



**REPUBLIC OF KENYA
PARLIAMENT**

**SENATE BILLS
(Bill No. 15 of 2018)**

THE IMPEACHMENT PROCEDURE BILL, 2018

(A Bill published in the Kenya *Gazette* Supplement No. 64 of 2018 and passed by the Senate, with amendments, on 12th June, 2019)

THE IMPEACHMENT PROCEDURE BILL, 2018

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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

Short title.

1. This Act may be cited as the Impeachment Procedure Act, 2018.

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

Removal of the President by impeachment.

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

Impeachment motion for removal of the President.

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—

- (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.

Procedure for the removal of the President in the National Assembly.

4. (1) A member of the National Assembly who intends to move a motion for the removal of the President by impeachment shall submit a copy of the proposed motion to the Clerk of the National Assembly together with a list of the members of the National Assembly who support the motion.

(2) The list of members under subsection (1) shall be in the form prescribed in the Schedule.

(3) The Clerk of the National Assembly shall confirm that the proposed motion-

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- (a) specifies the grounds and particulars upon which the proposed motion is made;
- (b) is signed by the Member; and
- (c) is signed in support by at least a third of all the Members of the National Assembly.

(4) The Clerk of the National Assembly, shall submit the proposed motion to the Speaker.

(5) The Speaker shall examine the proposed motion and the list containing the names of the supporting Members submitted under subsection (1) and, if satisfied that the proposed 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.

(6) The Member of the National Assembly who intends to move the motion under subsection (1) shall give notice of the approved motion within seven sitting days of approval of the motion under subsection (5)(a).

(7) The Member shall move the motion within fourteen days of giving notice under subsection (6).

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

(9) 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.

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

5. (1) Pursuant to Article 145(3) of the Constitution, within seven days after receiving the notice of a resolution from the Speaker of the National Assembly under section 5(8)(a)—

- (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 on 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 for removal by impeachment; 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 for removal by impeachment 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 in respect of that allegation; or

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(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.

President's right to appear and be represented.

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

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

Removal of a Deputy President by impeachment.

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.

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

Removal of a Cabinet Secretary from office.

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

Procedure for the removal of a Cabinet Secretary.

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 National 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 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 subsection (1) shall submit to the Clerk of the National Assembly a copy of the proposed motion for the removal of the Cabinet Secretary together with a list of the members of the National Assembly who support the motion.

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(3) The list of members under subsection (2) shall be in the form prescribed in the Schedule.

(4) The Clerk of the National Assembly shall confirm that the proposed motion-

- (a) states the grounds and particulars upon which the proposed motion is made;
- (b) is signed by the Member; and
- (c) is signed in support by at least one quarter of all the Members of the National Assembly.

(5) The Clerk of the National 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).

(6) 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.

(7) 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 (6)(a).

(8) The Member shall move the motion within fourteen days of giving notice under subsection (7).

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

(10) If the motion under subsection (1) 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

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- (b) the select committee shall, within ten days, report to the National Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.

(11) 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.

Report of the select committee of the National Assembly.

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—

- (a) unsubstantiated, no further proceedings shall be taken in respect of that allegation; or
- (b) substantiated, the National Assembly shall—
 - (i) accord the Cabinet Secretary an opportunity to be heard; and
 - (ii) vote on whether to approve the resolution requiring the Cabinet Secretary to be dismissed.

Resolution of the National Assembly.

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

- (a) the Speaker shall, within three days, deliver the resolution to the President; and
- (a) the President shall dismiss the Cabinet Secretary.

Cabinet Secretary's right to appear and be represented.

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

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

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

Motion for removal of Governor.

13. Pursuant to Article 181(1) of the Constitution, 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

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of a Governor.

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

14. (1) A member of a county assembly who intends to move a motion under section 13 shall submit to the Clerk of the county assembly the motion together with a list of the members of the county assembly who support the motion.

(2) The list of members under subsection (1) shall be in the form prescribed in the Schedule.

(3) The Clerk of the county assembly shall 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 in support by at least a third of all the members of the county assembly.

(4) The Clerk of the county assembly shall, within three days of receipt of the proposed motion, submit the motion to the Speaker advising the Speaker of the determination made under subsection (3).

(5) 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 four days; or
- (b) does not comply with section 13, decline to approve the motion and inform the member within four days giving reasons for the refusal in writing.

(6) If the Speaker fails to respond within seven days of receiving the motion under subsection (5)-

- (a) the motion shall be taken to have been approved to; and
- (b) the member of the county assembly may proceed to give a notice of motion under subsection (7).

(7) 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 (5)(a) or (6)(a).

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(8) The Member shall move the motion within fourteen sitting days of giving notice under subsection (7).

(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-

- (a) the particulars of the motion; and
- (b) calling for submission of written memoranda from the public in relation to the charges against the governor within seven days.

(10) 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 –
 - (i) a copy of the motion; and
 - (ii) copies of the written memoranda submitted under subsection (9)(b);
- (b) invite the Governor to appear and be heard by the county assembly specifying the date, time and place for the hearing.

(11) If a motion under subsection (8) 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.

Transmission of certificate and report to the Senate.

15. The Speaker of the county assembly shall, for the purposes of section 14(8)(a), submit to the Speaker of 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;

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- (b) the notice of motion; and
- (c) any other supporting documentation.

Proceedings before the Senate.

16. (1) Within ten days after receiving the resolution from the Speaker of the county assembly under section 14(11)(a)—

- (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.

Investigations by the special committee.

17. (1) The special committee shall-

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

(2) Within two days of the determination of the special committee under section 16 (2) that section 14 was complied with, 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 any allegation against the Governor to have been established, the special committee shall specify, in its report, whether in the opinion of the special

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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.

Proceedings without a special committee.

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 sitting in plenary.

Decision of the Senate.

19. (1) If a majority of the county delegations of the Senate vote to uphold any impeachment charge-

- (a) the Governor shall cease to hold office; and
- (b) the Speaker of the Senate shall notify the Speaker of the relevant county assembly accordingly.

(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.

Right of the Governor to appear and be heard.

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

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

Re-introduction of the motion.

21. (1) A motion by the county assembly for the removal of the Governor may, subject to subsection (2), only be re-introduced in the county assembly on the expiry of one hundred and eighty days from the date of a vote by the Senate under section 19.

(2) A motion under subsection (1) may only be re-introduced in the county assembly if it relates to different facts from those which formed the subject of the impeachment proceedings.

Vacancy in the office of Governor.

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.

Removal of a Deputy Governor.

23. The procedure for the removal of a Governor under this

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Act shall, with necessary modifications, apply to the removal from office, by impeachment, of a Deputy Governor.

Vacancy in the office of Deputy Governor.

24. (1) Within fourteen days of a vacancy arising in the office of Deputy Governor, by virtue of the incumbent Deputy Governor ascending to the office of Governor by operation of section 22, the Governor shall, with the approval of the county assembly, nominate a person to fill the 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.

Simultaneous vacancies.

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.

Questions as to validity of removal of Governor or Deputy Governor.

26. (1) A person may apply to the High Court for review within a period of fourteen days of the decision of the Senate under section 19.

(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-

(a) filed within fourteen days; and

(b) heard and determined within forty-five days.

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

Impeachment 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 propose a motion requiring the Governor to dismiss a county executive committee member on any of the following grounds –

(a) incompetence;

(b) abuse of office;

(c) gross misconduct;

(d) Physical or mental incapacity or

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- (e) gross violation of the Constitution or any other law.

Procedure for the impeachment of a county executive committee member.

28. (1) A member of a county assembly who intends to move a motion under section 27 shall submit to the Clerk of the county assembly the motion together with a list of the members of the county assembly who support the motion.

(2) The list of members under subsection (1) shall be in the form prescribed in the Schedule.

(3) The Clerk of the county assembly shall 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 in support by at least a third of all the members of the county assembly.

(4) The Clerk of the county assembly shall, within three days of receipt of the proposed motion, submit the motion to the Speaker advising the Speaker of the determination made under subsection (3).

(5) 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.

(6) The member of the county assembly who proposes to move the motion under subsection (1) shall give notice of the approved motion within seven sitting days of approval of the motion under subsection (5)(a).

(7) The member of the county assembly shall move the motion within fourteen days of giving notice under subsection (6).

(8) The County assembly shall dispose of the motion within fourteen days from the day the motion is moved.

(9) Upon the notice of motion being given under subsection

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(6), 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 the allegations against the member to have been substantiated.

(10) 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.

(11) If the select committee finds any of the allegations to be—

- (a) unsubstantiated, no further proceedings shall be taken in respect of that allegation; or
- (b) substantiated, the county assembly shall-
 - (i) accord the county executive committee member an opportunity to be heard; and
 - (ii) vote whether to approve the resolution requiring the county executive committee member to be dismissed.

(12) If a resolution under subsection (11) (b) (ii) is supported by a simple majority of the members of the county assembly -

- (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.

(13) 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.

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(14) If the vote under subsection (11) 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 may, subject to subsection (15), only be re-introduced in the county assembly on the expiry of ninety days from the date of the vote by the county assembly under subsection (11).

(15) A motion under subsection (14) (b) may only be reintroduced in the county assembly if it relates to different facts from those which formed the subject of the impeachment proceedings.

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

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

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

PART VI – MISCELLANEOUS

Substantiation of allegation.

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.

Service.

31. An invitation to appear before any House of Parliament or its committee or a county assembly or its committee under this Act may be effected-

- (a) by personal service;
- (b) through an agent appointed in writing by the person who is sought to be impeached; or
- (c) by notice in at least one newspaper with national circulation.

Public notice and access to proceedings.

32. (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

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under this Act are to take place.

(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.

Amendment to Act No.
17 of 2012

33. The County Governments Act is amended-

(a) by deleting section 33 and substituting therefor the following new section-

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).

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SCHEDULE

(Sections 4(2), 9(3), 14(2) and 28(2))

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 |
|-----|-------|-----------|
| ... | | |
| ... | | |
| ... | | |
| ... | | |
| ... | | |
| ... | | |
| ... | | |
| ... | | |
| ... | | |

Signature of sponsor of the motion

Date

(add more pages if necessary)

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I certify that this printed impression is a true copy of the Bill as passed by the Senate, with amendments, on 12th June, 2019.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.



Speaker of the Senate

PRINTED BY THE CLERK OF THE SENATE