



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT - (FIFTH SESSION)**

**THE NATIONAL ASSEMBLY  
COMMUNICATIONS FROM THE CHAIR**

\_\_\_\_\_ (No. 9 of 2021) \_\_\_\_\_

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

---

**Honourable Members,**

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 Members,** it is in public domain that 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 Members,** 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 Members,** you will recall that during the consideration of the *Punguza Mizigo (Constitution Amendment) Bill*, I had highlighted several procedural difficulties that Parliament encountered during the process of the delivery of resolutions by the County Assemblies to the two Houses.

You will also recall that in my Communication dated **5<sup>th</sup> December, 2019**, I informed the House that the Speaker of the Senate and I had 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 subsequently published in the *Kenya Gazette as Legal Notice No. 175 dated 22<sup>nd</sup> November, 2019*. The *Guidelines* have informed the current process before Parliament.

**Honourable Members**, at the current stage of the process, paragraphs (5) and (6) of the *Guidelines* require that the Speakers of the two Houses of Parliament undertake the following, and I quote —

*(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).*

The *Guidelines* do also provide that, *"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 Members**, in furtherance to requirements of paragraph 5 of the said *Guidelines*, the statistics of the submissions which have been formally delivered by the respective Speakers of the County Assemblies as at **two o'clock (2.00 pm)**, today, Thursday, 25<sup>th</sup> February, 2021 are as follows -

- (a) thirty (30)** County Assemblies have 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, Taita Taveta, Kakamega, Kitui, Vihiga, Murang'a, Narok, Makueni, Kirinyaga, Nyeri, Bungoma, Machakos, Nakuru, Meru, Tharaka Nithi, Tana River, Embu, Nyandarua and Kericho;

- (b) **One (1)** County Assembly, which is Baringo County Assembly, rejected the draft Bill. However I note that the County Assembly only submitted a certificate of rejection, and failed to submit a copy of the draft Bill as required under the *Guidelines*;
- (c) **Kwale County Assembly** submitted a certificate of approval but failed to submit a copy of the draft Bill that was considered by the Assembly;
- (d) **Nyamira County Assembly** submitted a certificate of approval. It was however observed that the draft Bill submitted by the Assembly alongside the certificate had fundamental variances in many clauses compared to the draft Bill submitted to the County Assembly by the IEBC.

**Hon Members**, at this point I wish to reiterate the importance of paragraphs 1 and 2 of the *Guidelines* which provide that *upon approval or rejection of a draft Bill to amend the Constitution, as the case may be, the Speaker of the County Assembly, shall notify the Speakers of the two Houses by delivering, during official working hours, the following documents-*

- (i) *a copy of the draft Bill; and*
- (ii) *a certificate, as prescribed in the First and Second Schedule certifying that the County Assembly has approved or rejected the draft Bill.*

The provision of paragraphs 1 and 2 of these Guidelines are couched in mandatory terms and the premise of this is that without such clear directives on the manner of issuance of returns, the process would be clothed in ambiguity leading to inconsistency and discretion in the manner in which Counties not only consider the draft Bill but also subsequently submit returns to Parliament.

**Hon Members**, indeed you will agree that the provisions are essential in assisting the Speakers and the Houses of Parliament to ascertain the exact decisions the Counties have made and to confirm whether the draft Bill considered by each County Assembly was the exact version forwarded to the respective County Assembly by the IEBC.

**Hon. Members**, with respect to the deadlines, a simple calculation reveals that **fourteen (14)** 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.

Correspondence received from the IEBC indicates 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 Bill on the 27<sup>th</sup> January, 2021, while Elgeyo Marakwet County Assembly received the Draft Bill last, having received it on 2<sup>nd</sup> February, 2021. Consequently, the last date by which Elgeyo Marakwet County Assembly ought to have made a resolution after its consideration of the Draft Bill pursuant to the provisions of Article 257(5) of the Constitution is 3<sup>rd</sup> May, 2021.

**Honourable Members**, from the statistics I have just read, **thirty (30)** 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. Further, 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**"*.

**Hon. Members**, in this regard, it is **clear that the Draft Constitution of Kenya (Amendment) Bill, 2020 promoted by the Building Bridges Initiative has met the threshold required under Article 257(7) of the Constitution for introduction in Parliament.**

**Honourable Members**, probably, the only questions that would arise at this stage would be two-fold, being-

- (i) *What then follows with respect to the parliamentary processes of the Draft Bill; and,*
- (ii) *What is the recourse with respect to the un-received, or incomplete, or inconsistent returns from County Assemblies?*

**Honourable Members**, having consulted the Speaker of Senate, we have resolved to facilitate the Houses of Parliament to commence the process of consideration of the Bill without any delay in accordance with the requirements of Article 257(7) of the Constitution. We have also agreed that the Draft Bill will be forwarded for publication to the Government Printer tomorrow, 26<sup>th</sup> February, 2021 in *White Paper*, as a Bill for introduction in Parliament, so as to pave the way for its processing in Parliament. Once this is done, we will guide the respective Houses on the rest of the processes, after meetings of the respective House Business Committees. We have also resolved that, in full recognition of the bicameral nature of our Parliament and in order to comply with the provisions of Article 257(7) of the Constitution, the Bill will be considered in the Houses of Parliament in a concurrent manner and processed in accordance with the Standing Orders of the respective Houses.

This implies that, it will be introduced in both Houses at the same period and be processed in a parallel manner. My colleague and I will be updating each other and the respective Houses, whenever necessary.

**Honourable Members,** In compliance with paragraph 5 of the *Guidelines*, the Speakers of the Houses of Houses of Parliament will be expecting the Clerks of the Houses of Parliament to publish the following information in at least two newspapers of national circulation and in the *Kenya Gazette* for general information of the public, at the appropriate time —

- (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.

With respect to the *un-submitted, or incomplete, or inconsistent returns from County Assemblies*, 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 us to conclusively submit to the Independent Electoral and Boundaries Commission the decisions of all the forty-seven (47) County Assemblies. Further, with respect to the County Assemblies of Baringo and Kwale, we have directed the Clerks to communicate to the County Assemblies for purposes of drawing their attention to Article 257(6) of the Constitution, the *Guidelines* and attendant provisions requiring their compliance. At this point, it is not possible to determine if Nyamira County Assembly received the right document and amended it or if the Assembly passed a different document. Similarly, we have directed the Clerks to seek clarification on the material discrepancies from Nyamira County Assembly and draw the attention of Kwale County Assembly to the requirements of the Guidelines.

**Hon Members,** in the meantime the returns from the County Assemblies of Nyamira and Kwale County assembly will not count for purposes of confirming if the process has met the threshold of the total number of county assemblies required to approve the draft Bill as submitted by the IEBC.

The House is accordingly informed and guided.

**I Thank You!**

  
**THE HON. JUSTIN B.N. MUTURI, E.G.H, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**  
*Thursday, 25<sup>th</sup> February, 2021*