



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - (FOURTH SESSION)

**THE NATIONAL ASSEMBLY
COMMUNICATIONS FROM THE CHAIR**

_____ (No. 11 of 2020) _____

**REGARDING THE RESOLUTIONS OF COUNTY ASSEMBLIES ON
THE DRAFT PUNGUZA MIZIGO (CONSTITUTION AMENDMENT)
BILL, 2019**

Honourable Members, you will recall that on 5th December, 2019 I made a Communication to the House regarding the status of delivery of decisions on the *Draft Punguza Mizigo (Constitution Amendment) Bill, 2019* by the County Assemblies to the Speakers of the two Houses of Parliament.

In the Communication, I also informed the House that the Speaker of the Senate and I had jointly developed and published ***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. The *Guidelines* were published in the *Kenya Gazette as Legal Notice No. 175 of 22nd November, 2019*.

Honourable Members, Paragraphs (5) and (6) of the *Guidelines* provide 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 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* in respect of the *Draft Punguza Mizigo (Constitution Amendment) Bill, 2019*, I reported to the House the statistics of the submissions which had been formally delivered by the respective Speakers of the County Assemblies as at December 5, 2019. In that Communication, I did inform the House that-

- (a) Twenty-six (26)** County Assemblies had delivered the draft Bill with a certificate indicating their respective decisions on the Bill;
- (b)** Out of the twenty-six, **three (3)** County Assemblies, that **Machakos**, Turkana and Uasin Gishu had approved the Bill;
- (c)** Out of the same number, **twenty-three (23)** County Assemblies had rejected the draft Bill. These were: Kwale, Kilifi, Tana River, Wajir, Mandera, Marsabit, Isiolo, Meru, Tharaka-Nithi, Kitui, Makueni, Nyeri, Murang'a, Samburu, Trans Nzoia, Nandi, Laikipia, Narok, Kajiado, Kericho, Bomet, Bungoma and Busia;
- (d) Twenty-one (21)** other County Assemblies were yet to deliver decisions on the draft Bill to the Speakers of the Houses of Parliament with a certificate indicating either their approval or rejection of the Bill.

These were the County Assemblies of Mombasa, Lamu, Taita/Taveta, Garissa, Embu, Nyandarua, Kirinyaga, Kiambu, West Pokot, Elgeyo/Marakwet, Baringo, Nakuru, Kakamega, **Vihiga**, Siaya, Kisumu, Homa Bay, Migori, Kisii, Nyamira and Nairobi City.

The Speaker of the Senate and I did publish this information in the *Kenya Gazette as Gazette Notice No. 11013 dated 22nd November, 2019* for the information of the public.

Honourable Members, the County Assembly of Machakos initially submitted their certificate on October 24, 2019. Whereas the certificate indicated the County Assembly had rejected the draft Bill, the forwarding letter indicated the opposite. We have since received clarification to the effect that the County Assembly of **Machakos DID NOT** actually approve the *Punguza Mizigo (Constitution Amendment) Bill, 2019*. In addition, we have also received a certificate indicating the rejection of the said Bill by the County Assembly of **Vihiga**. This was one of the twenty one County Assemblies which had not submitted their certificates to the two Speakers of Parliament. Given the fact that there is no timeline within which a County Assembly has to submit its feedback to Parliament after having considered the draft Bill under Article 257 of the Constitution within the stipulated ninety (90) days, the Speaker of the Senate and myself found it difficult to disallow the submission by the said County Assembly, even though it was submitted more than two months after the County Assembly had considered and made its decision on the draft Bill. Indeed, this lacuna is one of the several gaps that have been identified with respect to the process of amending the Constitution through popular initiative under Article 257 of our Constitution, which in our view may require to be addressed in law, or through other legislative instruments. As Speakers of the two Houses of Parliament, the experience of the *Punguza Mizigo (Constitution Amendment) Bill, 2019* has caused us to reflect on a number of questions. For instance, since the Constitution obligates **ONLY** the County Assemblies which have approved such a Bill to send their certificates to the Speakers of the Houses of Parliament, **are we to assume that those County Assemblies whose certificates have not been received, considered and rejected the Bill?**

Further, since the three months timelines under Article 257(5) and (6) of the constitution relates to the period of consideration of the Bill by County Assemblies, and **NO** timeline is prescribed for the conveyance of the certificates to Parliament, for **how long should the Speakers of the Houses of Parliament wait for the Speakers of County Assemblies to submit the approval certificates before pronouncing the fate of particular Bill?** It is clearly evident that there are gaps in the Constitution that ought to be addressed.

Nevertheless, **Honourable Members**, the new decisions now bring the total number of County Assemblies that rejected the draft Bill to **twenty-five (25)**, and those that approved the Bill within the 90 days period to **two (2)**. Article 257(7) provides that if a draft Bill to amend the Constitution by popular initiative has been approved by a majority of County Assemblies, it shall be introduced in Parliament without delay. The statistics I have just read confirm that the ***Punguza Mizigo (Constitution Amendment) Bill, 2019* did not meet the threshold to be introduced in Parliament, and hence stands lost.**

In this regard, I hereby direct the Clerk to submit this information to the Independent Electoral and Boundaries Commission and also publish the same in the *Gazette* as required under paragraph (5)(b) of the *Guidelines* published 22nd November, 2019.

The House is accordingly informed.

I Thank You!



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

Thursday, March 5, 2020