PROCEDURE BIL(SENATE BILL NO.15), 2018**

The Committee considered and unanimously adopted its draft report on the Impeachment Procedure Bill (Senate Bill No. 15 of 2018) with the following recommendations. The adoption was proposed by Hon. Adan Haji and seconded by Hon Otiende Amollo

- 1) Clauses 4, 9 and 14 of the Bill be amended
  - (a) by deleting sub-clause (3);
  - (b) in sub-clause (4) by inserting the word “immediately” after the word “shall”;
  - (c) by deleting sub-clause (5) and substituting therefor the following new sub-clause-
    - (5) The Speaker shall examine and confirm that the proposed motion-
      - (i) specifies the grounds and particulars upon which the proposed motion is made;
      - (ii) is signed by the Member; and
      - (iii)Is signed by at least a third of all the Members of the National Assembly.

(d) by inserting the following new sub-clause immediately after the proposed new sub-clause (5)-(6) If the Speaker is satisfied that the proposed motion-

(i) complies with sub-section (5), the Speaker shall approve the motion and inform the Member within three days; or

(ii) Does not comply with sub-section (5), the Speaker shall refuse to approve the motion and inform the Member within three days giving reasons for the refusal.

(e) By renumbering the other sub-clauses accordingly.

2) The Bill be amended by deleting Clause 21 and substituting therefor the following new Clause-

*Introduction of motions*      21. Where a vote in the Senate under section 19 fails to result in the removal of a Governor, the Senate shall not hear any motion for the removal of the Governor until after the expiry of a period of at least six months from the date of the vote in the Senate.

3) The Bill be amended by deleting Clause 22 and substituting therefor the following new Clause-

*Vacancies arising under the Act*      22. A vacancy in the office of the President, Deputy President, Cabinet Secretary, Governor or Deputy Governor arising under this Act shall be filled as provided for in the Constitution or this Act.

4) The Bill be amended by deleting Part V-Procedure for Removal from Office of a County Executive Committee Member (Clauses 27, 28 And 29)

MIN No. 05/2020:

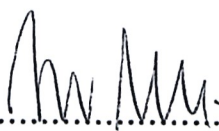
ANY OTHER BUSINESS

No matter arose

MIN No. 06/2020:

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at 1:00 p.m. Next Meeting at 2.30 p.m.

Signed..........  
Chairperson

Date...1st October, 2020

**ANNEXURE 2**  
**ADOPTION LIST**

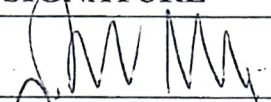
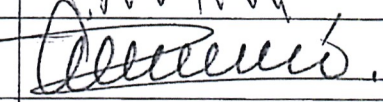
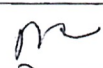
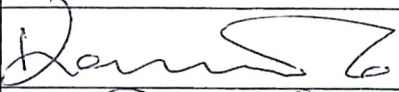

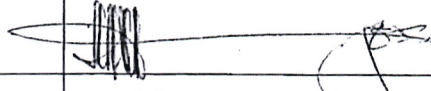
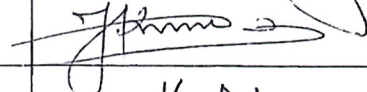

Annexure 2

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION LIST FOR THE REPORT ON THE CONSIDERATION OF  
THE IMPEACHMENT PROCEDURE BILL (SENATE BILL NO. 15  
OF 2018)

DATE: THURSDAY 10<sup>TH</sup> SEPTEMBER, 2020

VENUE: THE OAK ROOM, WINDSOR GOLF CLUB HOTEL

NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. - <b>Chairperson</b>	
2.	Hon. (Dr.) Paul Otiende Amollo, M.P. - <b>Vice- Chairperson</b>	
3.	Hon. Emmanuel Wangwe, M.P.	
4.	Hon. Junet Sheikh Nuh Mohamed, M.P	
5.	Hon. John Olago Aluoch, MP.	
6.	Hon. Roselinda Soipan Tuya, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Mwamkale Kamoti, MP.	
9.	Hon. Zuleikha Hassan, MP.	
10.	Hon. Josephine Naisula Lesuuda, M.P.	
11.	Hon. George Gitonga Murugara, MP.	
12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	
14.	Hon. Anthony Githiaka Kiai, MP.	 KIAI

15.	Hon. Jennifer Shamalla, MP.	<i>Jennifer Shamalla</i>
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. John Munene Wambugu, MP.	
18.	Hon. Anthony Oluoch, M.P.	<i>Anthony Oluoch</i>
19.	Hon. Robert Gichimu Githinji, M.P	<i>Robert Gichimu Githinji</i>

A.M Wasike

~~AM~~

16/09/2020

ANNEXURE 3  
NEWSPAPER  
ADVERTISEMENT

HISTORY: You have not given any consideration to me as your number two in State matters. I have a conscient

# Ruto woes not new as Jaramogi and Kibaki

The vice-presidency in Kenya is a poisoned chalice, especially when succession politics comes into play. It has been so from independence to the present

BY JOHN KAMAU  
jkamau@ke.nationmedia.com

Of late, Deputy President William Ruto sounds like an injured tiger. He is angry. Cornered. And willing to fight those determined to eclipse his political goals.

His only solace is that his position as DP is protected by the Constitution, although he seems to have lost his place within President Uhuru Kenyatta's inner circle.

For the past two years, ever since President Kenyatta managed to tame Opposition leader Raila Odinga's political anger with a "handshake", security and a promise to right some historical wrongs through the Building Bridges Initiative, the star of Dr

Ruto has been dimming within the government, but still shining among his supporters.

Apart from Mr Odinga, who took on his tormentors head-on from January 1965 to April 1966 - when he threw in the towel, no other vice-president has staged a formidable fight to save his place as Dr Ruto has done.

The DP seems to blame his woes on the system - even though he is a member of the National Security Council, whose mandate is to "exercise supervisory control over national security organs", including the military, the police and the National Intelligence Service.

But his body language, of late,

appears to indicate that he may have lost the confidence of such security organs.

That Dr Ruto has not raised those issues within the National Security Council - and has opted to discuss them in public meetings - indicates that he is willing to fight, and score, at public forums.

It is not the first time that a vice or deputy president has found himself in a similar predicament due to succession wars.

Moi's VP Mwai Kibaki found himself restricted to his native Nyeri District and few politicians would dare invite him to their districts. The fear among Moi's inner circle was that Mr Kibaki was capable of building a national image and perhaps become a threat to Moi.

But Kibaki faced the humiliation he went through silently - and hardly raised his voice until he found that his position as a politician was

under threat during the 1988 queue voting saga.

By failing to take on his tormentors, Kibaki would be regarded as a "coward" by his detractors - although he later on rose to become one of the most successful presidents.

At the moment, and in public, the DP does not seem to take on President Kenyatta, who appears to have abandoned him to sink or swim in 2022.

Again, the DP has been rubbishing the war against corruption, claiming it was targeting particular people, while President Kenyatta sees the graft fight as one of the hallmarks of his rule.

Mr Odinga's party is now threatening an impeachment motion against Dr Ruto, but the latter remains unbowed. "Since the system cannot elect anybody, they can only kill. But there is GOD in heaven," he posted on Twitter.

## How Kenyatta's inner circle humiliated Jaramogi

Before he fell, Jomo Kenyatta's Vice-President Jaramogi Oginga Odinga was embroiled in a damaging arms scandal. This was after

guns were found in the basement of his Jogoo House office.

Odinga knew about the guns - and as he later claimed - so did Kenyatta and some members of the Cabinet.

It was 1964 and Kenya was preparing to become a republic. According to Odinga, some rumours were started in British papers in mid-1964 that he was preparing to take over the

government while Kenyatta was away attending the Commonwealth Prime Ministers' Conference.

As Kenyatta left, he appointed Joseph Murumbi as the acting prime minister, even though Odinga was the second senior-most politician in the country. That meant that he believed the rumours that Odinga was the "evil genius".

It was reported that Odinga had imported arms - guns, rifles, ammunition, medicine and radio sets - from communist countries and that they were stored in the basement of his office.

As Home Affairs minister, Odinga was in charge of the police and prisons and it had been "agreed" between him, Kenyatta and External Affairs minister Joseph Murumbi that the police force should be well equipped before the British left.

"The Prime Minister wanted to be able, if necessary, to equip the police independently of Britain," Odinga would later write.

Although the arms, according him, came designated as cargo for the Prime Minister, it was agreed that some of the arms should be stored in the basement of Odinga's ministry building.

"Part of the consignment was in the safekeeping of Kenyatta himself," he wrote.

But the arms saga was used by anti-Odinga elements within the Kenyatta government, led by Tom Mboya, to damage his reputation as Kenya's transition to a republic began.

It was Defence Minister Njoroge Mungai who "discovered" the arms and invited the international press to come and witness the cache of weapons that Odinga had imported.

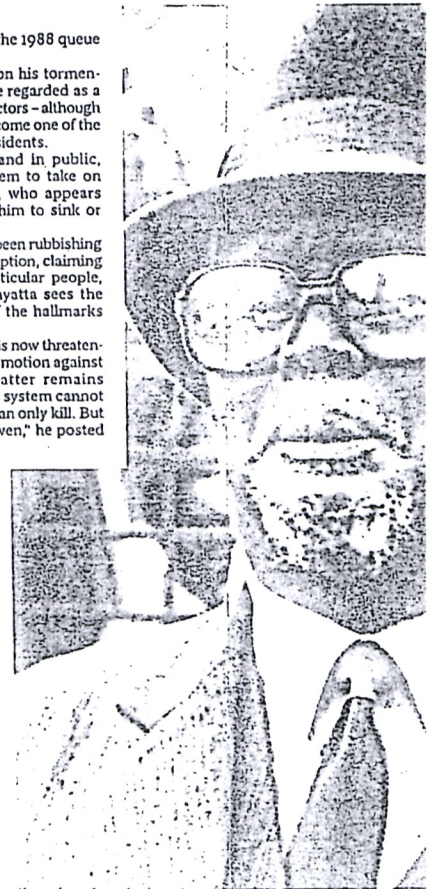
The timing was perfect. Odinga was away and the raid had been leaked to the media.

"I was not even informed of the proposed removal... I reacted as coolly as possible to the provocations. For the most part, I let them slide," Odinga would later remark.

But neither Kenyatta nor Murumbi came out to tell the story behind the arms.

"The country was left with the impression that there might possibly be some truth in these reports about my plotting," Odinga added.

Kenyatta, or rather the inner circle, was immediately gathering



Jaramogi Oginga Odinga.

It all started shortly before independence, when Kenyatta, as Prime Minister, failed to appoint Odinga - by then one of the leading figures in Kanu - into the Cabinet and he only came to learn about it from Achleng Oneko, who was acting as Kenyatta's private secretary.

The British had convinced Kenyatta to leave out Odinga's name because they feared his communist links.

"I was taken aback," Mr Odinga wrote in his book, *Not Yet Uhuru*. "But I decided that this was no time to make an

In the Cabinet, I was being excluded from decision-making, and at one and the same time, my membership of the Cabinet was used to silence me and to hold the allegiance of my supporters

issue of my exclusion. I could to ensure that my final list included men genuine representativ people's cause."

Odinga blamed the colonial government according to him, w to "divide the Kanu r time by driving a wedge Kenyatta and me. I lically that I had been a witch-hunting aimed a Kanu and slowing dow of Kenya's independe

Slowing down Od become the pastime politicians who were sy to western democraci supremacy wars star the Kenyatta governr

Although Kenyatta l Odinga as his first idant, that did not nemesis's bid to det from the number two

At that time, from focus had turned o mumba Institute, Road, where Kanu w its junior officers

REPUBLIC OF KENYA

**NATIONAL ASSEMBLY**  
**TWELFTH PARLIAMENT - FOURTH SESSION**

In the Matter of consideration by the National Assembly

1. The Impeachment Procedure Bill (Senate Bill No. 15 of 2018)
2. Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 27 of 2018),
3. The Determination of the Nature of Bills (Procedure), Bill (Senate Bill No. 8 of 2018)

**SUBMISSION OF MEMORANDA**

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127(3) provides that, "The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Impeachment Procedure Bill (Senate Bill No. 15 of 2018) seeks to provide for the procedure for removal from office by Impeachment of a President, Deputy President, Cabinet Secretary, Governor, Deputy Governor and member of a county executive committee.

Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 27 of 2018) seeks to establish a framework for the preservation of human dignity, for the promotion, monitoring and enforcement of economic and social rights. The Act further seeks to establish mechanisms to monitor and promote adherence by county governments to Article 43 of the Constitution.

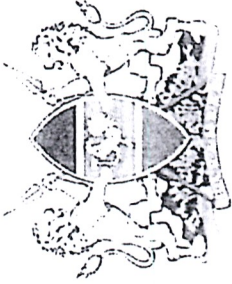
The Determination of the Nature of Bills (Procedure), Bill (Senate Bill No. 8 of 2018) seeks to provide procedure for the Speakers of the National Assembly and the Senate to determine the nature of a Bill and for connected purposes.

The Impeachment Procedure Bill (Senate Bill No. 15 of 2018, Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 27 of 2018) and the Determination of the Nature of Bills (Procedure), Bill (Senate Bill No. 8 of 2018) have undergone First Reading pursuant to Standing Order 127 (3) and stand committed to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bills. The submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100,

ANNEXURE 4  
STAKEHOLDERS  
SUBMISSIONS

# **COUNCIL OF GOVERNORS COMMENTS**



COUNCIL OF GOVERNORS

MEMORANDUM TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE IMPEACHMENT PROCEDURE BILL 2018

FROM

THE COUNCIL OF GOVERNORS

10<sup>TH</sup> JULY 2020

1  
14/07/20  
14/07/20  
14/07/20

② WASIKI  
please deal  
FAA  
14/7/20

14/07/20

NATIONAL ASSEMBLY  
RECEIVED  
GOVERNOR'S OFFICE  
P.O. BOX 1842, NAIROBI

THE NATIONAL ASSEMBLY  
RECEIVED  
13 JUL 2020  
DIRECTOR GENERAL'S OFFICE  
Time: .....

## INTRODUCTION

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2)

In further recognition of the need to ensure that all legislation is cognizant of devolved governments; and

Aware of the need for coordinated action between the National and County Governments to ensure that these legislations properly respond to the key issues, and further reflects the spirit and purpose of the devolution process.

This memorandum address the concerns on the impeachment procedures that would ensure procedural justice for every person who is sought to be impeached. This legislative proposal is partly informed by challenges identified from the several proceedings for the removal of a Governor.

## Specific Concerns

Section 33 of the County Governments Act provides for the procedure of removal of an erring Governor. The organ vested with the mandate at first instance to move a motion for the removal of a County Governor is the County Assembly. Neither the Courts nor the Senate have the constitutional mandate to move a motion for the removal of a County Governor. The Senate's constitutional mandate to hear charges against a Governor is activated upon receipt of a resolution of the County Assembly to remove a Governor. Upon receipt of such a resolution, the Senate shall convene a meeting to hear the charges against the Governor and may appoint a Special Committee to investigate the matter. The Council supports the bill as it address the above cited procedure and provides specific timelines to be followed.

The Courts have pronounced itself on the question whether the County Assembly and Senate have exclusive mandate and jurisdiction to remove a Governor from office and the threshold for removal of a Governor from Office in Nyeri Civil Appeal No. 21 of 2014:-Martin Nyaga Wambora & 3 others v Speaker of the Senate & 6 others, Kerugoya Constitutional Petition No. 3 Of 2014:-Martin Nyaga Wambora & 4 Others VS Speaker Of The Senate & 6 Others and Petition 32 of 2014.

The memorandum is presented in a tabular form setting out the clause and the issue the clause raises, the preferred proposal by CoG or in the alternative a comment on the issue and a justification either on the proposal or the comment.

Table presenting the issue in contention, proposal and justification

Clause	Provision in the Bill	CoG PROPOSAL /COMMENT	JUSTIFICATION
<p>Clause 14</p> <p>Proceedings in the County Assembly for the removal of a Governor:</p>	<p>14 (2) The Speaker of the county assembly shall examine the motion and the list of supporting members submitted under subsection (1) and, if satisfied that the motion</p> <p>(a) complies with section 13, approve the motion and notify the member within four days; or</p> <p>(b) does not comply with section 13, decline to approve the motion and inform the member within four days giving reasons for the refusal.</p>	<p>Amend clause 14 (2B) to read</p> <p>“does not comply with section 13, decline to approve the motion and inform the member within three days giving reasons” in writing” for the refusal.</p>	<p>The Council advocates for the reasons for declining to approve the motion be done in writing for record purposes. This is to avoid bringing up the same subject matter/facts/evidence for discussion.</p>

<p>14(9) Within two days of a member of the county assembly giving notice under subsection (7), the Clerk of the county assembly shall advertise in a newspaper of nationwide circulation -</p> <ol style="list-style-type: none"> <li>the particulars of the motion; and</li> <li>calling for submission of written memoranda from the public in relation to the charges against the Governor within seven days.</li> </ol>	<p>Amend 14(9) and add advertise in radio stations in every ward.</p> <p><b>Amend 14 (9b) to read as follows:-</b></p> <ol style="list-style-type: none"> <li>calling for submission of written memoranda from the public in relation to the charges against the Governor within Thirty days.</li> <li><b>Include a new clause immediately after 9(b) to read as follows:-</b></li> <li>Calling for oral submissions from the public or any interest group in relation to the charges against the governor within 30 days</li> <li><b>Include a new clause to read as follows:-</b></li> <li>The motion for impeachment shall be supported by at least 30% of registered voters in all the</li> </ol>	<p>This is to ensure that everyone in the Counties and wards are aware of the public participation. They are the people who elected the governor and its important for them to participate.</p> <p>The timeline for submitting the written memorandum is very short hence need to give members of the public at least 30 days to submit the same. This is in order to comply with the principle of public participation as set up in Civil Appeal No. 21 of 2014 in the case of Martin Nyaga Wambora Vs. Senate and 6 others.</p>
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*Annexure 4B*

**COUNTY ASSEMBLIES FORUM  
COMMENTS**



Annexure 4 E

## COUNTY ASSEMBLIES FORUM (CAF)

Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552- 00200 Nairobi Kenya Tel: 0701 046 933  
Email:communication@countyassembliesforum.org www.countyassembliesforum.org

### MEMORANDUM ON THE IMPEACHMENT PROCEDURE BILL, 2018

**TO:** Mr. Michael Sialai, MBS  
Clerk of the National Assembly, Parliament of Kenya.

**FROM:** The County Assemblies Forum (CAF).

**DATE:** Monday, July 13, 2020.

**SUBJECT:** CAF Memorandum on the Impeachment Procedure Bill,2018

**KENYA LAW REFORM COMMISSION  
COMMENTS**

10/16

Annexure 4

# KENYA LAW REFORM COMMISSION



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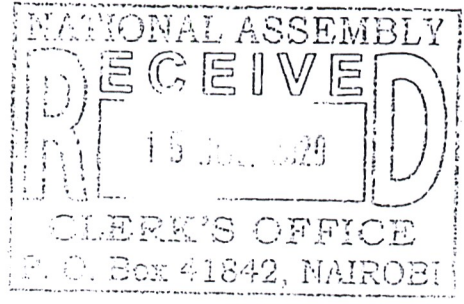
"A Vibrant Agency for Responsive Law Reform"  
Telegrams: "LAWREFORM" NAIROBI  
Telephone: Nairobi, +254-20-2241186/2241201  
Fax: +254-20-2225786  
www.info@klrc.go.ke

KENYA LAW REFORM COMMISSION  
REINSURANCE PLAZA  
3RD FLOOR  
TAIFA ROAD  
P.O. Box 34999-00100  
NAIROBI, KENYA

When replying to **KLRC/RES/93.VOL.III(28)**

Ref. No. \_\_\_\_\_ and Date \_\_\_\_\_

The Clerk,  
National Assembly  
Parliament Buildings  
P O Box 41842 - 00100  
NAIROBI,



14<sup>th</sup> July, 2020

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Dear \_\_\_\_\_,

**RE: CONSIDERATION OF THE IMPEACHMENT PROCEDURE BILL.**

The above refers.

The Kenya Law Reform Commission (KLRC) is mandated to keep under review all the law and recommend its reform to ensure that it conforms to the letter and spirit of the Constitution, that it systematically develops the law in compliance with the values and principles enshrined in the Constitution and to ensure that the law is consistent, harmonized, just, simple, accessible, modern and cost effective in application.

One of the key functions of KLRC is to consult and collaborate with State and non-State organs, departments or agencies in the formulation of legislation to give effect to the social, economic and political policies for the time being in force.

In light of this, KLRC hereby forwards the following comments in consideration of the Impeachment Procedure Bill:

PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
Clause 1	Amend to read Impeachment Procedure Act, 2020.	To reflect current date.
Clause 9	Make a provision for the motion against a Cabinet Secretary to be heard by the	To align with parliamentary procedures and the Standing Orders on how matters before

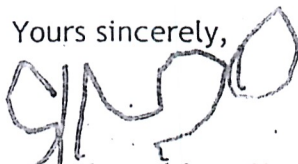
PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
	whole House or a select Committee	<p>the House are heard and determined.</p> <p>Matters laid before the House may be heard by a Committee of the whole House or a select Committee.</p> <p>To ensure consistency.</p> <p>Amend clause 10 accordingly.</p>
Clause 14 (4)	<p>It is unclear what "advising the Speaker of the determination made under subsection (3)" means.</p> <p>Propose use of the word "informing" instead.</p>	<p>Clauses 4 (4) and 9 (5) of the Bill do not make a provision for the Clerk of the respective Houses to advise the Speaker of their determination.</p> <p>The Clerk's role in the legislature is purely administrative in nature.</p>
Clause 22	Delete the clause.	<p>Redraft the clause to read as follows and move it to the Miscellaneous provisions:</p> <p>"A vacancy in the office of the President, Deputy President, Cabinet Secretary, Governor, Deputy Governor or County Executive Committee Member, arising under this Act, shall be filled in the manner provided for in the Constitution or this Act."</p>
Clause 28 (4)	<p>It is unclear what "advising the Speaker of the determination made under subsection (3)" means.</p> <p>Propose use of the word "informing" instead.</p>	<p>Clauses 4 (4) and 9 (5) of the Bill do not make a provision for the Clerk of the respective Houses to advise the Speaker of their determination.</p> <p>The Clerk's role in the legislature is purely</p>

PROVISION IN THE BILL	KLRC PROPOSAL	RATIONALE
Clause 28	Make a provision for the motion against a County Executive Committee Member to be heard by the whole House or a select Committee	To align with parliamentary procedures and the Standing Orders on how matters laid before the House are concluded.  Matters laid before the House may be heard by a Committee of the whole House or a select Committee.  To ensure consistency.  Amend clause 29 accordingly.
Clause 29	Delete the letter "s" at the end of the word "rights" in the marginal note.	Correction of a typographical error.
Clause 32	This clause implies that the Clerks of the Senate and National Assembly make invitations to the public to submit memoranda for impeachment of the President and Cabinet Secretary as is the case with the impeachment procedure against the Governor or Deputy Governor	Align for consistency throughout the whole Bill.

We conclude by stating that KLRC is committed to ensuring that legislation is drafted to the highest standards possible to promote their legal effectiveness, clarity and intelligibility to anticipated users.

As always, we thank you for your continued cooperation.

Yours sincerely,



Hon. Josephine Sinyo, Ebs  
Ag, SECRETARY/ CHIEF EXECUTIVE OFFICER



REPUBLIC OF KENYA  
OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Annexure 40  
② NAIK  
Please deep  
FOA  
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AG/LDD/522/1/22

28<sup>th</sup> July, 2020

Mr. Michael Sialai EBS  
Clerk of the National Assembly  
Clerk's Chambers  
Parliament Buildings  
P.O. Box 41842-00100  
NAIROBI

①  
Oleus 29/7

RE: CONSIDERATION OF THE IMPEACHMENT PROCEDURE BILL (SENATE BILL NO. 15 OF 2018)

This has reference to your letter dated the 1<sup>st</sup> July 2020, and Ref. No. NA/DCS/JLAC/2020/06, regarding comments and recommendations on the Impeachment Procedure Bill (Senate Bill No. 15 of 2020).

Having perused the Bill, we find that it does not raise any significant constitutional or statutory issues and consequently, you may proceed as necessary.

P. Kihara Kariuki  
ATTORNEY-GENERAL

Copies to: Mr. Kennedy Ogeto CBS  
Solicitor-General

