

COMMUNICATION FROM THE CHAIR

ON

**THE MANDATE OF THE SENATE, RULES OF PROCEDURE,
PROGRAMME FOR THE HEARING AND ALLOCATION OF TIME IN
THE MATTER OF THE PROPOSED REMOVAL FROM OFFICE, BY
IMPEACHMENT, OF THE GOVERNOR OF NYERI COUNTY**

1. Honourable Senators, let me take this opportunity to welcome you back for this Special Sitting of the Senate which is the sixth during the current recess. In addition, Honourable Senators, we shall, tomorrow, Wednesday, 14th September, 2016 and on Thursday, 15th September, 2016, hold the 7th and 8th Special Sittings, respectively, during this recess. Your finding time to come each time you are required to do so in this recess is a clear demonstration of your dedication to the service of the people of Kenya and your readiness to execute your constitutional mandate.
2. Honourable Senators, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 2nd September, 2016, the County Assembly of Nyeri approved a Motion for the removal from office of the Governor of Nyeri County.
3. By a letter dated 2nd September, 2016 and received in my office on 5th September, 2016, the Speaker of the County Assembly of Nyeri informed the Speaker of the Senate of the approval of the Motion by the County Assembly of Nyeri and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly.

4. Pursuant to section 33(3)(a) of the County Governments Act, 2012, and standing order 68(1)(a) of the Senate Standing Orders, on Wednesday, 7th September 2016, the Speaker of the Senate convened a meeting of the Senate to hear charges against the Governor of Nyeri County. Further, on the same date, the Senate resolved to investigate the matter of the proposed removal from office, by impeachment, of the Governor of Nyeri County by the Senate, in Plenary.

5. Honourable Senators, the mandate of the Senate in so far as it relates to the removal of a Governor from office is provided for under Article 181 of the Constitution as read together with section 33 of the County Governments Act, 2012 and standing order 68 of the Senate Standing Orders. In particular, Article 181 of the Constitution provides as follows-

(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).

6. Honourable Senators, as you may recall in a ruling that I made on Thursday, 8th September, 2016, I stated that neither Article 181 of the Constitution nor section 33 of the County Governments Act, nor indeed

our own Standing Orders, shed any light on the procedure to be followed where the hearing and determination of the proposed removal from office of a governor, by impeachment, is to be undertaken by the Senate in Plenary. Accordingly, pursuant to standing order 1 of the Senate Standing Orders, I directed that the procedure which the Senate has previously utilized in special committees established pursuant to section 33(3) of the County Governments Act, 2012 and standing order 68(1) of the Senate Standing Orders would apply, with necessary modifications, to the hearing by the Senate in Plenary.

7. In this regard, Honourable Senators, the Rules of Procedure for the Hearing and Determination of the Proposed Removal from Office by Impeachment of a Governor have been circulated to all Senators and to both the County Assembly and the Governor. The Rules of Procedure shall apply to these proceedings.
8. Honourable Senators will further note that a Hearing Programme has been circulated which details the various activities in the hearing and determination of the matter and the time allocated to each activity. It will be crucial that all the parties comply with the time allocated. In summary, the Programme is as follows-

(a) Today, Tuesday, 13th September, 2016, after we have dispensed with preliminary matters, the charges against the Governor as submitted by the County Assembly shall be read to the Governor. This will be followed by Opening Statements to be made on behalf of both

parties and thereafter, the presentation of the case of the County Assembly.

(b) On Wednesday, 14th September, 2016 the Governor will have an opportunity to present his case before the Senate. This will be followed by Closing Statements by both parties. The Senate urges all parties to observe the time allocated to them in the Hearing Programme so as to ensure that the matter is disposed of expeditiously.

(c) The Senate shall then proceed to a closed session for deliberations prior to voting on each of the charges. In accordance with section 33(7) of the County Governments Act, 2012 and standing order 68(5) of the Senate Standing Orders, the voting shall be by county delegations.

(d) The Governor shall cease to hold office if a majority of all county delegations of the Senate vote to uphold any impeachment charge. If the charges are not substantiated, the Governor will remain in office.

9. Honourable Senators, it is important to observe that pursuant to rule 11 of the Rules of Procedure, the hearing of evidence, once it commences, shall proceed and continue on until the Senate concludes the hearing of the matter. As the Senate embarks on the hearing and determination of the matter, the Senate must therefore undertake this task expeditiously and in addition, observe procedural propriety. The Senate, acting as a quasi-judicial organ, must also observe the principles of natural justice.

10. I wish to emphasize that the Senate is cognizant of the gravity of the matter with which it is seized and that it shall accord all the parties to the proceedings a full and fair hearing.

I thank you.

SEN. EKWEE ETHURO, EGH, EBS, MP
SPEAKER OF THE SENATE

13th September, 2016