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REPUBLIC OF KENYA

13TH PARLIAMENT | 5TH SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

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REPORT ON A PETITION BY MR. LABAN OMUSUNDI REGARDING
THE ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR
RECALL OF THE PRESIDENT OR A GOVERNOR THROUGH A
CITIZEN INITIATIVE

PAPERS LAID	
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COMMITTEE	JLAHR
CLERK AT THE TABLE	Abdirahman

on behalf
of the chair JLAHR

15/06/26
APPROVED
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AMASON J. KINGI

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

May, 2026

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LIST OF ABBREVIATIONS AND ACRONYMS

AG	Office of the Attorney General
CAF	County Assemblies Forum
IEBC	Independent Electoral and Boundaries Commission
KLRC	Kenya Law Reform Commission

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated ‘to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.’

Membership of the Committee

The Committee is comprised of –

1. Sen. Wakili Hillary Kiprotich Sigei, CBS, MP	Chairperson
2. Sen. Veronica W. Maina, CBS, MP	Vice-Chairperson
3. Sen. Raphael Chimera Mwinzagu, MP	Member
4. Sen. Karen Njeri Nyamu, MP	Member
5. Sen. Andrew Omtatah Okoiti, MP	Member
6. Sen. (Prof.) Tom Ojienda, SC, MP	Member
7. Sen. Crystal Asige, MP	Member
8. Sen. Daniel Kitonga Maanzo, EBS, MP	Member

Minutes of the Committee in considering the Petition by Mr. Laban Omusundi on the enactment of a legal framework to provide for the recall of the President or a Governor through a citizen initiative are attached to this Report as *Annex I*.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

On Thursday, 12th February, 2026, the Speaker of the Senate reported that a Petition had been received from Mr. Laban Omusundi, a citizen of the Republic of Kenya based in Nakuru, regarding the enactment of a legal framework to provide for recall of the President and Governors through a citizen initiative.

Honourable Speaker,

The Committee embarked on its consideration of the Petition, whereupon it held a meeting with the Petitioner to better understand the background, rationale and justification for the proposed amendments. The Committee further invited and received written responses from the Office of the Attorney General, the Independent Electoral and Boundaries Commission, Kenya Law Reform Commission and the County Assemblies Forum.

A summary of the Petition is set out at Chapter One of the Report, while an overview of the submissions received from stakeholders is set out at Chapter Two of the Report.

Honourable Speaker,

Having considered the Petition and the submissions received thereon, the Committee observed that the Constitution establishes an exhaustive and closed framework for the tenure and removal from office of the President, and outlines the instances under which the Office of the President may become vacant under Articles 142 to 146. That being the case, Parliament lacks the legislative competence to enact a law providing for citizen-initiated recall of a President, and such a mechanism may only be introduced through a Constitutional amendment in accordance with the procedures set out under Articles 255 to 257 of the Constitution.

Likewise, the Committee observed that the grounds for the removal of a county governor from office are set out under Article 181 of the Constitution, with the procedure for the same outlined at section 33 of the County Governments Act.

The Committee noted that the proposal to introduce citizen-initiated recall of the President touches on the architecture of executive accountability enshrined in Chapter Nine of the Constitution and would require a referendum under Article 255(1)(f), and that the involvement of Parliament and the county assemblies in the removal procedures for the President and county governors is a deliberate constitutional safeguard ensuring that removal from high office is subjected to institutional scrutiny, public accountability and due process.

That being the case, the Committee found that the proposed legislation would contradict and undermine the constitutionally prescribed removal procedures for the two offices, and recommends that it be **rejected** by the Senate.

Honourable Speaker,

I take this opportunity to thank the Petitioner as well as the stakeholders who submitted written comments which greatly assisted the Committee in its deliberations and determination on the Petition. I commend the Members of the Committee for their diligence in executing this assignment, and thank the offices of the Speaker and Clerk of the Senate for the support extended to the Committee which made the consideration of the Petition successful.

Honourable Speaker,

It is now my pleasant duty, pursuant to standing order 238(2) of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of a Petition by Mr. Laban Omusundi regarding the proposed enactment of a legislative framework to provide for recall of the President and Governors through citizen initiative.

Signed.......... Date..... 03-06-2026

**SEN. WAKILI HILLARY KIPROTICH SIGEL, CBS, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS**

CHAPTER ONE: INTRODUCTION

1.1 Right to Petition Parliament

1. The right to present petitions to public authorities is provided for at Article 37 of the Constitution. Article 119(1) further provides that *‘Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.’*
2. Parliament enacted the Petition to Parliament (Procedure) Act (No. 12 of 2012) to make provision for the procedure for the exercise of this right. Further, Part XXVII of the Standing Orders of the Senate also makes provision of how this right may be exercised.

1.2 Summary of the Petition

3. At the sitting of the Senate held on Thursday, 12th February 2026, the Speaker of the Senate reported that a Petition had been received from Mr. Laban Omusundi, a Kenyan Citizen based in Nakuru, regarding the enactment of a clear and enforceable allowing citizens to directly recall the President or County Governors.
4. The salient issues raised in the Petition were—
 - a) while the Constitution provides for the recall of Members of Parliament (MPs) and Members of County Assemblies (MCAs), it lacks a similar mechanism for the heads of the national and county executives;
 - b) concern that Parliament and County Assemblies are often compromised by political patronage, financial inducements, or party intimidation. The petitioner submitted that this compromised oversight leaves citizens constitutionally stranded when their elected representatives fail to hold the executive accountable;
 - c) that the current impeachment processes have become political rituals rather than genuine tools for accountability. Through the proposal to introduce a citizen-initiated recall, the petitioner seeks to provide a direct democratic remedy when leadership grossly violates the Constitution, bypassing purely political processes; and

- d) to affirm Article 1 of the Constitution by ensuring that all sovereign power remains with the people. The petitioner argues that no public office, including the Presidency and Governorship, should be immune from direct democratic accountability.
5. Consequently, the petitioner prayed that the Senate intervenes by way of enacting a legislation that provides a legal framework that provides for —
- a) recall of the President by citizens through a defined citizen initiative when it deems necessary;
 - b) recall of Governors by citizens where County Assemblies and Senate are compromised;
 - c) clear thresholds for citizen signatures and verification by the IEBC or a similar constitutional body;
 - d) safeguards against abuse while preserving the supremacy of the people's will;
 - e) affirmation of the principle that no public office, including the Presidency and Governorship, is immune from direct democratic accountability; and
 - f) any other orders or recommendations it deems fit to restore, protect, and strengthen constitutional governance and people's sovereignty.
6. Pursuant to Standing Order 238(1), the Speaker committed the Petition to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.
7. A copy of the Petition is attached to this Report as *Annex 2*.

CHAPTER TWO: STAKEHOLDER SUBMISSIONS

2.1 Introduction

8. Upon committal of the Petition, the Committee met with the Petitioner on Tuesday, 24th February, 2026, whereupon he took Members through the background, rationale and justification for the proposed legislation.
9. The Committee further invited and received submissions on the Petition from-
 - a) The Office of the Attorney General and Department of Justice (AG)
 - b) The Independent Electoral and Boundaries Commission (IEBC)
 - c) The Kenya Law Reform Commission (KLRC)
 - d) The County Assemblies Forum (CAF).
10. The submissions by the said stakeholders are set out in the section below, while copies of the submissions are attached to this Report as *Annex 3*.

2.2 The Office of the Attorney General

11. The **AG** observed that, while Article 1(1) vests all sovereign power in the people of Kenya, and Article 1(2) provides that the people may exercise this sovereign power either directly or through their democratically elected representatives, these provisions must be read together with Article 1(3) which delegates the exercise of sovereign power to Parliament, the National Executive, the Judiciary, County Governments and Constitutional Commissions. Consequently, it is within this structured delegation that any recall mechanism must be designed.
12. The **AG** submitted that the Constitution provides for the removal of the President under Article 144 on the grounds of incapacity or by impeachment under Article 145, whereas removal of the Governor is provided for under Article 181(1) and (2) and section 33 of the County Governments Act. They highlighted the decision of the High Court in *Institute for Social Accountability & Another v. National Assembly & 4 Others (2015) eKLR*, where the Court held that Parliament is not at liberty to create removal or recall processes that either contradict or undermine the constitutionally prescribed removal procedure.

13. The Stakeholder further submitted that, in the case of *David Ndi & Others v. Attorney General & Others (2021) eKLR* the Courts affirmed that fundamental changes to the constitutional architecture require the people's direct participation through a referendum. Thus, any proposal to introduce citizen-initiated recall of the President touches the architecture of executive accountability enshrined in Chapter Nine of the Constitution and would require a referendum under Article 255(1)(f).
14. The Stakeholder added that enactment of a citizen-initiated recall mechanism for the President without a constitutional amendment would be unconstitutional as Article 142, as read together with Article 255(1)(f), calls for a referendum and that a statutory recall mechanism that effectively truncates the Presidential term without a referendum would violate this provision.
15. With regard to the procedure for removal of a county governor, the AG submitted that the legal framework set out in the County Governments Act is elaborate and there is no need for enactment of a new law to deal with the same subject matter.

2.3 The Independent Electoral and Boundaries Commission (IEBC)

16. The **IEBC** submitted that although it is not directly involved in the impeachment process, it plays a pivotal operational role once a vacancy arises.
17. The **IEBC** submitted that the Constitution gives the electorate the right to recall their representatives in both Houses under Article 104 and noted that omitting members of the County Assembly from recall through the Constitution was an oversight.
18. The Stakeholder further submitted that Article 80 read together with Article 194 requires Parliament to enact legislation which provides for circumstances under which a member of county assembly may be removed from office. However, Parliament has not enacted the necessary legislation.
19. The Stakeholder further added that section 45-48 of the Elections Act provide for recall of Members of Parliament whereas section 27-28 in the County Governments Act, 2012 provide for recall of Members of County Assemblies.

20. **IEBC** was in agreement with the petitioner that Kenya's impeachment framework lacks a recall mechanism for executive offices, thus citizens do not have direct democratic recourse for removing a President or County Governor between elections.
21. The Stakeholder further submitted that multiplicity of legal instruments governing impeachment creates inconsistencies in procedure and interpretation and that political interest at both county and national levels often overshadow legal considerations.
22. The Stakeholder added that political party interests at both levels of government and jurisprudence have highlighted procedural deficiencies, reinforcing the need for a harmonized legislative provision to guide impeachment processes.
23. **IEBC** submitted that the right to recall remains unimplemented, despite constitutional timelines and previous recall provisions in the Elections Act having been declared unconstitutional in the High Court Case in *Katiba Institute & Another v Attorney General & Another (2017)*.
24. The Stakeholder further submitted that the only constitutionally available removal mechanism for the executive offices of County Governor and President is impeachment, which they termed as the functional equivalent of recall for these two executive positions.
25. **IEBC** submitted that the constitution design deliberately limits the mechanisms through which a sitting President may be removed from office and that any attempt by Parliament to provide for the recall of the President would be inconsistent with the provision under Article 2.
26. **IEBC** alluded to the High Court's 2025 decision in *Okoiti & Others v Attorney General* to reinforce the importance of procedural fairness and observance of due process in impeachment proceedings, recognizing that impeachment is both a legal and political process requiring strict adherence to constitutional safeguards.

27. **IEBC** proposed that Parliament needs to enact a comprehensive impeachment and recall statute consolidating existing provisions and clarifying procedural steps for both national and county executives.
28. The Stakeholder further proposed that the statute should include uniform timelines, due process guarantees, intensify civil education to help citizens differentiate between impeachment and recall, and to promote public understanding of constitutional accountability mechanisms.

2.4 The Kenya Law Reform Commission (KLRC)

29. **KLRC** submitted that Article 1 of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution, either directly or through democratically elected representatives and Article 2 affirms the supremacy of the Constitution and renders void any law inconsistent with it.
30. **KLRC** submitted that the Constitution does not prescribe an exhaustive procedure for the removal of Governors and instead, creates a legislative space within which Parliament may design appropriate mechanism.
31. **KLRC** submitted that the Constitution establishes a closed and exhaustive framework for the tenure and removal of the President and outlines the instances under which the Office of the President may become vacant under Articles 142-146.
32. The Stakeholder further submitted that the Constitutional framework governing the removal of County Governors is prescribed under Article 181(1); and subsection (2) through which Parliament enacted the County Governments Act, Cap. 265 which provides for removal of Governors through impeachment under section 33.
33. **KLRC** submitted that Parliament lacks the legislative competence to enact a law providing for the citizen-initiated recall of a President and may only introduce such a mechanism through a constitutional amendment in accordance with the procedures set out under Articles 255-257 of the Constitution.

34. **KLRC** proposed that Parliament may consider amending the County Governments Act, Cap. 265 to provide for a framework on citizen-initiated recall of County Governors, subject to appropriate policy considerations and safeguards to ensure-
- a) protection against abuse and undue politicization;
 - b) fiscal prudence in line with Article 201 of the Constitution; and
 - c) consistency with the principles of good governance, accountability and public participation.

2.5 County Assemblies Forum (CAF)

35. **CAF** affirmed that the Constitution of Kenya already provides structured and deliberate mechanisms for the removal of executive office holders, including the President under Article 145 and County Governors under Article 181 and that these mechanisms are intended to balance accountability with stability in governance.
36. The Stakeholder further submitted that the involvement of these legislative institutions is a deliberate constitutional safeguard ensuring that removal from high office is subjected to institutional scrutiny, public accountability and due process.
37. **CAF** added that any legal reform concerning executive removal must complement and not diminish the constitutional mandate of Senators and Members of County Assemblies as representatives of the people.
38. The **CAF** submitted that the Senate and County Assemblies serve as an essential buffering role against political instability and that their involvement in removal processes ensures that accusations against the Executive are interrogated through a structured and deliberative process rather than through unmediated political mobilization.
39. **CAF** rejected any framework or narrative that treats the Senate and County Assemblies as bodies to be bypassed on the assumption that they are compromised by default. The Stakeholder added that where allegations of compromise are made

against constitutional institutions, those allegations must be supported by specific and substantive evidence demonstrating illegality, bad faith, or systemic failure.

40. The Stakeholder further submitted that failure of some impeachment processes to result in removal does not demonstrate inadequacy, but rather reflects the operation of constitutional safeguards requiring proof and due process.
41. **CAF** submitted that a direct citizen-initiated recall framework, if not carefully designed, may expose the offices of the President and County Governors to incessant agitation, political harassment and destabilizing recall attempts, particularly in highly polarized politicized environment.
42. The Stakeholder further submitted that should the Committee consider the progression of the proposal by the petitioner, the legal architecture must preserve the dignity, authority and constitutional role of Senators and MCAs in the accountability chain.
43. **CAF** proposed that such a framework should not provide for automatic removal upon presentation of a petition by citizens, rather, any citizen-led process should only operate as a formal trigger for an institutional, evidence-based inquiry conducted within a constitutional and statutory framework that respects the oversight role of Parliament and County Assemblies.
44. **CAF** added that any recall framework must be based on clear, specific, and legally recognizable grounds, supported by verifiable evidence of misconduct, violation of the Constitution, abuse of office, gross misconduct, or other recognized constitutional thresholds. The law should incorporate robust safeguards against misuse of the recall process for political vendetta, or harassment of elected office holders.
45. The stakeholder recommended that the law should expressly preserve the constitutional oversight and accountability role of the Senate and County Assemblies and should not reduce the Senators and MCAs to passive spectators in a process connected to their representative mandate.

46. **CAF** proposed that the Committee should reject any legislative framing that assumes Parliament or County Assemblies are compromised by default. CAF's position is that any reform should strengthen institutions, not delegitimize them.
47. The Stakeholder further proposed that the existing accountability mechanisms be strengthened, including public participation in oversight processes, transparency in impeachment proceedings, and civic education on the constitutional thresholds for removal from office, before resorting to the creation of a wholly new recall regime

2.6 General Comments by Stakeholders

48. The **CAF** commended the petitioner's effort to contribute to national discourse on democratic accountability but expressed a strong concern with the petition's broad suggestion that legislative bodies are compromised.
49. **CAF** submitted that the Senate and County Assemblies are elected and constituted bodies that exercise delegated sovereign power on behalf of the people with their legislative, representative and oversight functions constitutionally protected and that they are indispensable to the maintenance of democratic accountability.
50. **IEBC** noted that the Constitution establishes a clear and operational removal mechanism for executive offices through impeachment, but recall for Members of Parliament under Article 104 remains dormant because enabling legislation has not been enacted despite prior statutory attempts being invalidated by the High Court.
51. The Stakeholder submitted that this duality has produced accountability asymmetry in which people retain an indirect role in the removal of the President and County Governors through their legislative representatives; undermining realization of Article 1, which vests sovereign power in the people and envisions both direct and indirect exercise of that power.
52. **IEBC** called for the re-evaluation of the current removal architecture to ensure that executive accountability aligns with democratic principles, strengthens public trust and gives meaningful effect to the sovereign authority of the "*mwananchi*".

CHAPTER THREE: COMMITTEE OBSERVATIONS

3.1 Committee Observations

53. Having considered the subject Petition and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights observed that-

- a) The President may be removed from office under Article 144 of the Constitution on grounds on incapacity or by impeachment under Article 145. The grounds for impeachment are set out at Article 145 and include gross violation of the Constitution or any other law, committing a crime under national or international law, or gross misconduct. The procedure to be followed in each instance is set out in the Constitution.
- b) Likewise, a County Governor may be removed from office under Article 181 of the Constitution on the grounds of gross violation of the Constitution, committing a crime under national or international law, abuse of office or gross misconduct, or physical or mental incapacity to perform the functions of office of county governor. Article 181 delegates to Parliament the role of enacting legislation on the procedure for removal of a governor, which procedure is set out at section 33 of the County Governments Act, Cap. 265 of the Law of Kenya.
- c) The Constitution therefore establishes an exhaustive and closed framework for the tenure and removal of the President and outlines the instances under which the Office of the President may become vacant under Articles 142-146. That being the case, Parliament lacks the legislative competence to enact a law providing for citizen-initiated recall of a President. Such a mechanism may only be introduced through a Constitutional amendment in accordance with the procedures set out under Articles 255 to 257 of the Constitution.
- d) In *Institute for Social Accountability & Another v. National Assembly & 4 Others (2015) eKLR*, the High Court held that Parliament is not at liberty to create removal or recall processes that either contradict or undermine the constitutionally prescribed removal procedure.

- e) The proposal to introduce citizen-initiated recall of the President touches on the architecture of executive accountability enshrined in Chapter Nine of the Constitution and would require a referendum under Article 255(1)(f).
 - f) While Article 1(1) of the Constitution vests all sovereign power in the people of Kenya, and Article 1(2) provides that the people may exercise this sovereign power either directly or through their democratically elected representatives, these provisions must be read together with Article 1(3) which delegates the exercise of sovereign power to Parliament, the National Executive, the Judiciary, County Governments and Constitutional Commissions. Consequently, it is within this structured delegation framework that any recall mechanism must be designed.
 - g) The involvement of Parliament and the county assemblies in the removal procedures for the President and county governors is a deliberate constitutional safeguard ensuring that removal from high office is subjected to institutional scrutiny, public accountability and due process.
54. Thus, while acknowledging that the issues raised in the Petition were weighty and in the public interest, the Committee observed that the proposal to enact a legislative framework for citizen-initiated recall of the President or a county governor would contradict or undermine the constitutionally prescribed removal procedures, and would further need to be subjected to the Kenyan people through a referendum.
55. The Committee further observed that the Referendum Bill, 2026 (Senate Bills No. 3 of 2026) which seeks to put in place the legislative framework for the conduct of a referendum in Kenya is currently under consideration by the Senate.

CHAPTER FOUR: RECOMMENDATION

4.1 Committee Recommendation

56. Arising from its Observations as set out in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights –

In response to the Prayer that the Senate enacts legislation to provide for the recall of the President or a County Governor through a citizen initiative, the Committee found that the proposed legislation would contradict and undermine the constitutionally prescribed removal procedures for the two offices, and recommends that it be **rejected** by the Senate.

LIST OF ANNEXES

- Annex 1:* Minutes of the Committee in considering the Petition
- Annex 2:* Copy of the Petition
- Annex 3:* Submissions received in response to the Petition