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09/06/2026*



*Hon. speaker
You may approve
for tabling
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9/6/26*

REPUBLIC OF KENYA

13TH PARLIAMENT | 5TH SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

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	
DATE	11.06.2026
TABLED BY	Sen. Dan Maanzo
COMMITTEE	JLAHR
CLERK AT THE TABLE	AbdiRahman

*on behalf
of the chair JLAHR*
15/06/26

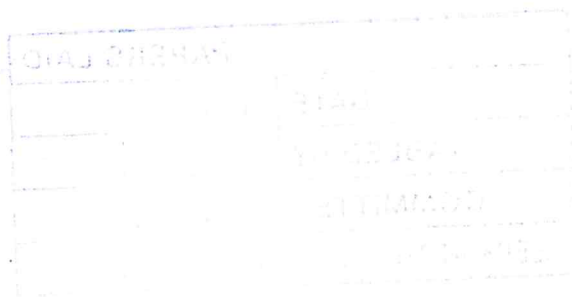
APPROVED
RT. HON. SEN
AMASON J. KINGI

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 1*.

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 SIGEI, 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 *Okoti & 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

***Annex 1: Minutes of the
Committee in
considering the
Petition***



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 265TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 24TH FEBRUARY, 2026 AT 8:00 A.M. VIRTUALLY ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Veronica W. Maina, CBS, MP | - Vice-chairperson |
| 3. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 4. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 5. Sen. Crystal Kegehi Asige, MP | - Member |
| 6. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. Karen Njeri Nyamu, MP | - Member |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Member |

SECRETARIAT

- | | |
|------------------------|---|
| 1. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 2. Mr. Boniface Kiambi | - Senior Clerk Assistant |
| 3. Ms. Faith Wangui | - Legal Counsel II |
| 4. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. Ms. Linet Aseka | - Research Officer III |
| 6. Mr. Josphat Ngeno | - Media Relations Officer |
| 7. Ms. Rosebella Ngesa | - Public Communications Officer |
| 8. Mr. Zenton Williams | - Audio Officer |
| 9. Ms. Anne Kigoro | - Pupil |

IN ATTENDANCE

- | | |
|-----------------------|--------------|
| 1. Mr. Laban Omusundi | - Petitioner |
|-----------------------|--------------|

MIN. NO. 849/2026

PRELIMINARIES

The meeting was called to order at twenty minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 850/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 851/2026

CONFIRMATION OF MINUTES

- a) The Minutes of the 260th Sitting were confirmed as a true record of proceedings having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and Sen. Andrew Omtatah Okoiti, MP.
- b) The Minutes of the 261st Sitting were confirmed as a true record of proceedings having been proposed by Sen. Crystal Kegehi Asige, MP and Sen. Andrew Omtatah Okoiti, MP.
- c) The Minutes of the 262nd Sitting were confirmed as a true record of proceedings having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and Sen. Crystal Kegehi Asige, MP.
- d) The Minutes of the 263rd Sitting were confirmed as a true record of proceedings having been proposed by Sen. (Prof.) Tom Ojienda, SC, MP and seconded by Sen. Daniel Kitonga Maanzo, EBS, MP.
- e) The Minutes of the 264th Sitting were confirmed as a true record of proceedings having been proposed by Sen. (Prof.) Tom Ojienda, SC, MP and Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 852/2026

MATTERS ARISING

*Under Min. No. 837/2026 - The Constitution of Kenya (Amendment) (No. 2) Bill, 2025
(Senate Bills No. 16 of 2025)*

Members were informed that-

- a) the Secretariat had since written to key stakeholders inviting written memoranda on the Bill;
- b) a brief with a case study on how other countries achieve balance in gender representation had been prepared and was scheduled for consideration at the next meeting; and
- c) the Parliamentary Budget Office was in the process of working on the cost implications of the proposed amendments for consideration by the Committee.

MIN. NO. 853/2026

**PETITION BY MR. LABAN OMUSUNDI
REGARDING THE ENACTMENT OF A LEGAL
FRAMEWORK TO PROVIDE FOR RECALL OF THE
PRESIDENT AND GOVERNORS THROUGH A
CITIZEN INITIATIVE**

The Committee met with the Petitioner, Mr. Laban Omusundi who took Members through the rationale and justification for the proposed law.

During deliberations, Members-

- i) noted that the proposals in the Petition required a constitutional amendment through a referendum pursuant to Article 255 of the Constitution as they touch on the sovereignty of the people, the term of office of the President as well as the functions of Parliament.
- ii) observed that Articles 145 and 181 of the Constitution already provided for the impeachment of the President and the removal of governors, respectively, and that where citizens perceived Parliament and the County Assemblies of being compromised in discharging this mandate, they could recall their respective Members of Parliament through Article 104.
- iii) recommended that a comparative study be conducted on countries with presidential systems that had similar citizen-driven recall mechanisms.

Thereupon, the Committee resolved that the Secretariat-

- a) conducts a comparative study on similar practices in countries with a presidential system of government for consideration by the Committee; and
- b) invites written comments on the Petition from constitutional commissions, independent offices and other relevant stakeholders.

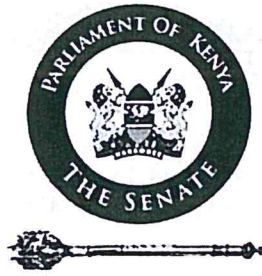
MIN. NO. 854/2026

ADJOURNMENT

The Chairperson adjourned the meeting at fifteen minutes past nine O'clock. The next meeting will be held on Thursday, 26th February, 2026 at 8.00 a.m.

SIGNED: 

DATE: 03. 06. 2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 272ND SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 17TH MARCH, 2026 AT 8:00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Daniel Kitonga Maanzo, EBS, MP - Member (*Chairing*)
2. Sen. Andrew Omtatah Okoiti, MP - Member
3. Sen. Crystal Kegehi Asige, MP - Member
4. Sen. (Prof.) Tom Ojienda, SC, MP - Member
5. Sen. Raphael Chimera Mwinzagu, MP - Member

ABSENT WITH APOLOGY

1. Sen. Wakili Hillary Sigei, CBS, MP - Chairperson
2. Sen. Veronica W. Maina, CBS, MP - Vice-Chairperson
3. Sen. Karen Njeri Nyamu, MP - Member

SECRETARIAT

1. Mr. Boniface Kiambi - Senior Clerk Assistant (*Taking Minutes*)
2. Ms. Faith Wangui - Legal Counsel II
3. Ms. Angela Bonaya - Clerk Assistant III
4. Mr. Jackson Matheshe - Research Officer III
5. Mr. Josphat Ngeno - Media Relations Officer
6. Ms. Rosebella Ngesa - Public Communications Officer
7. Mr. Zenton Williams - Audio Officer
8. Ms. Anne Kigoro - Pupil

MIN. NO. 883/2026

PRELIMINARIES

The meeting was called to order at seven minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 884/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. (Prof.) Tom Ojienda, SC, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 885/2026

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

- a) The Minutes of the 268th Sitting were confirmed as the true record of the proceedings having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. (Prof.) Tom Ojienda, SC, MP.
- b) The Minutes of the 269th Sitting were confirmed as the true record of the proceedings having been proposed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 886/2026

PETITION BY MR. LABAN OMUSUNDI REGARDING THE ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR RECALL OF THE PRESIDENT AND GOVERNORS THROUGH A CITIZEN INITIATIVE

The Committee resumed its consideration of the captioned Petition and was taken through a research Brief analyzing impeachment and recall mechanisms in comparative jurisdictions, highlighting the need for a constitutional framework to ensure democratic accountability while exploring the implications of recall thresholds.

Members took note of the Brief and observed that overly high or low thresholds for removal from office could lead to political instability or render the recall mechanism ineffective.

Thereupon, the Committee noted that it had invited submissions on the Petition from selected stakeholders and resolved to await receipt of and to consider the said submissions before proceeding to prepare its Report on the Petition.

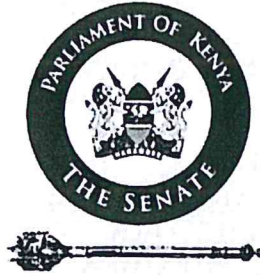
MIN. NO. 887/2026

ADJOURNMENT

The Chairperson adjourned the meeting at twenty five minutes past nine O'clock. The next meeting will be held on Thursday, 19th March, 2026 at 8.00 a.m.

SIGNED: 

DATE: 03. 06. 2026



13TH PARLIAMENT | 5TH SESSION

MINUTES OF THE 286TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 14TH MAY, 2026 AT 8:00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | |
|--|---------------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | - Chairperson |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Member |
| 3. Sen. Crystal Kegehi Asige, MP | - Member |
| 4. Sen. Daniel Kitonga Maanzo, EBS, MP | - Member |
| 5. Sen. (Prof.) Tom Ojienda, SC, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|--------------------|
| 1. Sen. Veronica W. Maina, CBS, MP | - Vice-chairperson |
| 2. Sen. Karen Njeri Nyamu, MP | - Member |
| 3. Sen. Andrew Omtatah Okoiti, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Mr. Charles Munyua | - Principal Clerk Assistant II |
| 2. Mr. Boniface Kiambi | - Senior Clerk Assistant (<i>Taking Minutes</i>) |
| 3. Ms. Faith Wangui | - Legal Counsel II |
| 4. Mr. Malcolm Ngugi | - Legal Counsel II |
| 5. Ms. Angela Bonaya | - Clerk Assistant III |
| 6. Mr. Jackson Matheshe | - Research Officer III |
| 7. Ms. Linet Aseka | - Research Officer III |
| 8. Mr. Josphat Ngeno | - Media Relations Officer |
| 9. Mr. John Lekampule | - Serjeant at Arms |
| 10. Mr. Zenton Williams | - Audio Officer |
| 11. Ms. Anne Kigoro | - Pupil |
| 12. Ms. Natalie Amu | - Attachee |

MIN. NO. 951/2026

PRELIMINARIES

The meeting was called to order at seventeen minutes past eight O'clock and opened with a word of Prayer.

MIN. NO. 952/2026

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded Sen. Daniel Kitonga Maanzo, EBS, MP.

MIN. NO. 953/2026

**PETITION BY MR. LABAN OMUSUNDI
REGARDING THE ENACTMENT OF A LEGAL
FRAMEWORK TO PROVIDE FOR RECALL OF
THE PRESIDENT AND COUNTY GOVERNORS
THROUGH CITIZEN INITIATIVE**

The Committee resumed consideration of the captioned Petition and was taken through the draft Report. Members deliberated on and concurred with the proposed Committee Observations and Recommendation as set out at Chapters Three and Four of the Report, respectively.

Thereupon, the Report on the Petition was adopted having been proposed by Sen. Daniel Maanzo, EBS, MP and seconded by Sen. Crystal Asige, MP.

MIN. NO. 954/2026

ANY OTHER BUSINESS

a) *Working Retreat to Consider three Constitutional Amendment Bills before the Committee*

Members were reminded of the Committee retreat to be held on 24th to 28th May, 2026 in Mombasa County to consider the submissions received on three Constitutional amendment Bills before the Committee.

Following deliberations, it was resolved that the program for the retreat be extended by two working days to enable the Committee to also consider and adopt the Reports on the three Bills for tabling in the Senate upon resumption from the short recess.

b) *Budget Execution Status for FY 2025/ 2026*

Members were briefed on the budget execution status for the Committee for FY 2025/2026, and on the need to commit the outstanding balances ahead of the close of the financial year in June.


Following deliberations, it was resolved that the Committee firms up arrangements for the following activities to be held in June –

- i) A retreat to be held on 7th to 9th June, 2026 in Kiambu County to consider the submissions received on and prepare the Committee Report on the Referendum Bill, 2026 (Senate Bills No. 3 of 2026);
- ii) A retreat with the Independent Electoral and Boundaries Commission, the Office of the Registrar of Political Parties and the Judiciary Committee on Elections, to be held in Naivasha, Nakuru County, on 11th to 14th June, 2026, to deliberate on electoral reforms and preparedness for the 2027 General Elections; and

- iii) A fact-finding visit to Narok and Bomet Counties on 18th to 21st June, 2026 to meet with stakeholders to deliberate on the Statement sought by Sen. Catherine Mumma, CBS, MP regarding the criminalization and re-victimization of survivors of Female Genital Mutilation (FGM), particularly in Bomet and Narok counties.

MIN. NO. 955/2026 ADJOURNMENT

The Chairperson adjourned the meeting at seven minutes to nine O'clock. The next meeting will be held on notice.

SIGNED: 

DATE: 03.06.2026

***Annex 2: Copy of the
Petition***



**GRASSROOT CIVIL SOCIETY
OVERSIGHT INITIATIVE**

P.O Box 9759-20100 Nakuru,

Email: omusundi200@gmail.com



Tel : +254723159625

22nd January 2026.

**TO
SENATE
REPUBLIC OF KENYA
PARLIAMENT BUILDINGS
NAIROBI KENYA**

22 JAN 2026

3:40pm

DIPS

Please deal

MA

23/1/26

PUBLIC PETITION TO THE SENATE

**IN THE ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR
RECALL OF THE PRESIDENT AND GOVERNORS THROUGH A
CITIZEN INITIATIVE**

A. INTRODUCTION

1. I, Laban Omusundi, a citizen of the Republic of Kenya, and an active serial constitutional petitioner, bring this Petition under the strength of Article 119(1) of the Constitution, which grants every person the right to petition Parliament to consider any matter within its authority.

B. JURISDICTION OF THE SENATE

2. This Petition properly lies before the Senate by virtue of Article 96 of the Constitution, which mandates the Senate to represent and protect the interests of the Counties and their governments, and to participate in the oversight of State officers, including Governors, and to safeguard the sovereign power of the people exercised at both levels of government.

C. CONSTITUTIONAL AND LEGAL BASIS

3. This Petition is anchored on, inter alia:

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*D.K.S. Mchanda
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process
A. Mchanda
26/01/2026*

*Please deal
23/01/26*

**IN THE ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR
RECALL OF THE PRESIDENT AND GOVERNORS THROUGH A
CITIZEN INITIATIVE**

Article 1 – Sovereignty of the people

Article 2 – Supremacy of the Constitution

D. STATEMENT OF FACTS AND CONCERN

4. That the Constitution vests all sovereign power in the people of Kenya, exercisable directly or through democratically elected representatives.

5. That the Constitution expressly provides for recall of Members of Parliament and Members of County Assemblies, but does not provide a clear, enforceable legal framework for recall of the President and Governors by the people, despite their immense executive power and control over public resources.

6. That in practice, oversight mechanisms against the President and Governors are largely dependent on political actors—namely MPs and MCAs—who are often:

-Compromised through patronage, appointments, and financial inducements.

-Subordinated through party control, intimidation, or misuse of State machinery.

-Rendered ineffective where political loyalty outweighs constitutional duty.

7. That impeachment processes against the President and Governors, though constitutionally provided for, have increasingly become political rituals rather than genuine accountability tools, thereby denying citizens an effective remedy where leadership grossly violates the Constitution.

8. That the absence of a direct citizen-initiated recall mechanism for the President and Governors:

(a) Undermines Article 1 on people's sovereignty.

(b) Weakens accountability and constitutionalism.

(c) Entrenches impunity at the highest levels of executive power.

(d) Contradicts democratic best practices where ultimate power rests with the people.

**IN THE ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR
RECALL OF THE PRESIDENT AND GOVERNORS THROUGH A
CITIZEN INITIATIVE**

9. That where MPs are compromised in oversight of the President, and MCAs are compromised in oversight of Governors, citizens are left constitutionally stranded, with no direct democratic instrument to protect the Republic.

10. That there no effort done to address this matter for it only be addressed by Senate. It should not be disregarded on that ground.

11. That this matter is not pending in any Court or any constitutional body between the parties

F. PRAYERS / RELIEFS SOUGHT

12. The Petitioner humbly prays that the Senate:

(A). Admits this Petition for consideration

for initiating a legislation to provide a clear legal framework for:

-Recall of the President by citizens through a defined citizen initiative when it deems necessary.

-Recall of Governors by citizens where County Assemblies are compromised and Senate too.

(B) Ensures that such a framework includes:

Clear thresholds for citizen signatures.

Independent verification by the IEBC or a similar constitutional body.

(C) Safeguards against abuse while preserving the supremacy of the people's will.

(D) Affirms the principle that no public office, including the Presidency and Governorship, is immune from direct democratic accountability.

(E) Makes any other orders or recommendations it deems fit to restore, protect, and strengthen constitutional governance and people's sovereignty.

IN THE ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR
RECALL OF THE PRESIDENT AND GOVERNORS THROUGH A
CITIZEN INITIATIVE

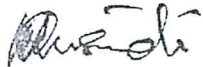
G. CONCLUSION

13. This Petition is not about political convenience, but about constitutional survival.

14. A Republic where citizens can recall MPs and MCAs but are powerless against compromised Presidents or Governors betrays the spirit of the 2010 Constitution.

15. The people of Kenya must remain the same ultimate custodians of power, not spectators to elite bargains and compromised oversight

Yours truly



Laban Omusundi

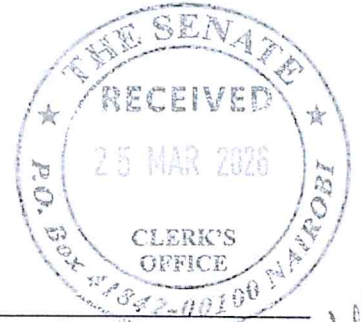
An Active Citizen Based in Nakuru

And a Serial Petitioner on Matter of Governance of National importance

IB No 20579948



***Annex 3: Submissions
received in response to
the Petition***

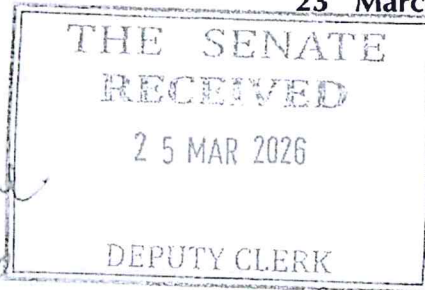


Our Ref: AG/LDD/1101/1/101

23rd March, 2026

Mr. J.M. Nyegenye, CBS
Clerk of the Senate
Clerk's Chambers
Parliament Building
P.O Box 41842-00100
NAIROBI.

DGAC
Kindly deal
Eg



H/S/Boole
JAH re
Please deal
26/3/2026

26/03/2026

RE: PETITION BY MR. LABAN OMUSUNDI REGARDING THE ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR CITIZEN INITIATED RECALL OF THE PRESIDENT AND COUNTY GOVERNORS

This is in reference to your letter under Ref. No. SEN/DGAC/DGC/JLAHRC/2026/3(a) dated 6th March, 2026 forwarding the Petition by Mr. Laban Omusundi regarding the enactment of a legal framework to provide for citizen initiated recall of the President and County Governors, for our consideration and comments prior to consideration and reporting to the House by the Standing Committee on Justice, Legal Affairs and Human Rights.

Following our review of the Petition with respect to the Constitution and the County Governments Act (Cap.265) as well as relevant decided cases, we hereby provide the following observations and advice for the consideration of the Standing Committee:

1. Sovereignty of the People — Article 1 of the Constitution

Article 1(1) of the Constitution vests all sovereign power in the people of Kenya. Article 1(2) provides that the people may exercise this sovereign power either directly or through their democratically elected representatives. The supremacy of the people's sovereignty is the basis in which all government authority is derived and exercised.

While the Petition correctly anchors its premise on Article 1(2), it 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

STATE LAW OFFICE
SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227460/0700072929/0732529995
E-MAIL: info@ag.go.ke / communication@ag.go.ke WEBSITE: <https://www.statelaw.go.ke> ; <https://www.ag.go.ke>

STATE DEPARTMENT FOR JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: ps@ag.go.ke

ISO 9001:2008 Certified



Constitutional Commissions. It is within this structured delegation that any recall mechanism must be designed.

2. Under the Constitution, President may be removed:-

(a) under Article 144 on the grounds of incapacity; or

(b) by impeachment under Article 145.

Under Article 144 on the grounds of incapacity, a member of the National Assembly, supported by at least a quarter of all the members, may move a motion for the investigation of the President's physical or mental capacity to perform the functions of office. If that motion is supported by a majority of all members, then the speaker can inform the country's Chief Justice of the resolution within two days. After receiving notice of the resolution, the Chief Justice or Deputy Chief Justice has seven days to appoint a special tribunal to investigate the matter. If the tribunal concludes that the President doesn't have the capacity to perform the functions of his or her office, the National Assembly must vote on whether to ratify the report. If the majority vote to ratify the report, this will automatically result in the President's removal from office. The report of the tribunal is considered final and is not subject to appeal.

Under Article 145 of the Constitution, a member of the National Assembly may move a motion to impeach a sitting president on the following grounds—

- (a) 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.

If the motion to impeach the President is supported by at least two-thirds of all the members of the National Assembly, the speaker then transmits the resolution to the speaker of the Senate within two days. Within seven days of receiving the notice of the impeachment resolution from the speaker of the National Assembly, the speaker of the Senate must call a sitting to hear and investigate the charges against the President.

The Senate may pass a resolution to appoint a special committee, which is made up of eleven of its members, to investigate the charges against the President. The President shall have right to appear before the special committee during investigations. If the special committee determines and reports to the Senate that the particulars of any allegation against the President—

- (a) have not been substantiated, further proceedings shall not be taken under Article 145 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.

If at least two-thirds of the members of the Senate vote in favour of upholding any of the impeachment charges, the President's mandate will be terminated.

3. **Similarly, removal of a governor is a power vested in the people but exercised through elected representatives, i.e. members of the County Assembly. Article 181 provides for removal of a county governor on any of the following grounds—**

- (a) gross violation of the 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.

4. Article 181(2) provides that Parliament shall enact legislation to give effect to the provisions on removal of a county governor. Section 33 of the County Governments Act provides for removal of a governor which is initiated by member of the county assembly by notice to the speaker, supported by at least a third of all the members. The motion must be supported by at least two-thirds of all the members of the county assembly. The speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days. 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.

5. **Court decisions**

(a) ***Institute for Social Accountability & Another v. National Assembly & 4 Others [2015] eKLR***

Petition No. 71 of 2014, High Court of Kenya (three-judge bench: Mumbi Ngugi, Odunga and Makau JJ). 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."

(b) ***David Ndi & Others v. Attorney General & Others [2021] eKLR***

Petition Nos. E282, E397 & E394 of 2021 (consolidated), High Court of Kenya (Constitutional and Human Rights Division). The court held, affirmed on appeal, that fundamental changes to the constitutional architecture require the people's direct participation through a referendum. The court drew a distinction between constitutional amendments through Parliamentary initiative or through a referendum.

Any proposal to introduce citizen initiated recall of the President touches the architecture of executive accountability enshrined in Chapter Nine of the Constitution. This would constitute a primary constitutional amendment requiring a referendum under Article 255(1)(f), which protects provisions on the term of office and functions of the President.

6. The fundamental legal question raised by the Petition is whether Parliament has the mandate to enact a law providing for citizen-initiated recall of the President.
7. Article 255(1) of the Constitution provides that a bill to amend the Constitution which relates to, among others, the term of office of the President (Article 255(1)(f)) must be subject to a referendum. Article 142 provides that the President shall hold office for a term beginning when the President is sworn in and ending when the person next elected as President is sworn in.

It is our considered view that the enactment of a citizen initiated recall mechanism for the President, without a constitutional amendment, would be unconstitutional for the following reasons—

- (a) Article 142, as read together with Article 255(1)(f), entrenches the President's term of office as a fundamental provision alterable only by a referendum. A statutory recall mechanism that effectively truncates the Presidential term without a referendum would violate this provision;
 - (c) Articles 144 and 145 constitute a complete mechanism for the removal of the President. Parliament cannot legislate an additional or parallel removal mechanism outside Articles 144 and 145, the position has been buttressed in the decided case of *Institute for Social Accountability v. National Assembly & 4 Others [2015] eKLR* discussed herein;
 - (b) The courts in *David Ndi & Others v. Attorney General (2021)*, protects the architecture of executive accountability. Citizen initiated recall of the President shall require an amendment to the Constitution through a referendum as contemplated by Article 255(1)(f).
8. Article 181(2) expressly mandates Parliament to enact legislation providing for the procedure for removal of a county governor. Section 33 of the County Governments Act (Cap. 265) operationalises Article 181.

The grounds for removal of a county governor is specified under Article 181(1), and Parliament cannot add new grounds for removal of a county governor beyond what the Constitution contemplates. Section 33 of the County Governments Act is explicit on the procedures for removal of a county and therefore there is currently provided justification for enactment of a new legal framework as proposed in the Petition.

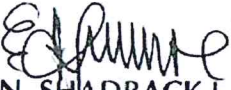
9. From the foregoing, it is clear that the Constitution provides an elaborate legal framework regarding the removal of the president and did not contemplate enactment of an Act of Parliament to deal with the recall of the President. The Constitution is

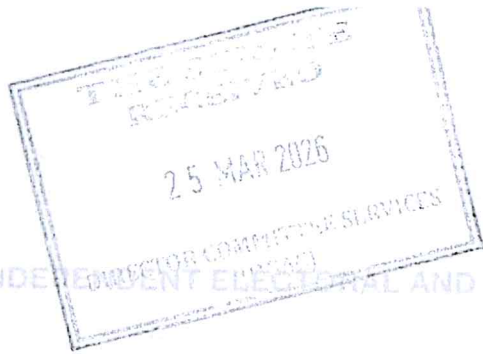
clear on the procedure for removal of a president and it being the supreme law, it supersedes any other legislation. Where a member of the public wishes to petition for the removal of the President, that person may exercise that mandate through their elected representatives in the National Assembly.

A proposal for a different legal framework would require referendum as this would require an amendment of the Constitution to change the legal framework established in the Constitution.

10. On the other hand, regarding the removal of a governor, Section 33 of the County Governments Act operationalizes Article 181(2) of the Constitution as it sets out the procedure for removal of a governor. The legal framework set out under the County Governments Act is elaborate and there is no need for enactment of a new law to deal with the same subject matter.
11. We further note that the Petition raises fundamental constitutional issues regarding the architecture of executive accountability and the realisation of the sovereignty of the people. The Policy on the subject matter, lies within the mandate of the Ministry of Interior and National Administration and the State Department of Devolution. To this end, we have sought policy guidance from the Ministry of Interior and National Administration and the State Department of Devolution.

We thank you and assure you of our continued support.


HON. SHADRACK J. MOSE, CBS
SOLICITOR-GENERAL



Ref: IEBC/40/JLAC/14 (4)

19th March, 2026

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI



Dear Mr. Nyegenye,

RE: PETITION BY MR. LABAN OMUSUNDI REGARDING THE ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR CITIZEN INITIATED RECALL OF THE PRESIDENT AND COUNTY GOVERNORS

The Independent Electoral and Boundaries Commission (IEBC) acknowledges receipt of your letter Ref: SEN/DGAC/DGC/JLAHRC/2026/3 (b) dated 6th March, 2026 on the above subject matter.

The Commission hereby forwards its written submissions on the petition to the Standing Committee on Justice, Legal Affairs and Human Rights as directed for further course of action.

Thank you for your continued support.

Yours Sincerely,

Moses Sunkuli, OGW
Ag. Commission Secretary/CEO

*HOD / Legal Dept
JLAHRC
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25/03/2026*

DGAC

kindly deal

*E
26/03/2026*

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

SUBMISSIONS ON

THE PETITION BY MR. LABAN OMUSUNDI REGARDING THE
ENACTMENT OF A LEGAL FRAMEWORK TO PROVIDE FOR CITIZEN
INITIATED RECALL OF THE PRESIDENT AND COUNTY GOVERNORS

Dated 23rd arch, 2026

Independent Electoral & Boundaries Commission (IEBC)

Anniversary Towers, 6th Floor, Off University Way

P.O. Box 45371 – 00100, Nairobi – Kenya

Telephone: + 254 (0) 20 29925

A. INTRODUCTION

1. The Independent Electoral and Boundaries Commission (hereinafter referred to as the Commission) is a Constitutional Commission established under Article 88 of the Constitution of Kenya.
2. The Commission is responsible for the conduct or supervision of referenda and elections to any elective body or office established by the Constitution and any other elections prescribed by an Act of Parliament.
3. Article 88(4) (d) stipulates the mandate of the Commission to regulate the process by which parties nominate candidates for election.
4. The Constitution of Kenya gives the electorate the right to recall their elected representatives on the basis of incompetence, gross misconduct or the gross violation of the Constitution or any other written law.

B. LEGAL FRAMEWORK FOR THE RECALL

5. Article 104 of the Constitution gives the electorate the right to recall their representatives in the National Assembly and the Senate. ✓
6. 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.
7. In this regard, Section 27 of the County Governments Act, 2012 provides the grounds upon which a member of county assembly may be recalled.

8. Sections 28 and 29 outlines the process of a recall petition and recall elections after the filing of a petition for a member is to be recalled.
9. It is trite to note that the intention of the Constitution was for Parliament to enact laws to recall members of the National Assembly and Senate. Perhaps it was an oversight in omitting Members of the County Assembly in this prescription.
10. Nonetheless, Section 45 -48 of the Elections provide for recall of members of Parliament whereas Section 27-28 in the County Governments Act provide for recall of Members of County Assemblies.

C. ANALYSIS ON THE PROPOSAL TO HAVE A FRAMEWORK FOR THE RECALL OF A PRESIDENT AND COUNTY GOVERNOR

11. Kenya's constitutional architecture places a strong emphasis on accountability, separation of powers and checks and balances in the exercise of executive authority. Although the public discourse often uses the term "recall" broadly to refer to the removal of political leaders, the Constitution provides recall only for Members of Parliament under Article 104.
12. However, even this right of recall remains unimplemented because Parliament has not enacted the necessary legislation, 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)*.
13. The Constitution of Kenya only has a recall mechanism exists for National Assembly and Senate. This means that the only constitutionally available removal mechanism for the executive offices of County Governor and President is impeachment.
14. This situation underscores a crucial gap in Kenya's system of political accountability and highlights the importance of understanding the impeachment architecture as the functional equivalent of recall for these two executive positions.

The Commission observes that:

- (a) The constitutional design deliberately limits the mechanisms through which a sitting President may be removed from office.
- (b) These mechanisms are exhaustive and exclusive, leaving no room for the introduction of additional removal procedures through ordinary legislation.
- (c) Any attempt by Parliament to enact a law providing for the recall of the President would therefore be inconsistent with the Constitution and invalid under Article 2.

Accordingly, the Commission is of the considered view that:

A framework for the citizen-initiated recall of the President cannot be introduced through legislation and would require a constitutional amendment.

4.2 Recall of County Governors

The constitutional framework governing the removal of County Governors differs materially from that of the President.

- (a) Article 181(1) sets out the grounds for removal of a County Governor.
- (b) Article 181(2) expressly mandates Parliament to enact legislation providing for the procedure of removal.

Pursuant to this mandate, Parliament enacted the County Governments Act, Cap. 265, which provides for removal of Governors through impeachment (section 33).

The Commission notes that:

- (a) The Constitution does not prescribe an exhaustive procedure for the removal of Governors.
- (b) Instead, it creates a legislative space within which Parliament may design appropriate mechanisms.

Recommendation

The Commission recommends that Parliament takes cognizance of the constitutional design governing the removal of elected executives under the Constitution of Kenya, 2010. In particular:

1. **On the Office of the President**
2. The Senate is invited to note that the Constitution establishes an exhaustive and closed framework for the removal of the President. Consequently, Parliament lacks the legislative competence to enact a law providing for the citizen-initiated recall of the President. Should such a mechanism be considered desirable, it may only be introduced through a constitutional amendment in accordance with the procedures set out under Articles 255–257 of the Constitution.
3. **On the Office of the County Governor**

Parliament should further note that the Constitution adopts a legislatively delegated framework in respect of the removal of County Governors, by prescribing the grounds for removal while leaving the procedural aspects to legislation.

In this regard, the Commission recommends 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.

REPUBLIC OF KENYA



COUNTY ASSEMBLIES FORUM (CAF)

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

CAF MEMORANDUM ON THE PETITION CONCERNING THE ENACTMENT OF A LEGAL FRAMEWORK FOR THE CITIZEN-INITIATED RECALL OF THE PRESIDENT AND COUNTY GOVERNORS

TO: Mr. Jeremiah Nyegenye, CBS, Clerk of the Senate, Parliament of Kenya.

FROM: The County Assemblies Forum.

DATE: 19th March 2026

1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
2. As one of the key institutional pillars within Kenya's devolved system of governance, CAF remains committed to supporting constitutionalism, accountable government, democratic participation, and the protection of representative institutions established under the Constitution.
3. It is in that spirit that CAF submits this memorandum on the petition concerning the enactment of a legal framework for the citizen-initiated recall of the President and County Governors. The petition raises questions regarding the adequacy of the existing constitutional mechanisms for the removal of holders of executive office and proposes a more direct citizen-driven recall framework.

2.0. BACKGROUND

- 2.1. The petition by Laban Omusundi is premised on the argument that the current constitutional and statutory mechanisms for the removal of the President and County Governors are insufficient because they substantially depend on legislative institutions, namely Parliament and County Assemblies.
- 2.2. The petitioner contends that such institutions may in some instances be compromised, influenced, or otherwise unable to exercise their oversight powers effectively, thereby frustrating public accountability.
- 2.3. On that basis, the petitioner seeks the establishment of a legal framework enabling citizens to directly initiate a recall process against the President and County Governors.
- 2.4. While the petition raises legitimate questions regarding public participation in governance and the need to strengthen accountability, it also makes broad assertions regarding the conduct and independence of legislative institutions, including the Senate and County Assemblies, which assertions require careful scrutiny.



- 2.5. In CAF's considered view, any discussion on the possible introduction of a citizen-initiated recall framework must be undertaken in a manner that respects the architecture of the Constitution, preserves institutional balance, and safeguards the oversight mandate of the Senate and County Assemblies.

3.0. GENERAL COMMENTS.

- 3.1. The CAF acknowledges the importance of enhancing public confidence in governance and appreciates the petitioner's effort to contribute to national discourse on democratic accountability.
 - 3.2. However, CAF expresses strong concern with the petition's broad suggestion that legislative bodies are generally compromised or unduly influenced by the Executive. Such a characterization is overly sweeping, lacks the necessary evidentiary precision, and risks unfairly discrediting constitutional institutions that are central to Kenya's representative democracy.
 - 3.3. The Senate and County Assemblies are not peripheral actors in the constitutional order. They are elected and constituted bodies that exercise delegated sovereign power on behalf of the people. Their legislative, representative, and oversight functions are constitutionally protected and are indispensable to the maintenance of democratic accountability.
 - 3.4. The mere fact that impeachment or removal proceedings do not always culminate in removal cannot, without more, be taken as proof of compromise, capture, or illegitimate influence. In many instances, the constitutional threshold for removal is intentionally high in order to protect institutional stability, guard against abuse, and ensure that removal is grounded on law and evidence rather than political expediency.
 - 3.5. CAF is therefore of the view that care must be taken not to frame legislative institutions as obstacles to accountability merely because they serve as constitutional filters against arbitrary, populist, or insufficiently substantiated attempts to remove elected executives from office.
 - 3.6. We further observe that rhetoric portraying Parliament and County Assemblies as inherently unreliable may erode public trust in representative institutions and undermine the very constitutional order within which any proposed reform must be debated and enacted.
 - 3.7. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendments:
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4.0. THE FORUM VIEWS ON THE PETITION

- 4.1. CAF affirms 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. These mechanisms are not accidental; they are part of the constitutional design intended to balance accountability with stability in governance.
 - 4.2. The involvement of legislative institutions in those processes is neither a weakness nor a procedural inconvenience. Rather, it is a deliberate constitutional safeguard ensuring that removal from high office is subjected to institutional scrutiny, public accountability, and due process.
 - 4.3. Senators and Members of County Assemblies exercise oversight responsibilities not in their personal capacities, but as representatives of the people. Any legal reform concerning executive removal must therefore complement, and not diminish, their constitutional mandate.
 - 4.4. CAF rejects 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. Such a premise would be institutionally dangerous, constitutionally unsound, and democratically regressive.
 - 4.5. The petitioner's proposal to amend electoral laws by emphasizing ethnic community representation is commendable. It promotes inclusivity, diversity, and ensures that MCAs genuinely understand and address the unique needs and challenges of their communities.
 - 4.6. The petitioner has alluded to legislative compromise as justification for a citizen-initiated recall framework. In CAF's view, 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. General dissatisfaction with legislative outcomes is not sufficient basis for restructuring constitutional accountability mechanisms.
 - 4.7. We concur with the position that the Constitution should not be treated as
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though it were elastic and open to constant structural re-engineering merely because a petitioner is dissatisfied with the outcome of existing constitutional processes. Constitutional reform must be principled, evidence-based, and institutionally coherent

- 4.8. The Senate and County Assemblies serve an essential buffering role against political instability. 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.
- 4.9. A direct citizen-initiated recall framework, if not carefully designed, may expose the offices of the President and County Governor to incessant agitation, political harassment, and destabilizing recall attempts, particularly in highly polarized political environments.
- 4.10. Accordingly, if the Committee considers progression of this proposal, the legal architecture must preserve the dignity, authority, and constitutional role of Senators and MCAs in the accountability chain.

5.0. RECCOMENDATIONS

- 5.1. CAF recommends that the Committee approach the petition with caution and with full regard to the constitutional role of representative institutions.
 - 5.2. Should the Committee nonetheless consider the development of a citizen-initiated recall framework, 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.
 - 5.3. Any such framework should require clear, specific, and legally cognizable grounds for recall, supported by verifiable evidence of misconduct, violation of the Constitution, abuse of office, gross misconduct, or other recognised constitutional thresholds.
 - 5.4. The law should incorporate robust safeguards against misuse of the recall process for partisan contestation, political vendetta, or harassment of elected office holders.
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- 5.5. The law should expressly preserve the constitutional oversight and accountability role of the Senate and County Assemblies and should not reduce Senators and MCAs to passive spectators in a process constitutionally connected to their representative mandate.
- 5.6. The Committee should reject any legislative framing that proceeds from the presumption that legislative compromise is the default condition of Parliament or County Assemblies. Reform, if any, should strengthen institutions rather than delegitimise them.
- 5.7. Consideration may also be given to strengthening existing accountability mechanisms, 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.

6.0. CONCLUSION

- 6.1. CAF appreciates the opportunity to submit its views on this petition.
 - 6.2. While the petition raises important issues concerning participatory democracy and accountability, CAF maintains that any resulting legal framework must safeguard the dignity, constitutional mandate, and oversight authority of the Senate and County Assemblies.
 - 6.3. Kenya's representative democracy depends on the integrity and proper functioning of its constitutional institutions. It is therefore imperative that reform efforts do not proceed on the basis of unsubstantiated assumptions that these institutions are compromised or dispensable
 - 6.4. CAF accordingly urges the Committee to reject any framing of the petition that undermines legislative institutions and, if any reform is to be considered, to ensure that such reform complements rather than supplants the constitutional role of Senators and Members of County Assemblies.
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