

COUNTY GOVERNMENT OF NAIROBI CITY



SECOND ASSEMBLY

THE NAIROBI CITY COUNTY ASSEMBLY
(THIRD SESSION)

COMMUNICATION FROM THE CHAIR

No. 13 of 2019

ON THE TRANSMISSION OF THE PUNGUZA MIZIGO (CONSTITUTIONAL AMENDMENT) BILL, 2019 TO COUNTY ASSEMBLIES

Honorable Members, I have the following Communications to make: -

Honorable Members, my Office is in receipt of a letter dated 18th July, 2019 from the Chairperson of the Independent Electoral and Boundaries Commission (IEBC), regarding the Transmission of The Punguza Mizigo (Constitutional Amendment) Bill, 2019 to County Assemblies.

The letter reads as follows, which I now reproduce verbatim: -

“The Independent Electoral and Boundaries Commission received a draft bill to amend the Constitution by Popular initiative pursuant to Article 257 of the Constitution of Kenya, 2010 dubbed Punguza Mizigo Initiative. The said initiative was promoted by Thirdway Alliance Kenya.

In compliance with Article 257(4) of the Constitution of Kenya, 2010, the Commission undertook a verification exercise to confirm whether the Punguza Mizigo Initiative was supported by at least one million registered voters.

The Commission has since verified that the Initiative has been supported by 1,222,541 registered voters. This is therefore to notify you that the

Initiative has met the requisite threshold as provided in Article 257 (4) of the Constitution of Kenya, 2010.

Pursuant to Article 257 (5) of the Constitution of Kenya, 2010, the Commission hereby submits a copy of the draft Punguza Mizigo (Constitutional Amendment) Bill 2019, to your County Assembly for consideration within three months from the date thereof.

In conformity with Article 257 (6) you are required to submit the decision of your County Assembly to the Speakers of the National Assembly and the Senate.” End of quote.

Honorable Members, The *Punguza Mizigo (Constitutional Amendment) Bill, 2019* is therefore admitted and properly with us.

Similarly, the Chair is in receipt of a Petition from parties who have moved to the High Court seeking orders to stop Assemblies consideration of this Bill. The said orders, as far as we are concerned, have not issued any stay to this process, and therefore we shall proceed.

Now therefore, **Honorable Members,** I now draw your attention to the provisions of Article 257, which provides as follows regarding the consideration by the County Assembly of Constitutional Amendment Bills by Popular Initiative, which reads thus: -

257. (1) An amendment to this Constitution may be proposed by a popular initiative signed by at least one million registered voters.

(2) A popular initiative for an amendment to this Constitution may be in the form of a general suggestion or a formulated draft Bill.

(3) If a popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill.

(4) The promoters of a popular initiative shall deliver the draft Bill and the supporting signatures to the Independent Electoral and Boundaries

Commission, which shall verify that the initiative is supported by at least one million registered voters.

(5) If the Independent Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each county assembly for consideration within three months after the date it was submitted by the Commission.

(6) If a county assembly approves the draft Bill within three months after the date it was submitted by the Commission, the speaker of the county assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it.

(7) If a draft Bill has been approved by a majority of the county assemblies, it shall be introduced in Parliament without delay.

Hon. Members, the IEBC having dispensed with its mandate in so far as this matter is concerned has forwarded *The Punguza Mizigo (Constitutional Amendment) Bill, 2019* for the Assembly's consideration.

For that, **Hon. Members,** we turn back to Article 257 (6), which provides, and I reiterate, that *if a county assembly approves the draft Bill within three months after the date it was submitted by the Commission, the speaker of the county assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it.*

Hon. Members, the exposition of the procedural processes requisite for consideration of the Bill once transmitted to the County Assembly, as it now has, is not laid out in the Constitution nor indeed the Assembly Standing Orders.

Accordingly, **Hon. Members,** I must invoke Standing Order 1 to provide direction in so far as the Assembly's procedural consideration

process for the Bill is concerned. The said Standing Order 1 provides that *in all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the County Assembly, any procedural question shall be decided by the Speaker.*

Hon. Members, in providing direction, two key issues come to mind, namely: -

1. Is a Constitutional Amendment Bill under Article 257 of the Constitution to be considered in the same manner as regular Bills of the County Assembly? Or,
2. Does the Constitutional requirement under Article 257(6) to **approve** call for a simple, straightforward Resolution of the County Assembly which either **negates** or **okays approval** of the Bill?

To begin with, **Hon. Members**, in addressing the first issue, we must briefly canvass what our procedure demands of us when considering a Bill in the traditional sense, and then reflect on the Constitutional dictate under 257(6), and whether such process speaks to what is required of us in this instance.

Hon. Members, several questions suffice. Were we to run the Bill through the process outlined in Standing Order 121, would it be subject to public participation? What would become of the Public's views and our own views on the Bill? Would there be opportunity for amendments during Committee of the Whole and subsequent processes? Would these processes then tie in with the approval expected of us under Article 257(6)?

Hon. Members, the answer to the foregoing questions is a resolute no. The nature of the duty bestowed on us is such that we cannot amend

nor have any further meaningful consideration of the Constitutional Amendment Bill other than to simply **approve**, nor in the alternative **negate our approval** of the same.

Which brings me to the second issue at hand, *whether the Constitutional requirement under Article 257(6) to **approve** merely calls for a simple, straightforward Resolution of the County Assembly which either negates or okays the Bill.*

Hon. Members, it is my finding that the framing of Article 257(6) leaves us no space for anything else other than to proceed with the Bill in a manner that results in a **Resolution of the House, either approving or negating such approval.**

Even if we were to proceed as if on a normal Bill, our processes would not lend themselves proper to the requirement at hand. Still, were we to apply the provisions of Standing Order 121 *mutatis mudandis*, we would arrive at the same conclusion - being that we are **incapable of amending the bill** nor **forwarding to Parliament anything other than a Resolution either approving or negating such approval** as contemplated by Article 257(6).

In the circumstances, I now direct as follows regarding the consideration of *The Punguza Mizigo (Constitutional Amendment) Bill, 2019*: -

1. That *The Punguza Mizigo (Constitutional Amendment) Bill, 2019*, is hereby referred to the Select Committee on Assembly Business;
 2. That the Select Committee on Assembly Business prepare a Resolution Motion on the Bill for consideration by the Assembly;
- and

3. The Select Committee on Assembly Business allocate time for the Assembly's consideration of the said Motion keeping in mind the requisite Constitutional timelines.

I now direct that *The Punguza Mizigo (Constitutional Amendment) Bill, 2019* be now laid.

It is so directed.

THE HON. CHEGE MWAURA, MCA
AG. SPEAKER OF THE NAIROBI CITY COUNTY ASSEMBLY
Tuesday, 30th July 2019