

PRESS STATEMENT

1. The Constitution of Kenya recognizes the sovereignty of the people which may be exercised directly by the people or through democratically elected representatives.
2. To date, the sovereign power of the people to amend the Constitution has not been exercised.
3. Chapter sixteen, and in specific Articles 255 to 257, broadly provides for the manner in which the Constitution maybe amended through parliamentary or popular initiatives.
4. Article 257(1) of the Constitution provides that the Constitution may be amended by popular initiative whereby promoters proposes and amendment in the form of a draft bill supported by at least one million registered voters.
5. To operationalise the provisions of the Constitution that relate to its amendment, the Commission, jointly with the office of the Attorney General and the Kenya Law Reform Commission generated a Referendum Bill to aided the development of the draft Referendum Bill, 2016. The bill was presented for consideration to Justice and legal Affairs Committee of the National Assembly. To date, the Bill is yet to be tabled in Parliament. We wish to underscore the urgency to have the Referendum Bill discussed and enacted for purposes of guiding any referendum initiative by any party or individual.
6. As the only available solution to the absence of a standalone statute on Referendum, the Commission shall rely on Part V of the Elections Act, 2011 that provide for the conduct of Referendum. This part was enacted vide amendments contained in the Elections (laws) Amendment) Act, 2016 and the Elections (laws) Amendment) Act, 2017. However, a cursory glance at the relevant Section, that is S49 – 55, reveals that those provisions are still wholly inadequate to govern the referendum process.
7. The lacuna in Referendum law is further aggravated by the absence of regulations or rules to guide the process. Towards addressing this gap in the Law, the Commission has relied on Regulation 98 of the Elections (General) Regulations to develop guidelines and directives to shepherd the referendum process. The Regulation provides as follows:-

“98. Subject to the Act and these Regulations, the Commission shall have power to, by notice in the Gazette, provide for measures the to ensure efficient and fair elections and referendum and may issue directives from time to time in that regard.

PRESS STATEMENT

(2) Where the Commission issues directives under subregulation (1), the Commission shall ensure that such directives are published in such manner as to reach the persons who may be affected or whose compliance or action may be required.”

8. The guidelines are informed by experiences and lessons learnt from past referendum initiatives such as: referendum to change the constitution in 2005; the 2010 referendum on constitutional change under the Interim Independent Electoral & Boundaries Commission; the OKOA Kenya initiative proposal to change the Constitution; and the verification of signatures of petition to dissolve the County Government of Makueni.
9. Further, the Commission has appointed a referendum Project Implementation Committee with members drawn from the Secretariat to coordinate the day to day activities regarding referendum issues and report the progress to the Commission.
10. Already, the Commission has been approached by several promoters of different initiatives to amend the Constitution through the popular initiative. They include;
 - a. Punguza Mizigo initiative.
 - b. Better Kenya initiative.
 - c. Free Kenya Campaign.
 - d. The Ufungamano Initiative.
11. Thirdway Alliance, the promoters of the Punguza Mizigo, initiative wrote to the Commission seeking guidance on how to initiate Constitutional Amendment through a popular initiative. The Commission held a meeting with the promoters on Wednesday, 21st March, 2018 in Commission's Boardroom. The purpose of the meeting was to provide guidance on the modalities and format for collecting signatures, and submitting the Referendum Bill to the Commission.
12. The promoters of any referendum initiative are required to submit to the Commission both electronic and printed copies of documents of signatures of voters.
13. It should be noted that the Commission is expected to receive the Draft Bill in accordance with the Constitution and the laid down statutory provisions, guidelines and/or directives. Additionally, the documents are received under Article 257 (4) of the Constitution. To briefly explain the process:-
 - a. The Promoters submit the draft Bill and the list of supporters to the IEBC to verify that the initiative is supported by at least one million registered voters.

PRESS STATEMENT

(Art. 257(4)) NOTE: the proposed amendment must be formulated into a draft bill by the Promoters before submission to the IEBC. (Art. 257(3))

- b. If IEBC is satisfied that the initiative meets the requirements, the Commission submits the draft Bill to each county assembly which considers and approves the draft Bill within three months from the date it received the draft bill from the Commission. (Art. 257(5))
 - c. If the County Assemblies approve the draft bill, within 3 months, the speaker of each of the the county assemblies shall deliver a copy of the draft Bill and a certificate that the county assembly has approved draft bill jointly to the Speakers of the two Houses of Parliament. (Art. 257(6))
 - d. If the draft Bill is approved, by a majority of the county assemblies (at least 24 counties), it shall be introduced in Parliament without delay. (Art. 257(7))
 - e. Parliament is considered to have passed the draft bill if it voted by a majority of members of each House. (Art. 257(8))
 - f. the Bill is passed by Parliament, it is submitted to the President who shall assent and cause its publication within 30 days. (Art. 257(9))
 - g. However, if (a) either House of Parliament fails to pass the draft bill or (b) it relates to provisions that must be subjected to referendum, the proposed amendment shall be submitted to the people in a referendum.
 - h. During the referendum the draft bill must be supported by a simple majority of citizens voting in the referendum with at least twenty per cent of the registered voters in each of the at least half (24) of the counties voting in the referendum
14. The Commission requires budgetary allocation in order to verify the records of each supporter against the 19,611,423 registered voters in current register of voters. This is to ensure that there are no multiple records, and that the supporters enlisted are registered voters. We wish to state that there is no budget provision for conduct of the the referendum initiative(s) during this financial year 2018/2019, thus the need for National Treasury to allocate adequate funds for the exercise not only for Punguza Mizigo initiative, but also other initiatives likely to be submitted to the Commission.

PRESS STATEMENT

15. The Commission notes that it shall be required to verify that the Draft Bill is supported by a million signatures of registered voters and commits to conduct this process within a month subject to availability of resources.

The Commission has adopted the following methodology

Step One: Handover/Takeover of the Signatures and the Bill

16. During the handover of the draft bill and supporting signatures, the Referendum Initiative team is expected to do the following:
 - a. Ensure that books are serialized
 - b. Ensure the booklets are well bound
 - c. Ensure the booklets are paginated
 - d. Ensure the electronic copy is in the prescribed format.
 - e. Sign the handover/ take over document.
 - f. Carry out elaborate documentation to ensure that the data received is what has been declared by the promoters of initiative.
 - g. Ensure safe custody of the document.

Step Two: The Data Verification Process

17. The verification exercise, timelines and the budget will be informed by the quality of the data submitted by the promoters of the initiative.
18. Based on the quality of data, teams will be created comprising of clerks, Commission staff who will be team leaders and the Support Referendum Project Implementation Team will provide technical support to the process.
19. The data verification process will be done in two steps.

Step three: Data Capture/Verification

20. Specifically, the process entails:
 - a) The clerks typing/reviewing all the entries in each booklet.
 - b) The supervisors undertaking quality assurance by going through all the records to confirm that the data is captured/verified correctly.

PRESS STATEMENT

- c) Consolidation of the daily work into one document.

Step four: cleaning and verification of data

- 21. Cleaning of the data by:
 - a) Removing records without signatures. The law speaks to verification of signatures of registered voters. Thus, it would be vain to subject any record that does not have a signature to further analysis.
 - b) Eliminating records without ID or passport number, since an ID or Passport is a prerequisite for registration as voter.
 - c) Excluding records without names.
 - d) Retaining only one record where ID/passport number matches with the correct name in instances where one ID number has been used several times.
- 22. Confirming if the Initiative supporters are registered voters by running the data against the Commission's Register of voters.
- 23. Establishing if the Constitutional threshold of one Million signatures has been met.
- 24. Publishing the records of supporters of the initiative in the Commission's website and a notice in a newspaper of national circulation. This is aimed at realizing public participation and to invite objections from person(s) who in their view may have been included in the list of supporters without their consent.
- 25. If the constitutional threshold of one million signatures is met, then the Commission shall forward the draft bill to the County Assemblies for the next process to commence.
- 26. In the event the Commission finds that the signatures do not meet the threshold aforesaid, then the initiative by operation of the law collapses.
- 27. It should be noted that the verification process of supporters is a laborious and time-consuming process which cannot be done in one day, thus the Commission calls for patience, understanding from the promoters as well as the public as it diligently carries out the work.
- 28. Timely allocation of funds by National Treasury for the support and maintenance of Biometric voter Registration system and associated ICT infrastructure will enable the verification process to commence and be completed expeditiously.

PRESS STATEMENT

29. The Commission reiterates its Commitment to be Professional, Impartial and confirms that it shall adhere to the rule of law during the pendency of this process.
30. Additionally, the Commission is committed to provide timely communication on the progress of the process through constant engagement with the promoters and the Public.

Thank you.


W. W. Chebukati
CHAIRMAN, IEBC