



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - (FIFTH SESSION)

**THE NATIONAL ASSEMBLY
COMMUNICATIONS FROM THE CHAIR**

(No. 10 of 2021)

**ON UPDATE ON THE RESOLUTIONS OF COUNTY ASSEMBLIES ON THE
DRAFT CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020**

Honourable Members,

Further to the Communication I made on Thursday, 25th February, 2021 regarding the status of returns by the County Assemblies to the Speakers of the Houses of Parliament with respect to the draft Constitution of Kenya (Amendment) Bill, 2020, I wish to give the following update -

Honourable Members, in my Communication of Thursday, 25th February, 2021, I did list the thirty-three (33) County Assemblies that had made returns to the Speakers of the Houses of Parliament. In addition to that number, we have since received respective Certificates and draft Bills from the Speakers of the following other County Assemblies: Wajir, Marsabit, Isiolo, Kiambu, Lamu, Turkana, Samburu, Nandi and Bomet. At the same time, the Speakers of the County Assemblies of Kwale and Nyamira have since submitted the Copy of the Draft Bill.

Honourable Members, The Certificates received from County Assemblies I have mentioned indicate that they **approved** the draft Constitution of Kenya (Amendment) Bill, 2020 (popularly referred to as the BBI Bill), except the County Assembly of Nandi, which **rejected** the Bill. In summary therefore, as at close of business yesterday, 1st March, 2021, forty-two (42) County Assemblies had submitted their decisions on the draft Bill to the Speakers of the Houses of Parliament. The five (5) County Assemblies that were yet to submit their decisions on the draft Bill as at close of business yesterday, Monday, 1st March, 2021 were Migori, Elgeiyo Marakwet, Uasin Gishu, Mandera and Kilifi.

This notwithstanding, **Honourable Members**, it will be recalled that the Speaker of the Senate and I did communicate to our respective Houses that the draft Constitution of Kenya (Amendment) Bill, 2020, popularly referred to as the BBI Bill, has met the threshold contemplated under Article 257(7) of the Constitution, having been approved by a majority of the County Assemblies.

Honourable Members, having said that, there are two procedural questions that have been brought to my attention relating to the process of consideration in Parliament of a Bill under Article 257 of the Constitution. These are-

- (i) Should the Bill be republished, and if so, what value would the republication add to the process; and,
- (ii) Does Standing Order 120 regarding the fourteen (14) days maturity period apply to such a Bill before its introduction in Parliament?

Honourable Members, you will recall that, during the period of admitting returns from the County Assemblies with respect to the *Punguza Mizigo Initiative*, the Speaker of the Senate and I did observe that our rules of procedure are deficient with respect to fully actualizing the parliamentary process contemplated under Article 257 of the Constitution.

With respect to the fourteen (14) days maturity period before First Reading, the House is aware that the maturity period is a commonwealth parliamentary practice which is aimed at according the House and indeed the public of a notification period on the presence of a Bill before its formal introduction in the House by way of First Reading. This however applies to a Bill being introduced in a House for the first time. It does not apply to a Bill that has originated from another House. As such, Bills originating in the Senate are not subjected to this publication period.

However, **Hon. Members**, with respect to a Bill under Article 257 of Constitution such notice period would serve little value. As members will note, Article 257 of the Constitution contemplates expeditious processing of a Bill to amend the Constitution by popular initiative. Clause (7) of the Article, which notes that such a Bill shall "*be introduced in Parliament without undue delay*", is instructive.

To my mind, the urgency implied by the provision seems to be drawn from the lengthy process attached to the consideration of the Bill in terms of collection of signatures in support; verification of said signatures; public participation by the various county assemblies and ultimately approval by the assemblies. I am of the opinion therefore that the House is under an obligation to do everything necessary within its powers to expedite the introduction of the Bill for consideration.

Hon. Members, In our consultations over the processing of the Bill in the two Houses, the Speaker of the Senate and I were initially of the view that it should be republished before its introduction with minor changes to reflect the current year (2021) on its face and to include a footnote indicating its approval by a majority of the county assemblies pursuant to the provisions of Article 257(7) of the Constitution. Indeed, the Clerks of the Houses who had been directed to republish the Bill had so requested the Government printer to expedite the republication of the Bill.

However, **Hon. Members**, in order protect the **integrity** of the Bill as proposed by its promoters and presented to the county assemblies as well as the process contemplated under Article 257 of the Constitution, I am now of the opinion that republication of the Bill would serve no practical purpose, may lead to unnecessary delay in the introduction and consideration of the Bill and may create confusion as to the operative version of the Bill. Consequently, the House Business Committee at its meeting held today Tuesday, 2nd March, 2021 has resolved that that Bill be introduced in the House for First Reading on Thursday, 4th March, 2021 in the form that it was presented to the forty—seven (47) county assemblies by the Independent Electoral and Boundaries Commission.

In this regard, **Hon. Members**, and pursuant to Article 257 of the Constitution I do direct as follows—

- 1. THAT, the draft Constitution of Kenya (Amendment) Bill, 2020 popularly referred to as the BBI Constitutional Amendment Bill be introduced in the House for its First Reading on Thursday, 4th March, 2021;**

2. THAT, the Clerk of the National Assembly urgently obtains sufficient copies of the Bill in the form that it was presented to the forty—seven (47) county assemblies by the Independent Electoral and Boundaries Commission to enable its introduction into the House as directed.

The House is accordingly guided.

I Thank You!



THE HON. JUSTIN B.N. MUTURI, E.G.H, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, 2nd March, 2021