



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FIFTH SESSION)

THE SENATE

VOTES AND PROCEEDINGS

THURSDAY, FEBRUARY 25, 2021 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.
3. **COMMUNICATION FROM THE CHAIR ON THE RESOLUTIONS OF COUNTY ASSEMBLIES ON THE DRAFT CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020**

The Speaker conveyed the following communication from the Chair-

“Honourable Senators,

I wish to make the following Communication regarding the status of delivery by the County Assemblies to the Speakers of the two Houses of Parliament their decisions on the draft Constitution of Kenya (Amendment) Bill, 2020.

Honourable Senators,

The Building Bridges Initiative Steering Committee, delivered a draft Bill to amend the Constitution by popular initiative and signatures of persons in support of the initiative to the Independent Electoral and Boundaries Commission (IEBC) for verification. Consequently, the IEBC pursuant to the provisions of Article 257(4) of the Constitution submitted the draft Bill to the (47) County Assemblies for consideration after verification of the signatures in support of the initiative.

Honourable Senators,

Article 257(6) of the Constitution affords the respective County Assemblies a period of three months after receipt of a draft Bill to amend the Constitution by popular initiative within which to approve the Bill. Thereafter, the respective Speakers of the County Assemblies are required to communicate the resolution of the approval by the respective assemblies by delivering a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate indicating such approval.

Honourable Senators,

You will recall that during the *Punguza Mizigo (Constitution Amendment) Bill*, the Speaker of the National Assembly and I agreed to jointly develop and issue standard *Guidelines for Delivery by the County Assemblies to the Speakers of the two Houses of Parliament of a draft Bill for the amendment of the Constitution by Popular Initiative*, to inform the process. These *Guidelines* were published in the *Kenya Gazette as Legal Notice No. 175 dated 22nd November, 2019* and have informed the current process before Parliament.

Honourable Senators,

Paragraphs (5) and (6) of the *Guidelines* provides as follows, and I quote—

(5) *Upon the expiry of the period specified under Article 257(5) of the Constitution for the consideration of a draft Bill by a County Assembly, the Speakers of the two Houses of Parliament shall—*

(a) *report to their respective House of Parliament—*

(i) *the County Assemblies that have submitted the draft Bill and the certificate approving the Bill;*

(ii) *the County Assemblies that have submitted the draft Bill and the certificate rejecting the Bill;*

(iii) *the County Assemblies that did not submit the draft Bill and the certificate;*

(iv) *whether or not the threshold required under Article 257(7) of the Constitution has been met; and*

(v) *such other information as the Speakers of the two Houses of Parliament may consider necessary; and*

(b) *submit to the Independent Electoral and Boundaries Commission and publish, by notice in the Gazette, the information specified under subparagraph (a).*

(6) *The Speakers of the two Houses of Parliament shall not receive any draft Bill and certificate where the Bill was considered by the County Assembly after the expiry of the period specified under Article 257(6) of the Constitution.*

Honourable Senators,

In furtherance to requirements of paragraph (5) of the said *Guidelines*, the statistics of the submissions which had been formally delivered by the respective Speakers of the County Assemblies as at 2pm today, 25th February, 2021 are as follows-

- (a) Thirty - three (33) County Assemblies had delivered the draft Bill with a certificate indicating their approval of the Bill, that is, Siaya, Homa Bay, Kisumu, Trans Nzoia, Busia, Kajiado, West Pokot, Laikipia, Kisii, Nairobi, Garissa, Mombasa, Nyamira, Taita Taveta, Kakamega, Kitui, Vihiga, Murang'a, Narok, Makueni, Kirinyaga, Nyeri, Bungoma, Machakos, Nakuru, Meru, Bungoma, Tharaka Nithi, Embu, Marsabit, Nyandarua, Kericho and Tana River;
- (b) One (1) County Assembly has rejected the draft Bill, that is Baringo. However, I note that the County Assembly only submitted a certificate of rejection without the draft Bill.

In this regard we shall be communicating to the County Assembly the requirements under the Guidelines for purposes of their compliance as the three months window has not lapsed.

Honourable Senators,

A simple calculation reveals that thirteen (13) other County Assemblies are yet to deliver the draft Bill to the Speakers of the Houses of Parliament with a certificate indicating either their approval or rejection of the Bill.

Honourable Senators,

Correspondence received from the IEBC indicate that the delivery of the draft Bill to the County Assemblies was done on varying dates. The first set of County Assemblies received the draft on the 27th January, 2021, while Elgeyo Marakwet received the draft Bill last, having received it on 2nd February, 2021. Consequently, the last date by which Elgeyo Marakwet County Assembly ought to make a resolution after its consideration of the draft Bill pursuant to the provisions of Article 257(5) of the Constitution, is 3rd May, 2021.

Honourable Senators,

From the statistics I have just read, thirty-three (33) County Assemblies have so far approved the Draft Bill. Article 257(5) read together with Paragraph (5) of the Guidelines provide that each county assembly shall consider the draft Bill within three months from the date it was submitted by the IEBC. However, Article 257(7) of the Constitution provides that if a draft Bill has been approved by a majority of county assemblies it shall be introduced in Parliament without delay.

Honourable Senators,

In view of the foregoing, it goes without saying that the threshold required under Article 257(7) of the Constitution for introduction of the Bill in Parliament and attendant requirements in the Guidelines HAVE BEEN MET.
Honourable Senators,

Article 257 of the Constitution was not crafted in vain. It is a provision which allows any citizen to originate a proposal to amend the Constitution and to garner popular support for the proposal with a view of having the proposal considered by Parliament upon gaining the support of the majority of the County Assemblies. It is noteworthy that the initiation and steering of the current process involved a significant investment of public resources, noting that it was a culmination of the recommendations of the Building Bridges Initiative Steering Committee. Any delay in processing to the next stage, which is consideration of the Bill in Parliament, would cause anxiety in the country, and would go against the spirit and intention of Article 257(7).

Honourable Senators,

Having consulted the Speaker of the National Assembly, we have resolved to commence the process of consideration of the Bill in Parliament without any further delay, in accordance with the Constitution and the Standing Orders of the respective Houses.

Honourable Senators,

In this regard, I hereby direct the Clerk to publish, at the appropriate time, the following information in at least two newspapers of national circulation and in the *Gazette* for general information of the public—

- (i) the list of County Assemblies that have submitted the draft Bill and the certificate approving the Bill jointly to the Speakers of the Houses of Parliament;
- (ii) the list of County Assemblies that have submitted the draft Bill and the certificate rejecting the Bill jointly to the Speakers of the Houses of Parliament; and
- (iii) the list of County Assemblies that have not submitted the draft Bill and the certificate.

As Speakers of the Houses of Parliament, it is our hope that once this information is published, the remaining County Assemblies will submit their respective returns to us within the stipulated timelines to enable Parliament to conclusively submit to the Independent Electoral and Boundaries Commission, the respective decisions of the county assemblies.

Further information regarding the parliamentary process will be provided to the House in due course.

The House is accordingly advised.

I thank you.”

4. **PAPERS**

The following Papers were laid on the Table of the Senate -

- i) Report of the Auditor General on the Financial Statements of Kisii County Assembly for the year ended 30th June, 2019;
- ii) Report of the Auditor General on the Financial Statements of Kisii County Executive for the year ended 30th June, 2019;

(The Deputy Senate Majority Leader)

- iii) Statement on the Business of the Senate for the week commencing Tuesday, 2nd March, 2021.

(The Senate Majority Leader)

5. **STATEMENT PURSUANT TO STANDING ORDER 52 (1)**

The Senate Majority Leader issued a Statement on the Business of the Senate for the week commencing Tuesday, 2nd March, 2021.

6. **MOTION - ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET ON THE 2021 BUDGET POLICY STATEMENT AND MEDIUM TERM DEBT MANAGEMENT STRATEGY**

Order read;

Motion made and Question proposed in amended form;

THAT, the Senate, adopts the Report of the Standing Committee on Finance and Budget on the 2021 Budget Policy Statement and Medium Term Debt Management Strategy, laid on the Table of the Senate on Wednesday, 24th February, 2021, and pursuant to Section 25 (7) of the Public Finance Management Act and Standing Order 180 (7) of the Senate, approves the 2021 Budget Policy Statement.

(Chairperson, Standing Committee on Finance and Budget)

Debate arising;

And there being no other Senator wishing to contribute;

The Mover replied;

Raising a point of Order, the Mover requested that the putting of the Question be deferred to a later date, pursuant to Standing Order 61 (3).

And the Temporary Speaker (Sen. (Dr.) Isaac Mwaura, MP), acceding to the request, deferred the putting of the Question to a later date.

And the time being thirty minutes past six O'clock, the Temporary Speaker (Sen. (Dr.) Isaac Mwaura, MP) interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

7. SENATE ROSE – at thirty minutes past six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, March 02, 2021 at 2.30 p.m.*

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