

SPECIAL ISSUE

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NATIONAL ASSEMBLY BILLS, 2017

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**THE OFFICE OF THE ATTORNEY GENERAL
(AMENDMENT) BILL, 2017**

A BILL FOR

**AN ACT of Parliament to amend the Office of the
Attorney General Act, 2012, and for connected
purposes.**

**ENACTED by the Parliament of Kenya as
follows—**

1. This Act may be cited as the Office of the
Attorney General (Amendment) Act, 2017.

Short title.

2. The Office of the Attorney General Act, 2012 is
amended (in this Act referred to as “the Principal Act”), in
section 12 by inserting the following new subsections—

Amendment of
section 12 of No.
49 of 2012.

“(3) Without prejudice to the power of the
President to dismiss the Attorney General and the
provisions of subsections (1) and (2), a member of the
National Assembly, supported by at least one-quarter
of all the members of the Assembly, may propose a
motion requiring the President to dismiss the Attorney
General on any ground specified in sub section (1).

(4) If a motion under clause (3) is supported by at
least one-third of the members of the National
Assembly—

(a) the Assembly shall appoint a select committee
comprising eleven of its members to
investigate the matter; and

(b) the select committee shall, within ten days,
report to the Assembly whether it finds the
allegations against the Attorney General to be
substantiated.

(5) The Attorney General has the right to appear
and be represented before the select committee during
its investigations.

(6) If the select committee reports that it finds the
allegations—

- (a) unsubstantiated, no further proceedings shall be taken; or
- (b) substantiated, the National Assembly shall —
 - (i) afford the Attorney General an opportunity to be heard; and
 - (ii) vote whether to approve the resolution requiring the Attorney General to be dismissed.

(7) If a resolution under clause (6) (b) (ii) requiring the President to dismiss the Attorney General is supported by a majority of the members of the National Assembly—

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

Procedure for
removal of the
Attorney General.

3. (1) Before giving notice of Motion under Section 2 of this Act, the Member shall deliver to the Clerk a copy of the proposed Motion in writing—

- (a) stating the grounds and particulars upon which the proposed Motion is made;
- (b) signed by the Member; and
- (c) signed in support by at least a quarter of all the Members

(2) A Motion under section (1) shall be disposed of —

- (a) by the Speaker within three days of receipt of notice by a member under paragraph (1); and
- (b) by the House within seven days of a member giving notice and if not, such motion shall be deemed to have been withdrawn and shall not be moved again in the same

session, except with the leave of the Speaker.

(3) If the National Assembly is not then sitting, the Speaker shall summon the Assembly for a special sitting to dispose of the Motion.

(4) An Order Paper on which the Motion under paragraph (1) is listed shall set out—

- (a) the grounds and particulars upon which the proposal is made;
- (b) the name of the Member sponsoring the Motion; and
- (c) the names of the Members in support of the Motion.

(5) Any signature appended to the list as provided under paragraph (4) shall not be withdrawn.

(6) If the Motion is supported by at least one third of the members of the National Assembly—

- (a) the Assembly shall, within seven days, appoint a select committee comprising eleven of its members to investigate the matter; and
- (b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Attorney General to be substantiated.

(7) If the select committee reports that it finds the allegations—

- (a) unsubstantiated, no further proceedings shall be taken; or
- (b) substantiated, the National Assembly shall—
 - (i) avail the Attorney General with the report of the select

Committee, together with any other evidence adduced and such note or papers presented to the Committee at least three days before the day scheduled for his or her appearance before the Assembly;

- (ii) afford the Attorney General an opportunity to be; and
- (iii) consider the Report of the select committee and vote whether to approve the resolution requiring the Attorney General to be dismissed.
- (iv) If a resolution requiring the President to dismiss the Attorney General is supported by a majority of the members of the National Assembly the Speaker shall promptly deliver the resolution to the President.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to make provisions to provide for mechanisms for the removal of the Attorney General. The Constitution of Kenya establishes the office of the Attorney General as the principal legal adviser to the government. The Principal Act provides for only one mechanism for the removal of the Attorney General by the President, the appointing authority under whose pleasure the Attorney General serves. This amendment therefore seeks to safeguard the National Assembly's role in reviewing the conduct of State officers and initiating the process of removing them from office.

Clause 1 of the Bill is the short title.

Clause 2 of the Bill seeks to prescribe the procedure for the removal of the Attorney General by the National Assembly.

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

The Bill does not limit any fundamental rights or freedoms.

Statement that the Bill concerns county governments

The Bill does not concern County Governments in terms of Article 109(3) of the Constitution and it does not affect the functions and powers of County Governments recognised in the Fourth Schedule to the Constitution.

The enactment of this Bill shall not occasion additional expenditure of public funds.

SAMUEL CHEPKONG'A,
Chairperson, Justice and Legal Affairs Committee.

Section 12 of No. 49 of 2012 which it is proposed to amend—

Removal from office

(1) The President may remove the Attorney-General or the Solicitor-General from office only for—

- (a) serious violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of their functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

(2) Notwithstanding the provisions of subsection (1), the President may, upon election under the Constitution, appoint a person who is qualified as Attorney General in accordance with the provisions of the Constitution and this Act.