



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FIFTH SESSION)

THE NATIONAL ASSEMBLY

ORDERS OF THE DAY

THURSDAY, MAY 06, 2021 AT 10.00 A.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 Tuesday, May 4, 2021 – Evening Sitting)

*** 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 (Afternoon), 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 (Afternoon), 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 – Morning 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

131/2021

The Member for Mumias East (Hon. Benjamin Washiali, MP) to ask the Cabinet Secretary for Petroleum and Mining:

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- (i) Could the Cabinet Secretary explain the cause of the constant increase in the price of petroleum products in the Country?
- (ii) Could the Cabinet Secretary provide the justification for the said increase given that petroleum products in other neighbouring countries including the landlocked ones are cheaper compared to the retail prices in Kenya?
- (iii) Could the Cabinet Secretary provide details of the actions being put in place by the Government, if any, to cushion citizens from the continued price increases of petroleum products, particularly during the Covid-19 pandemic period?

(To be replied before the Departmental Committee on Energy)

132/2021

The Nominated Member (Hon. Godfrey Osotsi, MP) to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works: -

- (i) Could the Cabinet Secretary indicate whether there have been any investigations by the Ministry to establish whether firms, directly or indirectly associated with employees of Kenya Rural Roads Authority (KeRRA) and Kenya National Highways Authority (KeNHA) have been engaging in financial and procurement malpractices contrary to the provisions of the Public Procurement and Assets Disposal Act, 2015, the Proceeds of Crime and Anti-Money Laundering Act, 2009 and the Leadership and Integrity Act, 2012?
- (ii) What is the status of investigations, if any, into the said malpractices by the Financial Reporting Centre and other investigative agencies?

- (iii) Are there plans by the Ministry to undertake lifestyle audits on the employees of the two authorities for the period 2015 to date?

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

137/2021 The Member for Uriri (Hon. Mark Nyamita, MP) to ask the Cabinet Secretary for Education: -

- (i) Could the Cabinet Secretary explain why there have been perennial delays in the disbursement of Free Secondary Education (FSE) Funds by the Ministry to public learning institutions in the country?
- (ii) Could the Cabinet Secretary give the timelines when the said funds will be disbursed to the various institutions to enable them to run smoothly?

(To be replied before the Departmental Committee on Education and Research)

152/2021 The Member for Tharaka Nithi County (Hon Beatrice Nyaga, MP), to ask the Chairperson of the Teachers Service Commission: -

- (i) What is the status of processing and payment of pension for one *Eliphaz Nyaga M`ribu* of Teacher's Service Commission No.167271, Pension No. APN/PC 97785 who retired from service in 1998?
- (ii) Could the Commission undertake to fast-track the processing and payment of the said pension and give a timeline for the payment?

(Question for Written Reply)
