

(No. 041)

(384)



REPUBLIC OF KENYA
TWELFTH PARLIAMENT – (FIFTH SESSION)
THE NATIONAL ASSEMBLY
ORDERS OF THE DAY
THURSDAY, MAY 06, 2021 AT 2.30 P.M.
ORDER OF BUSINESS

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Questions and Statements

8*. THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

(Introduced pursuant to the provisions of Article 257(7) of the Constitution)

(The Leader of the Majority Party, having been nominated by the Promoters of the Bill)

Second Reading

(Resumption of debate interrupted on Thursday, May 6, 2021 – Morning Sitting)

9*. COMMITTEE OF THE WHOLE HOUSE

The Constitution of Kenya (Amendment) Bill, 2020

(Introduced pursuant to the provisions of Article 257(7) of the Constitution)

(The Leader of the Majority Party, having been nominated by the Promoters of the Bill)

10*. THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

(Introduced pursuant to the provisions of Article 257(7) of the Constitution)

(The Leader of the Majority Party, having been nominated by the Promoters of the Bill)

Third Reading

*** Denotes Orders of the Day**

...../Notices*

NOTICES

The House resolved on Tuesday, March 23, 2021 as follows-

Limitation of Debate on Bills under Article 257 of the Constitution

- I. **THAT**, pursuant to the provisions of Standing Order 97(1) and notwithstanding the resolution of the House of February 10, 2021, each speech in debate on **Bills under Article 257 of the Constitution** (*Amendment of the Constitution by Popular Initiative*) shall be limited as follows:- a maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying and a maximum of fifteen (15) minutes for any other Member speaking, except for the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Committee (if the Bill is not moved by a Committee) who shall be limited to a maximum of thirty (30) minutes each, and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and Chairperson of the relevant Committee, in that order.

THE SPEAKER'S GUIDANCE ON THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

- II. The following is an excerpt of the *Communication* made by the Hon. Speaker on Tuesday, May 4, 2021 with respect to the constitutional and procedural questions that had been raised with regard to consideration of the Constitution of Kenya (Amendment) Bill, 2020 promoted by the Building Bridges Initiative-
 1. **THAT**, on the question as to whether the Constitution of Kenya (Amendment) Bill, 2020 promoted by the Building Bridges Initiative is a popular initiative under Article 257 of the Constitution; and whether the procedure outlined under Article 257 was followed by the County Assemblies and the correct threshold met before the introduction of the Bill in Parliament: **The Bill currently before the House is a Bill to amend the Constitution by popular initiative as envisaged by Article 257 of the Constitution. Any registered voter is at liberty to sign and support a popular initiative in terms of Article 257(1) of the Constitution. The Constitution does not place any restriction with regard to the age, gender, tribe, profession or status of a promoter of such a Bill. Further, the procedure prescribed under Article 257 of the Constitution was followed with regard to the origination and processing of the Constitution of Kenya Amendment Bill, 2020 promoted by the Building Bridges Initiative before its introduction in Parliament. The Certificates submitted by the county assemblies in their returns to the two Speakers of Parliament are conclusive evidence of the propriety of the procedures undertaken with regard to the Bill prior to its introduction in Parliament. The errors highlighted in the Bills currently before the two Houses are not a nature that affects the substance of the Bill. The errors may be corrected by the Speaker before submission of the Bill for assent;**

2. **THAT**, on the question as to whether the Bill upsets the “basic structure” of the Constitution and whether it contains “unconstitutional” constitutional amendments: **The matters listed under Article 255(1) constitute the “basic structure” of the Constitution of Kenya as any amendment relating to them must be submitted for approval at a referendum. The Bill touches on various matters listed under Article 255(1) of the Constitution and ought to be submitted for approval at a referendum. To the extent that the Bill currently before the House touches on various matters listed under Article 255(1) of the Constitution, which the Constitution requires to be submitted to a referendum for approval, any question as to the constitutionality of its provisions is premature;**
3. **THAT**, on the question as to whether a Bill to amend the Constitution by popular initiative can be amended and the value and intention of the public participation conducted by the Joint Committee: **A Bill to amend the Constitution by popular initiative may not be amended by the House as any amendment shall negate the popular will of the people in directly amending the Constitution. Alterations to the text of such a Bill may only be allowed to correct errors of form or typographical errors before submission for assent as provided in the Standing Orders and I will invoke this provision of the Standing Orders donated by the House at the appropriate stage.**

In addition, pursuant to the provisions of Article 118 of the Constitution, public participation on a Bill to amend the Constitution is mandatory and must be meaningful. The value of the exercise is to apprise the Members of and assist them to make informed decisions during the consideration of this Bill at Second Reading, Committee of the Whole House and the Third Reading. It will also assist the people to make an informed decision on whether to approve or reject the Bill when the Bill finally proceeds for a Referendum.

I am also satisfied that adequate public participation has been undertaken in respect of the Bill as the Bill by its nature being a popular initiative and the public participation having been undertaken by the two Committees jointly an environment and opportunity was given to the public to have their say on the matter;

4. **THAT**, on the question of the effect of pending court cases on the consideration of the Bill currently before the House: **There currently does not exist any Court Order directed at Parliament with regard to the consideration of the Constitution Amendment Bill, 2020. Standing Order 89 of the National Assembly Standing Orders cannot oust the obligation on Parliament to introduce and consider a Bill to amend the Constitution by popular initiative without delay; and,**

5. THAT, The procedure to be applied during the consideration of the Bill in the House shall be as follows—
- a) Having been Read a First Time, The Bill shall undergo Second Reading, Committee of the Whole House and Third Reading;
 - b) The voting threshold applicable to the Second and Third Reading of the Bill shall be a minimum of 175* Members, being a majority of all Members of the House, to pass;
 - c) Voting shall be by roll-call. Members will be called out as per the Division List with those seated in the other designated areas being allowed entry into to the Main Chamber to cast their votes and thereafter immediately exit the Chamber. In light of the exceptional circumstances occasioned by the COVID-19 Pandemic, should it become necessary, I will invoke the provisions of Standing Order 265D and direct the Clerk to facilitate Members unable to attend sittings of the House physically to take part in the vote virtually.
 - d) I may, if necessary, direct the holding of a further vote at the various stages of the Consideration of the Bill pursuant to the provisions of Standing Order 62(2).

*The Speaker later corrected the voting threshold to a minimum of 175 Members.

NOTICE PAPER

Tentative business for

Thursday (Evening), May 06, 2021

(Published pursuant to Standing Order 38(1))

It is notified that the House Business Committee has approved the following ***tentative*** business to appear in the Order Paper for Thursday (Evening), May 06, 2021-

A. THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

(Introduced pursuant to the provisions of Article 257(7) of the Constitution)

(The Leader of the Majority Party, having been nominated by the Promoters of the Bill)

Second Reading

(Resumption of debate interrupted on Thursday, May 6, 2021 – Afternoon Sitting)

B. COMMITTEE OF THE WHOLE HOUSE

The Constitution of Kenya (Amendment) Bill, 2020

(Introduced pursuant to the provisions of Article 257(7) of the Constitution)

(The Leader of the Majority Party, having been nominated by the Promoters of the Bill)

C. THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

(Introduced pursuant to the provisions of Article 257(7) of the Constitution)

(The Leader of the Majority Party, having been nominated by the Promoters of the Bill)

Third Reading

...../Appendix*

APPENDIX

ORDER NO.7 - QUESTIONS

Pursuant to the provisions of Standing Order 42A (5) the following Members will ask **questions** for reply before the specified Departmental Committees-

QUE. NO.

ORDINARY QUESTIONS

145/2021

The Member for North Imenti (Hon. Abdul Rahim Dawood, MP) to ask the Cabinet for Lands and Physical Planning: -

- (i) What is the current ownership status of a parcel of Land, LR No. Ntima/Igoki/1769 in Gakoromone Area in North Imenti Constituency which was sub-divided into LR No. Ntima/Igoki 5980 and 5999 on 8th April 1999 and who were the original owners?
- (ii) Could the Cabinet Secretary provide details of persons who have illegally acquired or occupied the said land?
- (iii) Could the Cabinet Secretary undertake to institute action against those who facilitated the illegal transfer processes?
- (iv) Are there plans by the Ministry to ensure that the title deeds illegally acquired are revoked and land reverted to the community for public use?

(To be replied before the Departmental Committee on Lands)

146/2021

The Member for Dadaab (Hon. Dr. Mohamed Duale, MP) to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works: -

- (i) What is the status of implementation of the *Garissa – Liboi - Harbar Road (A13)* project with regard to road designs and funding?
- (ii) Could the Cabinet Secretary explain why there have been inordinate delays in the construction and upgrading to bitumen standards of *Garissa – Liboi - Harbar Road (A13)* in Garissa County?
- (iii) What measures have been put in place by the Ministry to ensure that the said road project commences and state what the expected completion date will be?

(To be replied before the Departmental Committee on Transport, Public Works and Housing)

153/2021

**The Member for South Imenti (Hon. Kathuri Murungi, MP)
ask the Cabinet Secretary for Energy: -**

- (i) Could the Cabinet Secretary explain why electricity bills have skyrocketed due to various additional taxes and levies that are hard for our Kenyan citizens to comprehend?
- (ii) Could the Cabinet Secretary explain why the following deductions are made by the Kenya Power and Lighting Company (KPLC) during purchase of electricity tokens by users, namely *Fuel energy charge, Forex charge, EPRA charge, WARMA charge, REP charge and Inflation Adjustment?*
- (iii) What measures is the Ministry putting in place to end monopoly in this sector and allow other industry players to distribute and sell power which would give options to users and lead to price stabilization?

(To be replied before the Departmental Committee on Energy)

154/2021

**The Member for Mwingi West (Hon. Charles Ngusya, MP)
ask the Cabinet Secretary for Interior and Coordination of
National Government: -**

- (i) Could the Cabinet Secretary explain the criteria used during payment of hardship allowances to National Police Service Personnel and other National Government Administration officers particularly in Kitui County?
- (ii) Could the Cabinet Secretary provide a list of all the officers who currently benefit and those who are yet to be facilitated with hardship allowances in Kitui County?
- (iii) Could the Cabinet Secretary undertake to remit hardship allowances to the said personnel who are yet to be facilitated and state by when this will be done?

*(To be replied before the Departmental Committee of Administration and
National Security)*
