

THE IMPEACHMENT PROCEDURE BILL, 2016
ARRANGEMENT OF CLAUSES

Clause

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1—Short title

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OFFICE, BY IMPEACHMENT, OF PRESIDENT
AND DEPUTY PRESIDENT**

2—Removal of the President by impeachment

3—Impeachment motion for removal of the President

4—Procedure for the removal of the President in the
National Assembly

5—Proceedings in the Senate for removal of President
by impeachment

6—President’s right to appear and be heard

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SCHEDULE

A Bill for

AN ACT of Parliament to provide for the procedure for the removal from office, by impeachment, of a President, Deputy President, Cabinet Secretary, Governor, Deputy Governor and member of a county executive committee; and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

PART 1 – PRELIMINARY

1. This Act may be cited as the Impeachment Procedure Act, 2016. Short title.

PART II – PROCEDURE FOR REMOVAL FROM OFFICE, BY IMPEACHMENT, OF PRESIDENT AND DEPUTY PRESIDENT

2. The President may be removed from office, by impeachment, in accordance with Article 145 of the Constitution and the provisions of this Act. Removal of the President by impeachment.

3. Pursuant to Article 145(1) of the Constitution, 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— Impeachment motion for removal of the President.

- (a) on the ground of gross violation of a provision of the 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.

4. (1) A member of the National Assembly, who intends to move a motion for the removal of the President, by impeachment, shall submit the motion to the Speaker of the National Assembly together with a list of the members of the National Assembly who support the motion, in the form prescribed in the Schedule. Procedure for the removal of the President in the National Assembly.

(2) The Speaker shall examine the motion and the list of supporting members submitted under subsection (1) and, if satisfied that the motion-

- (a) complies with subsection (1), approve the motion 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.

(3) The member of the National Assembly who intends to move the motion under subsection (1) shall give notice of the approved motion within seven days of approval of the motion under subsection 2(a).

(4) The member shall move the motion within fourteen days of giving notice under subsection (3).

(5) The National Assembly shall dispose of the motion within seven days from the day the motion was moved.

(6) Pursuant to Article 145(2) of the Constitution, if a motion under subsection (1) is supported by at least two-thirds of all the members of the National Assembly—

(a) the Speaker of the National Assembly 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 impeachment proceedings.

5. (1) Pursuant to Article 145(3) of the Constitution, within seven days after receiving notice of a resolution from the Speaker of the National Assembly under section 4(6)(a)—

Proceedings, in the Senate for removal of President by impeachment.

(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.

(2) Pursuant to Article 145(4) of the Constitution, a special committee appointed under subsection (1)(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.

(3) Where the Senate does not appoint a special committee, the Senate shall make its determination within ten days of its first meeting under subsection (1)(a).

(4) Within two days of the meeting of the Senate under subsection (1)(a) or the appointment of a special committee under subsection (1)(b), the Clerk of the Senate shall -

- (a) serve the President with a copy of the motion; and
- (b) invite the President to appear and be heard by the Senate or the special committee on a specified date, time and place.

(5) The Senate or the special committee, as the case may be, may hear representations from the member who moved the motion in the National Assembly and such other members of the National Assembly as it may consider necessary for the proper determination of the matter.

(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 Article 145 of the Constitution 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) Pursuant to Article 145(7) of the Constitution, 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.

6. (1) The President shall have the right to appear and be represented before the Senate or the special committee during its investigations.

President's right to appear and be heard.

(2) The President may appear before the Senate or the special committee in person, by advocate or in person and by advocate.

7. Pursuant to Article 150(2) of the Constitution, the provisions of sections 3 to 6, relating to the removal of the President, shall apply, with necessary modifications, to the removal of a Deputy President, by impeachment, under Article 150(b) of the Constitution.

Removal of a Deputy President by impeachment.

PART III—PROCEDURE FOR REMOVAL FROM OFFICE OF A CABINET SECRETARY

8. A Cabinet Secretary may be removed from office in accordance with Article 152 of the Constitution.

Removal of a
Cabinet Secretary
from office.

9. (1) Pursuant to Article 152 (6) of the Constitution, 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—

Procedure for the
removal of a
Cabinet Secretary.

- (a) on the ground of a gross violation of a provision of the 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.

2. A member of the National Assembly who proposes a motion for the removal of a Cabinet Secretary under Article 152(6) and subsection (1) shall submit to the Speaker of the National Assembly the motion for the removal of the Cabinet Secretary together with a list of the Members of the National Assembly who support the motion, in the form prescribed in the Schedule.

3. The Speaker shall examine the motion and the list of 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.

4. The member of the National Assembly who proposes the motion under subsection (1) shall give notice of the approved motion within seven days of approval of the motion under subsection 3(a).

5. The Member shall move the motion within fourteen days of giving notice under subsection (4).

6. The National Assembly shall dispose the motion within seven days from the day the motion was moved.

7. Pursuant to Article 152(7) of the Constitution, if the motion under subsection (5) is supported by at least one-third of the members of the National Assembly–

- (a) the National 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 National Assembly on whether it finds the allegations against the Cabinet Secretary to be substantiated.

8. The Clerk of the National Assembly shall invite the Cabinet Secretary to appear and be heard by the select committee giving the date, time and place where the Cabinet Secretary is to appear.

10. Pursuant to Article 152(9) of the Constitution, if the select committee reports that it finds any of the allegations against the Cabinet Secretary–

Report of the select committee of the National Assembly.

- (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 on whether to approve the resolution requiring the Cabinet Secretary to be dismissed.

11. Pursuant to Article 152(10) of the Constitution, if a resolution under subsection (10)(b)(ii) is supported by a majority of the members of the National Assembly–

Resolution of the National Assembly.

- (a) the Speaker shall promptly deliver the resolution to the President; and
- (b) the President shall dismiss the Cabinet Secretary.

12. (1) The Cabinet Secretary has the right to appear and be represented before the select committee during its investigations.

Cabinet Secretary's right to appear and be represented.

(2) The Cabinet Secretary may appear before the select committee in person, by advocate or in person and by advocate.

**PART—PROCEDURE FOR REMOVAL FROM
OFFICE, IMPEACHMENT, OF A GOVERNOR AND
A DEPUTY GOVERNOR**

13. A member of a county assembly may, supported by at least a third of all the members of the county assembly, move a motion for the removal of a Governor under Article 181(1) of the Constitution.

Motion for removal of Governor.

14. (1) A member of a county assembly who intends to move a motion under section 13 shall submit to the Speaker of the county assembly the motion together with a list of the members of the county assembly who support the motion, in the form prescribed in the Schedule.

Proceedings in a county assembly for the removal of a Governor.

(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-

- (a) complies with section 13, approve the motion and notify the member within two days; or
- (b) does not comply with section 13, decline to approve the motion and inform the member within two days giving reasons for the refusal.

(3) The member of the National Assembly who intends to move a motion under subsection (1) shall give notice of the approved motion within seven days of approval of the motion under subsection 2(a).

(4) The member shall move the motion within fourteen days of giving notice under subsection (3).

(5) The Clerk of the county assembly shall, at least seven days before the date on which the motion is to be moved in the assembly-

- (a) serve the Governor with a copy of the motion; and
- (b) invite the Governor to appear and be heard by the county assembly specifying the date, time and place for the hearing.

(6) If a motion under subsection (4) 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 three days; and

- (b) the Governor shall continue to perform the functions of the office of Governor pending the outcome of the proceedings required by this Act.

15. The Speaker of the county assembly shall, for the purposes of section 14(6)(a), submit to the Speaker of the Senate-

Transmission of certificate and report to the Senate.

- (a) a certificate under the Speaker's hand confirming that the procedure specified in section 14 has been complied with and attach evidence of such compliance;
- (b) the notice of motion; and
- (c) any other supporting documentation.

16. (1) Within ten days after receiving the resolution from the Speaker of the county assembly under section 14(6)(a)—

Proceedings before the Senate.

- (a) the Speaker of the Senate shall convene a meeting of the Senate to hear the charges against the Governor; and
- (b) the Senate may, by resolution, appoint a special committee comprising not more than eleven of its members to investigate the matter.

2. A special committee appointed under subsection (1)(b), shall first determine whether or not section 14 was complied with in respect of the proceedings in the county assembly.

3. If the special committee is not satisfied that the county assembly has complied with the procedure set out under section 14, the special committee shall not proceed with the matter any further and shall report that finding to the Senate within three days from the date of its first meeting.

4. If the Senate resolves that the county assembly did not comply with the procedure set out under section 14, the Speaker of the Senate shall notify the Speaker of the county assembly of the resolution of the Senate and that the Senate shall not proceed with the impeachment process.

17. (1) If the special committee or the Senate finds that the county assembly complied with the procedure set out under section 14, the special committee shall-

Investigations by the special committee.

- (a) investigate the matter; and
- (b) within fourteen days, report to the Senate on whether or not, it finds the particulars of each of the allegations against the Governor to have been substantiated.

2. Within two days of the appointment of a special committee, the Clerk of the Senate shall invite the Governor to appear before the special committee and shall specify the particular date, time and place of the proceedings.

3. Where a special committee finds an allegation against the Governor to have been established, the special committee shall specify, in its report, whether in the opinion of the special committee, the allegation is substantiated within the meaning of section 30.

4. If the special committee reports that the particulars of one or more of the allegations against the Governor have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges in accordance with Article 123 of Constitution.

18. Where the Senate does not appoint a special committee under section 16(1)(b), sections 16(2) to 17 shall, with necessary modifications, apply to the Senate as it hears the charges against the Governor.

Proceedings
without a special
committee.

19. (1) If a majority of the county delegations of the Senate vote to uphold any impeachment charge, the Governor shall cease to hold office.

Decision of the
Senate.

(2) 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 relevant county assembly accordingly.

20. (1) The Governor shall have the right to appear and be represented before the Senate, the county assembly, a special committee of the Senate or the county assembly, as the case may be, during its investigations.

Right of the
Governor to
appear and be
heard.

(2) The Governor may appear before the Senate, the county assembly, a special committee of the Senate or the county assembly in person, by advocate or in person and by advocate.

21. A motion by the county assembly for the removal of the Governor on the same charges may only be re-introduced in the county assembly on the expiry of ninety days from the date of a vote by the Senate under section 19.

Reintroduction of motion.

22. A vacancy in the office of the Governor arising under this Act shall be filled in the manner provided for in Article 182 of the Constitution.

Vacancy in the office of Governor.

23. The procedure for the removal of a Governor under this Act shall, with necessary modifications, apply to the removal from office, by impeachment, of a Deputy Governor.

Removal of a Deputy Governor.

24. (1) Within fourteen days after a vacancy in the office of a Deputy Governor arises under section 23 or following the election of a Governor under section 25, the Governor shall, with the approval of the county assembly, nominate a person to fill the vacancy in the office of Deputy Governor.

Vacancy in the office of Deputy Governor.

(2) The county assembly shall vote on the nomination under subsection (1) within fourteen days after receiving the nomination.

(3) If the county assembly does not approve or reject a nomination within fourteen days under subsection (2), the nomination shall be deemed to have been approved by the county assembly.

(4) If a person assumes office as Deputy Governor under clause (1), then, for the purposes of Article 180(7)(b) of the Constitution, the person shall be deemed—

- (a) to have served a full term as Deputy Governor if, at the date on which the person assumed office, more than two and a half years remain before the date of the next regularly scheduled election under Article 180(1) of the Constitution; or
- (b) not to have served a term of office as Deputy Governor, in any other case.

25. Article 182 (4) to (6) of the Constitution shall apply where a vacancy occurs in the office of a Governor and that of a Deputy Governor under this Act.

Simultaneous vacancies.

26. (1) A person may apply to the High Court for review, on matters of procedure only, relating to a decision

Questions as to validity of removal of Governor or

of the Senate for the removal of a Governor or a Deputy Governor within a period of fourteen days of the decision of the Senate.

Deputy Governor.

(2) A matter filed under sub-section (1) shall be heard and determined within thirty days.

(3) An appeal to the Court of Appeal or the Supreme Court from any judgement or ruling under this section shall be filed within fourteen days and shall be heard and determined with forty-five days.

PART V – PROCEDURE FOR REMOVAL FROM OFFICE OF A COUNTY EXECUTIVE COMMITTEE MEMBER

27. A member of the county assembly, supported by at least one-third of all the members of the county assembly, may move a motion requiring the Governor to dismiss a county executive committee member on any of the following grounds –

Impeachment of a county executive committee member.

- (a) incompetence;
- (b) abuse of office;
- (c) gross misconduct; or
- (d) gross violation of the Constitution or any other law.

27. (1) A member of the county assembly who intends to move a motion under section 27 shall submit to the speaker 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.

Procedure for the impeachment of a county executive committee member.

(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-

- (a) complies with section 27, approve the motion and notify the member within two days; or
- (b) does not comply with section 27, decline to approve the motion and inform the member within two days giving reasons for the refusal.

(3) The member of the county assembly who intends to move the motion under subsection (1) shall give notice

of the approved motion within seven days of approval of the motion under subsection 2(a).

(4) Upon the notice of motion being given under subsection (3), the county assembly shall appoint a special committee of not more than nine of its members who shall-

- (a) investigate the matter; and
- (b) within fourteen days, report to the county assembly on whether or not it finds the particulars of each of the allegations against the member to have been substantiated.

(5) The clerk of the county assembly shall, at least seven days before the date on which the motion is to be moved in the assembly-

- (a) serve the county executive committee member with a copy of the motion; and
- (b) invite the county executive committee member to appear and be heard by the select committee on a specified date, time and place.

(6) If the select committee finds the allegations to be—

- (a) unsubstantiated, no further proceedings shall be taken; or
- (b) substantiated, the county assembly shall, after according the executive member an opportunity to be heard, vote on whether to approve the resolution requiring the county executive committee member to be dismissed.

(7) If more than two-thirds of the members of the county assembly support the motion for the removal of the executive committee member-

- (a) the speaker of the county assembly shall submit the resolution to the Governor within three days of the resolution; and
- (b) the Governor shall dismiss the member from the county executive committee, in writing, within two days of receipt of the resolution.

(8) The Governor shall inform the speaker of the county assembly when the dismissal has been effected and

the Speaker shall communicate such dismissal to the county assembly.

(9) If the vote under subsection (6) does not result in the removal of the county executive committee member-

- (a) the county executive committee member shall continue in office; and
- (b) a motion for the removal of that county executive committee member, on the same charges, shall not be re-introduced until after six months.

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

Rights of the county executive committee member to appear and be heard.

(2) The county executive committee may appear before the special committee in person, by advocate or in person and by advocate.

PART VI – MISCELLANEOUS

30. In this Act, an allegation shall be considered to be substantiated if it is established and rises to the threshold contemplated in the Constitution or this Act.

Substantiation of allegation.

31. Where there is a conflict between this Act and the standing orders of a House of Parliament or a county assembly, this Act shall prevail.

Conflict between Act and standing orders.

32. An invitation to appear before any House Parliament or its committee or a county assembly or its committee under this Act may be effected by personal service or by notice in at least one newspaper in national circulation.

Service.

33. (1) The Clerk of the Senate, the National Assembly or a county assembly, as the case may be, shall publish a notice in at least two newspapers with national circulation informing the members of the public of the date, place and time that hearings under this Act are to take place.

Public notice and access to proceedings.

(2) All proceedings under this Act shall be open to the public unless in exceptional circumstances where the person presiding over the proceedings has determined that there are justifiable reasons for the exclusion of the public.

(3) Subject to subsection (2), the proceedings under this Act may be broadcast in accordance with the

broadcasting rules of the relevant House of Parliament or the county assembly.

34. (1) Unless otherwise stated in this Act, a person may move to court, under this Act- Court proceedings.

- (a) for the review of matters of procedure only; or
- (b) on appeal from any court judgement or ruling under paragraph (a).

(2) A court matter under subsection (1) shall be filed within fourteen days of the decision and shall be heard and determined with forty-five days.

35. The County Governments Act is amended by- Transition

- (a) by deleting section 33 and substituting therefor the following new section- No. 17 of 2012.

33. The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall, with necessary modifications, apply to the removal of a Governor.

- (b) in section 40, by-
 - (a) deleting the words “subject to subsection (2)” appearing at the beginning of subsection (1); and
 - (b) deleting subsections 40(2) to (6).

SCHEDULE

(Sections 5, 9, 11 and 18)

List of members supporting Impeachment Motion, for removal of

I intend to move a motion, under Article..... of the Constitution and/or section..... of this Act, for the removal of holding the position of, on the grounds outlined in the attached motion. The members listed hereunder, who number. and are within the requisite number of. members as specified in, are in support of the motion.

No	Name	Signature
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Signature of sponsor of the motion

Date

(add more pages if necessary)

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to clearly set out impeachment procedures that would ensure procedural justice for every person who is sought to be impeached. It also proposes a period within which court matters relating to impeachment proceedings shall be concluded so as to minimize anxiety over prolonged undecided fate of the chief executive of the Nation or a County or other members of their cabinets.

This legislative proposal is partly informed by challenges identified from the several proceedings for the removal of a governor and for the removal of a deputy governor that the Senate has conducted and the court proceedings to which some of the impeachment proceedings have been subjected on the basis of the procedures followed.

The Bill therefore seeks to provide for a harmonized procedure to be applied in considering a motion for the removal of a President, Governor, a Deputy Governor, a Cabinet Secretary or a County Executive Committee Member. It also proposes appropriate solutions to procedural gaps identified with respect to the provisions in the Constitution for the removal of a President, Deputy President or Cabinet Secretary.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill is one that concerns county governments in terms of Article 110(1)(a) of the Constitution in that it includes the removal of a governor, a deputy governor or a county executive committee member, all of whom are fundamental to a county government.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 7th June, 2016.

MURIUKI KARUE,
Senator.

Section 33 of No. 17 of 2012 which it is proposed to amend-

Removal of a governor.

33.(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.

Section 40 of No. 17 of 2012 which it is proposed to amend-

Removal of member of executive committee

40. (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
- (e) governor, to attend three consecutive meetings of the county
- (f) executive committee;
- (g) physical or mental incapacity rendering the executive committee
- (h) member incapable of performing the duties of that office; or
- (i) 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.