

Approved for tabling at SNA



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FIFTH SESSION – 2017

30/5/17
Paper laid by
Hon. Asman Kamama,
MP, Chairperson Departmental
Committee on Administration
and National Security
on 31/5/2017

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT ON THE CONSIDERATION OF A PETITION BY CONCERNED CITIZENS
REGARDING RECOGNITION OF PERSONS WITH GENDER DISORDER CONDITIONS

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

MAY, 2017

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ACRONYMS AND ABBREVIATIONS

Hon. Honourable

Chairperson's foreword

The petition by concerned citizens regarding the recognition of persons with gender disorder conditions was tabled before the House pursuant to Standing Order No. 225 (2) (a) by Hon. Isaac Mwaura, MP on behalf of the petitioners.

In considering the petition, the Committee held meetings with the petitioners and the Kenya National Commission on Human Rights. The Committee also received written submissions from the Ministries of Education, Health and Interior & Coordination of National Government. The meetings and submissions were aimed at responding to the issues raised in the petition.

The Committee is thankful to the offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. The Committee is also thankful to the petitioners, Hon. Isaac Mwaura MP and the Kenya National Commission on Human Rights, the Ministries of Education, Health and Interior & Coordination of National Government for the submissions they made.

On behalf of the Committee, and pursuant to Standing Order, 227, it is my pleasant duty to table the Report of the Departmental Committee on Administration and National Security on its consideration of a petition by concerned citizens regarding the recognition of persons with gender disorder conditions.

The Hon. Asman Kamama, MGH, OGW, MP
Chairperson Departmental Committee Administration and National Security

EXECUTIVE SUMMARY

The purpose of this report is to consider and respond to the prayers sought by concerned citizens in a petition regarding the recognition of persons with gender disorder conditions. In considering the petition, the Committee held meetings with the petitioners and the Kenya National Commission on Human Rights. The Committee also received written submissions from the Ministries of Education, Health and Interior & Coordination of National Government. Through the meetings and submissions the Committee made several findings, conclusions and recommendations.

The Committee observed that Article 27 (4) and (5) of the Constitution recognizes individual rights with regards to equality and freedom from discrimination on grounds of sex, religion, race, pregnancy, marital status, health status, ethnic or social origin colour, age and disability among others. The Committee observed that intersex persons are faced with numerous challenges that include isolation from the society as the disorder is regarded as a result of a curse, the isolation is meant to prevent bad omen; intersex children suffer humiliation and harassment from the teachers and students

The Committee further established that surgical remedies to create more socially acceptable sex characteristics done at birth or during early childhood deny the affected persons the right to make informed consent as an intersex child who appears to be a male at birth may later develop the features of a female.

The Committee recommends that the Government should roll out public awareness programmes to sensitize the public on the issue of intersex in order to remove stigma and discrimination. The Ministry of Interior and Coordination of National Government should also take immediate administrative action to recognize the intersex persons by adding a marker 'intersex' on birth notification and birth certificates

The Ministry of Health and County Governments should allocate more funds to cater for special medical care for intersex persons to facilitate required corrective surgery and related procedures. The Registrar of Persons, the Kenya Bureau of Statistics and the Ministry of Health should also provide statistics for all the intersex persons by ensuring that such statistics are captured in the national census and other socioeconomic surveys to facilitate effective planning.

Lastly the Cabinet Secretary, Ministry of Health to develop guidelines and procedures for dealing with intersex children especially as it relates to corrective surgery and put measures in place to ensure that the surgeries are done at maturity when the affected persons have the right to make informed consent.

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Administration and National Security is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference:-

- (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (ii) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (iii) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (iv) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
- (vi) study and review all legislation referred to it

1.2 Committee subjects

The Committee is mandated to consider the following subjects:-

- i. National security
- ii. Police services
- iii. Public Administration
- iv. Public Service
- v. Prisons
- vi. Immigration
- vii. management of natural disasters

1.3 Oversight

In executing its mandate, the Committee oversees the following Government Departments and agencies, namely:-

- i. The Presidency
- ii. The State Department of Interior
- iii. The State Department for Coordination of National Government

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- iv. The Public Service Commission,
- v. The National Police Service Commission
- vi. The Independent Police Oversight Authority

1.4 Members of the Committee

Chairperson	The Hon. Asman Kamama, MGH, OGW, MP
Vice Chairperson	The Hon. Alois M. Lentoimaga, MP
	The Hon. Joseph Lekuton, MP
	The Hon. Alice Wahome, MP
	The Hon. Zakayo K. Cheruiyot, MP
	The Hon. Timothy W. Wetangula, MP
	The Hon. Patrick Ole Ntutu, MP
	The Hon. Ali Isaack Shaaban, MP
	The Hon. Samuel Moroto, MP
	The Hon. (Dr.) Humphrey Njuguna, MP
	The Hon. Francis K. Mwangangi, MP
	The Hon. Rashid J. Bedzimba, MP
	The Hon. David Gikaria, MP
	The Hon. Mohamed Shidiye, MP
	The Hon. Jane Machira, MP
	The Hon. Ibrahim Abdi Saney, MP
	The Hon. Joseph O. Ndiege, MP
	The Hon. Wanjiku Muhia, MP
	The Hon. Akuja Protus Ewesit, MP
	The Hon. Joseph M. Kahangara, MP
	The Hon. Grace Kiptui, MP
	The Hon. George Theuri, MP
	The Hon. James Bett, MP
	The Hon. Benard Shinali, MP
	The Hon Charles Nyamai, MP
	The Hon Fatuma Ibrahim Ali, MP
	The Hon. (Dr.) Makali Mulu, MP
	The Hon Peter Kaluma, MP
	The Hon. James Opiyo Wandayi, MP

Committee Secretariat

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant II	Ms. Rose M. Wanjohi
Clerk Assistant III	Ms. Hellen Lokwang
Legal Counsel II	Ms. Christine Odhiambo
Researcher Officer III	Ms. Fiona Musili
Fiscal Analyst III	Mr. Edison Odhiambo

1.5 Recommendations

The Committee in response to the prayers by the petitioners recommends that: -

1. The Government should roll out public awareness programmes to sensitize the public on the issue of intersex in order to eradicate stigma and discrimination.
2. The Ministry of Interior and Coordination of National Government should take immediate administrative action to recognize intersex persons by adding a marker 'intersex' on birth notifications and birth certificates.
3. The Ministry of Health and County Governments should consider allocating more funds to cater for special medical care for intersex persons to facilitate required corrective surgery and related procedures.
4. The Kenya Bureau of Statistics and the Ministry of Health should provide statistics on all the intersex persons by ensuring that such statistics are captured in the national census and socioeconomic surveys to facilitate effective planning for the needs of intersex persons.
5. The Cabinet Secretary for Health should develop guidelines and procedures for dealing with intersex children especially as it relates to corrective surgery and put measures in place to ensure that the surgeries are done at maturity, when the affected persons have the right to make informed consent.
6. The Government through the Inspector General of Police should ensure that human rights violations against intersex people are investigated and alleged perpetrators prosecuted and that victims of such violation receive redress.

2.0 INTRODUCTION

- 2.1 The petition on recognition of persons with gender disorder conditions was tabled in the House pursuant to Standing Order 225 (2) (a) by the Hon. Isaack Mwaura, MP on Wednesday 24th August, 2016.
- 2.2 Pursuant to the House rules, the petition was referred to the Committee on 24th August, 2016 for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227.
- 2.3 The Petitioners wished to draw to the attention of the House the following, that: -
- (i) Article 27 (4) (5) of the Constitution recognizes individual rights with regards to equality and freedom from discrimination on grounds of sex, religion, race, pregnancy, marital status, health status, ethnic or social origin colour, age and disability among others;
 - (ii) The Ministry of Interior and Coordination of National Government through the Directorate of Immigration and Registration of Persons, has failed to recognize persons living with gender disorders as Kenyan citizens and denies them the right to register as Kenyans;
 - (iii) Despite the Ministry of Education , Science and Technology having inter sex education covered in the curriculum , there is continued discrimination through issuance of wrong gender certificates to persons living with gender disorder conditions;
 - (iv) Due to lack of proper registration persons living with gender disorder condition are denied access to public places and buildings and their right to vote or practice other citizenry roles;
 - (v) Due to lack of awareness, persons living with gender disorder continually face discrimination and ridicule from not only the public but their own family members. This lead to low self – esteem and stigma with dire results being as extreme as committing suicide;
 - (vi) Due to lack of adequate initiative by the Ministry of Health persons living with gender disorders receive inadequate medical check - ups and are not eligible for National Hospital Insurance Fund (NHIF) cover;
 - (vii) Efforts to resolve the matter with the relevant Government agencies have been futile ; and
 - (viii) The matter in respect to the petition is not pending before any court of law.

2.4 The petitioners prayed that the National Assembly through the Departmental Committee on Administration and National Security:-

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- (i) Causes the Ministry of Interior and Coordination of National Government to establish mechanisms for national registration of persons living with the disorder;
- (ii) Enacts legislation to establish gender disorder programmes which will provide for the manner of handling persons living with gender disorders;
- (iii) Allocate funds in the next and subsequent budgets to cater for special medical care for persons with gender disorders especially surgeries; and
- (iv) Cause the Government to roll out public awareness programs to sensitize the public on the disorder in order to rid them of stigma and discrimination.

3.0 SUBMISSIONS

3.1 Submission by the Petitioners

The Committee held a meeting with one of the petitioners, Ms. Ruth Wagui accompanied by representatives of the Kenya National Commission on Human Rights, Jinsiangu, GAMAFRICA and Katiba Institute on Thursday, 6th October 2016 in committee room, 4th floor, Continental House. During the meeting the Committee was informed that inter-sex is a phenomenon where children are born with sex differentiation which makes the anatomy of their bodies atypical and their sexual identity indistinct. For many children the disorder is at the chromosomal level, for others, it is at the hormonal level and for more obvious cases, it is at the genitalia level. Many of the inter-sex infants are born with ambiguous genitalia and cannot be clearly classified as male or female at birth.

The petitioners highlighted the challenges facing persons with intersex conditions as follows:-

- (a) Discrimination by family and society at large;
- (b) Isolation from the society as the disorder is regarded as a result of a curse and the isolation is meant to prevent bad omen;
- (c) Children are denied education and those in school suffer humiliation and harassment from the teachers and students;
- (d) People living with gender disorder are generally poor due to lack of education and lack the necessary skills to earn a decent living;
- (e) Lack of basic documentations of citizenship e.g. ID, NHIF, NSSF, etc.
- (f) Corrective surgery is expensive for families of children living with gender disorders;
- (g) Parents and siblings developmental problems due to pressure from the family and society; and
- (h) Some intersex children born as boys on reaching puberty have challenges such as menstruation while in school is a shock to the boys and cases of expulsion from school had been reported cases while attempted suicide and refusal to go back to school had also been reported.

The petitioners stated that the following Articles of the Constitution provide for the recognition and protection of inter-sex persons: -

Article 2 (1), (4) & (5)

This constitution is supreme law of the Republic of Kenya and binds all persons and

state organs at both levels of government; Any law including customary law, that is inconsistent with this constitution is invalid and the general rules of international law shall form part of the law.

Article 10 (1), (2a & b)

The national values and principles of governance are applicable to this constitution and include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.

Article 19 (1), (2) & (3)

The Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies;

The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and realization of the potential of all human beings;

The rights and fundamental freedoms in the Bill of Rights –

- (i) Belong to each individual and are not granted by State;*
- (ii) Do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter; and*
- (iii) Are subject only to the limitations contemplated in this Constitution.*

Article 22 (1) & (2)

Every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is treated.

In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by - a person acting on behalf of another person who cannot act in their own name;

A person acting as a member of, or in the interest of, a group or class of persons;

A person acting in the public interest; or

An Association acting in the interest of one or more of its members.

Article 23 (1) & (3)

The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or treatment to, a right or fundamental freedom in the Bill of Rights;

23(1) any proceedings brought under Article 22, a Court may grant appropriate relief, including a declaration of rights; a declaration of invalidity of any law that denies,

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violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24.

Article 27 (1), (2), (4), (5), (6) & (7)

Every person is equal before the law and has the right to equal protection and equal benefit of the law;

Equality includes the full and equal enjoyment of all rights and fundamental freedoms;

The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth and A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated.

Article 28

Every person has inherent dignity and the right to have that dignity respected and protected

Article 29 (a, c, d & f)

Every person has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological and treated or punished in a cruel, inhuman or degrading manner.

Article 31 (c)

Every person has the right to privacy, which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed.

Article 43 (a)

Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.

Article 52 (1)

This part elaborates certain rights to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groups of persons.

Article 53 (1 a, b, c, d & e) (2)

Every child has the right to a name and nationality from birth; to free and compulsory basic education; to basic nutrition, shelter and health care and parental care and protection, which includes equal responsibility of the mother and father to provide for

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the child, whether they are married to each other or not.

A child's best interests are of paramount importance in every matter concerning the child.

Article 165 (3)

The High Court shall have the jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.

Article 258

Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

Article 260

The Constitution interprets "marginalized group" as a group of people who because of laws or practices before, on or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4).

3.2 Submissions by Kenya National Commission on Human Rights

Mrs. Patricia Nyaundi, Chief Executive Officer, Kenya National Commission on Human Rights made oral and written submissions to the Committee in two meetings held on Thursday, 6th October 2016 and on Friday 9th December. The Commission proposed that the title of the petition be amended to read "intersex persons" instead of "persons with gender disorders" noting that the title of 'persons with gender disorders' was too broad and open to different interpretations.

The Commission clarified that "intersex" is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not fit the typical definitions of female or male bodies. The Commission stated intersex persons faced a lot of stigma and families with intersex children keep them in secrecy due to superstition. Further the Committee was informed that intersex was different from transgender in that people who have intersex conditions have an anatomy that is not considered typically male or female. In contrast, people who are transgender have an internal experience of gender identity that is different from most people.

The Commission further informed the Committee that some intersex infants and children were surgically or hormonally altered to create more socially acceptable sex characteristics. However, this presented a challenge given that the affected intersex persons may develop a different sexual anatomy later on in life. An intersex child who

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appears to be a male at birth may later develop the features of a female. Therefore surgical remedies should not be imposed at an early at birth but should be done at maturity when the affected persons have the right to make informed consent.

The Commission also stated that the government needed to expand the definition of sex in various Acts to accommodate intersex rather than force the intersex persons to fit in the conventional male /female categorization. The Commission supported the petition and proposed the following recommendations:-

- (i) The department of registration of persons should take immediate administrative action to recognize the intersex persons by adding a marker "other" on birth notification and birth certificates;
- (ii) Institute legal reforms by enactment or amendment of laws to facilitate legal recognition of intersex persons e.g. the Registration of Births and Deaths Act, the Registration of Persons Act; the National Hospital Insurance Fund Act, the Kenya National Examination Council Act, the Statistics Act, the Basic Education Act, the Children's' Act among others;
- (iii) Amendment and enactment of legislation that gives effect to the provisions of Article 27(4) of the Constitution so as to guarantee non-discrimination to intersex persons in all spheres of life including in education, healthcare, employment, sports and access to public services and address such discrimination through relevant anti-discrimination initiatives;
- (iv) The National Assembly to recommend a budget allocation by the Treasury targeting intersex persons for accessing the required services of corrective surgery and related procedures;
- (v) The Registrar of Persons, Kenya Bureau of Statistics and the Ministry of Health to provide statistics for all the intersex persons and if such statistics are not available to embark on measures that would ensure that such statistics are captured;
- (vi) The National Hospital Insurance Fund (NHIF) to provide insurance cover to intersex persons;
- (vii) The Cabinet Secretary, Ministry of Education to provide health care personnel with training on the health needs and human rights of intersex people and the appropriate advice and care to give to parents and intersex children, being respectful of the intersex persons' autonomy, physical integrity and sex characteristics;
- (viii) The Cabinet Secretary, Ministry of Health to develop guidelines and procedures for dealing with intersex children especially as it relates to corrective surgery and put measures in place to protect the affected children;
- (ix) The Inspector General of Police to ensure that human rights violations against



THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT (FOURTH SESSION)

PUBLIC PETITION

BY CONCERNED CITIZENS REGARDING RECOGNITION OF
PERSONS WITH GENDER DISORDER CONDITIONS

I, the **UNDERSIGNED** on behalf of citizens of Kenya and in particular persons born with gender disorders also referred to as intersex;

DRAW the attention of the house to the following:

1. **THAT**, Article 27(4),(5) of the Constitution recognizes individual rights with regards to equality and freedom from discrimination on grounds of sex, religion, race, pregnancy, marital status, health status, ethnic or social origin, colour, age and disability among others;
2. **THAT**, the Ministry of Interior and Coordination of National Government through the Directorate of Immigration and Registration of Persons, has failed to recognize persons living with gender disorders as duly Kenyan citizens and denies them the right to register as Kenyans;
3. **THAT**, despite the Ministry of Education, Science and Technology having intersex education covered in the curriculum, there is continued discrimination through issuance of wrong gender certificates to persons living with gender disorder conditions;
4. **THAT**, due to lack of proper registration, persons living with gender disorder conditions are denied access to public places and buildings, exercise their right to vote or practicing other citizenry roles;
5. **THAT**, due to lack of awareness at any level, persons living with gender disorder continually face discrimination and ridicule from not only the public but their own family members. This lead to low self-esteem and stigma with dire results being as extreme as committing suicide.
6. **THAT**, due to lack of adequate initiative by the Ministry of Health, persons living with gender disorders receive inadequate medical check-ups and are not eligible National Hospital Insurance Fund (NHIF) cover;

PUBLIC PETITION

BY CONCERNED CITIZENS REGARDING RECOGNITION OF
PERSONS WITH GENDER DISORDER CONDITIONS

7. THAT, efforts to resolve this matter with the relevant Government agencies have been futile; and
8. THAT, the matter in respect of which this petition is made is not pending before any court of law.

THEREFORE, your humble Petitioners PRAY that the National Assembly, through the Departmental Committee on Administration and National Security;

- (i) Causes the Ministry of Interior and Coordination of National Government to establish mechanism for national registration of persons living with gender disorder;
- (ii) Enacts legislation to establish gender disorder programmes which will provide for the manner of handling persons living with gender disorder;
- (iii) Allocate funds in the next and subsequent budgets to cater for special medical care for persons with gender disorders especially surgeries; and
- (iv) Cause the Government to roll out a public awareness programs to sensitise the public on the disorder in order to rid stigma and discrimination.

And you PETITIONERS will ever pray.

PRESENTED BY

24/08/16

HON. MWAURA M. ISAAC, MP
NOMINATED MEMBER

DATE: Mwaura

PETITION

BY PERSONS WITH GENDER IDENTITY DISORDER TO BE LEGALLY RECOGNISED.

#	NAME	REGION	I.D NUMBER	SIGNATURE
1.	Elmontus Mungira	Nairobi	25693375	
2.	Evelyne Wanjiku	Kiambu	91392444	
3.	Michael Ikua	Kiambu	28036052	
4.	Stanley Muna	Kirinyaga	3205969	
5.	Lucy Nyawira	Kirinyaga	34775495	LA 1
6.	Geoffrey K. Sang	Kenya	23592299	
7.	DAVID DANIEL	NAIROBI	28392022	
8.	ROBERT GITOMBA	NAIROBI	9250550	
9.	SAID WALE	NAIROBI	29529095	
10.	JACOB MAKAU	NAIROBI	30810763	
11.	MASITA FELISTER	NAIROBI	29514738	
12.	MWANGI BENARD	NYERI	25216188	
13.	Banfac K Mutiga	NYERI	20586257	
14.	Daniel K. Kimeg	MWANGI	25740868	
15.	Kipserit Beth	NAKURU	24336742	
16.	Robert Mwendu	MELUNDI	22713457	
17.	DAVID KANGILE	MWANGI	25103173	
18.	Mercy Ndungu	NAKURU	2788160	
19.	David Kaisa	LAIKIPIA	25414720	
20.	Mercy Kingori	NYERI	23165007	
21.				
22.				
23.				

DIRECTOR COMMITTEE SERVICES

Committee minutes

**MINUTES OF 23RD SITTING OF THE COMMITTEE ON
ADMINISTRATION AND NATIONAL SECURITY HELD ON FRIDAY,
31ST MARCH, 2017 IN THE CONFERENCE ROOM, 3RD FLOOR, MARINA
ENGLISH POINT HOTEL, MOMBASA AT 9.30 A.M.**

PRESENT

1. Hon. Mohamed Shidiye, MP - Session Chairperson
2. Hon. Joseph Lekuton, MP
3. Hon. Benard Shinali, MP
4. Hon. Protus Akujah, MP
5. Hon. Zakayo Cheruiyot, MP
6. Hon. James Bett, MP
7. Hon. Charles Nyamai, MP
8. Hon. Samuel Moroto, MP
9. Hon. Rashid Bedzimba, MP - - -
10. Hon. George Theuri, MP
11. Hon. Dr. Makali Muli, MP

APOLOGIES

1. Hon. Asman Kamama, MGH, OGW, MP - Chairperson
2. Hon. Alois Lentoimaga, MP - Vice Chairperson
3. Hon. Alice Wahome, MP
4. Hon. Wanjiku Muhia, MP
5. Hon. Jane Machira, MP
6. Hon. Joseph Kahangara, MP
7. Hon. David Gikaria, MP
8. Hon. Ibrahim Ali Saney, MP
9. Hon. Issack Hassan, MP
10. Hon. Fatuma Ibrahim Ali, MP
11. Hon. Timothy Wanyonyi, MP
12. Hon. Peter Kaluma, MP
13. Hon. James Opiyo Wandayi, MP
14. Hon. Grace Kiptui, MP
15. Hon. Francis Mwangangi, MP
16. Hon. Joseph Ndiege, MP
17. Hon. Dr. Humphrey Njuguna, MP

IN-ATTENDANCE

Hon. Sunjeev Birdi, MP

COMMITTEE SECRETARIAT

1. Mrs. Florence Abonyo - Director, Committee Services
2. Ms. Rose M. Wanjohi - Clerk Assistant II
3. Ms. Hellen Lokwang - Clerk Assistant III
4. Ms. Christine Odhiambo - Legal Counsel II
5. Mr. Eric Kiarie - Research Assistant III

MIN.NO. 105/ANS/2017 - PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m. A prayer was said.

MIN.NO.106/ANS/2017 - CONFIRMATION OF MINUTES

The agenda item was deferred to the next meeting.

MIN.NO. 107/ANS/2017 - PREPUBLICATION SCRUTINY OF THE PROPOSED KENYA CITIZENSHIP AND IMMIGRATION (AMENDMENT) BILL, 2016 - SPONSORED BY HON. SUNJEEV BIRDI, MP

The Committee deliberated on the Bill as follows:-

Clause 3

The Committee noted that the amendment sought to introduce a requirement that an immigration officer shall be appointed by the Public Service Commission. However section 5 of the Act provides that the Kenya Citizens and Foreign Nationals Management Service shall appoint such immigration officers as may be necessary for the carrying out of the provisions of the Act. The Committee proposed a deletion of the clause as it would result in conflict regarding the appointing authority.

Clause 4

The Committee proposed an amendment to the clause as a period of sixty days would not be realistic given that the Cabinet Secretary would be required to exercise due diligence before granting the application for regaining citizenship.

Clause 5

The clause sought to extend the period within which a stateless person may make an application for citizenship, from five years from the enactment date, to ten years of the enactment date. It therefore meant that whereas the Act currently provides that stateless persons may make an application for citizenship only until the year 2016, the amendment will allow such applications to be made until the year 2021. The Committee agreed to the clause.

Clause 6

The amendment sought to provide for a thirty days timeline within which an application for a passport shall be considered and a passport issued. The Committee agreed to the clause.

Clause 7

The Committee proposed an amendment to the Clause as the proposed thirty days would be an excessively long period of time to merely replace a passport or other travel document. Seven days would be ideal as the process merely involves reproducing already an existing valid document.

Clause 8

The amendment sought to impose a timeline within which an application for the issuance of a permit shall be determined. The amendment proposes a period of ninety days from the date of the application. The Committee agreed to the clause.

Clause 9

The amendment sought to provide a ninety day timeline within which an application for permanent residence status shall be determined. The Committee agreed to the clause.

Clause 10

The amendment sought to provide for the commission of offences by immigration officers, as well as to impose a penalty for the commission of an offence by an immigration officer. The Committee agreed to the clause.

Clause 2

The Committee agreed to the proposed insertion of new definitions so as to eliminate instances of uncertainties or ambiguity in the terms used in the Act.

MIN.NO.108 /ANS/2017 - CONSIDERATION AND ADOPTION OF A DRAFT REPORT ON A PETITION BY CONCERNED CITIZENS REGARDING RECOGNITION OF PERSONS WITH GENDER DISORDER CONDITIONS BY HON. ISAACK MWAURA, MP.

The Committee unanimously adopted the report with the following observations and recommendations:-

Committee Observations

1. Article 27(4) and (5) of the Constitution recognizes individual rights with regards to equality and freedom from discrimination on grounds of sex, religion, race, pregnancy, marital status, health status, ethnic or social origin, colour, age and disability among others.
2. Intersex individuals are assigned a sex description at birth despite the ambiguous sexual organs because birth registration adheres to a dualistic categorization of people as either a “female” or “male”.
3. Intersex persons face numerous challenges that include isolation from the society as the disorder is regarded as a result of a curse, the isolation is meant to prevent bad omen; children are denied education and those in school suffer humiliation harassment from the teachers and students.
4. Surgical remedies to create more socially acceptable sex characteristics done at birth or during early childhood deny the affected persons the right to make informed consent as an intersex child who appears to be male at birth may later develop the features of a female.
5. Although the petitioners had stated that the National Insurance Hospital Fund (NIHF) did not recognize nor provide insurance cover for intersex persons, the Ministry of Health in its written submission said that currently intersex persons were eligible for surgical cover by the National Hospital Insurance Fund (NHIF).

Committee Recommendations

The Committee recommended that:-

1. The Ministry of Interior and Coordination of National Government should take immediate administrative action to recognize intersex persons by adding a marker “intersex” in addition to “male” and “female” on birth notifications and birth certificates:
2. The Government should roll out public awareness programmes to sensitize the public on the issue of intersex in order to eradicate stigma and discrimination.
3. The Ministry of Health and County governments should allocate more funds to cater for special medical care for intersex persons such access to required corrective surgery and related procedure.
4. The Registrar of Persons, Kenya Bureau of Statistics and the Ministry of Health should provide statistics on all the intersex persons by ensuring that that such statistics are captured in the national census and socioeconomic surveys to facilitate effective planning for the needs of intersex persons.
5. The Cabinet Secretary, Ministry of Health should develop guidelines and procedures for dealing with intersex children especially as it relates to corrective surgery and put

measures in place to prohibit medically unnecessary surgery and procedures to ensure that the surgeries are done at maturity when the affected persons have the right to make informed consent.

6. The government through the Inspector General of Police should ensure that human rights violations against intersex people are investigated and alleged perpetrators prosecuted and that victims of such violation receive redress.

MIN.NO.109 /ANS/2017 - ADJOURNMENT

There being no other business the meeting was adjourned at 1.30 p.m.

Signed by..........

(Chairperson)

Dated.....16/8/2017.....

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MINUTES OF THE 75TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON TUESDAY, 9TH DECEMBER 2016 IN COMMITTEE ROOM, 4TH FLOOR CONTINENTAL HOUSE PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Alois Lentoimaga, MP - **Vice Chairperson**
2. The Hon. Dr. Makali Mulu, MP
3. The Hon. Francis Mwangangi, MP
4. The Hon. James Bett, MP
5. The Hon. Joseph Ndiege, MP
6. The Hon. Zakayo Cheruiyot, MP
7. The Hon. Rashid Bedzimba, MP
8. The Hon. Grace Kiptui, MP
9. The Hon. Joseph Lekuton, MP
10. The Hon. Protus Akuja Ewesit, MP
11. The Hon. Fatuma Ibrahim Ali, MP
12. The Hon. Dr. Humphrey Njuguna, MP
13. The Hon. Ibrahim Abdi Saney, MP
14. The Hon. Mohamed Shidiye, MP
15. The Hon. Wanjiku Muhia, MP

APOLOGIES

1. The Hon. Asman Kamama, MGH, OGW, MP - **Chairperson**
2. The Hon. George Theuri, MP
3. The Hon. Samuel Moroto, MP
4. The Hon. Joseph Kahangara, MP
5. The Hon. (Maj. Rtd.) John K. Waluke, MP
6. The Hon. Alice Wahome, MP
7. The Hon. Shaaban Ali Isaack, MP
8. The Hon. Benard Shinali, MP
9. The Hon. Jane Machira, MP
10. The Hon. Timothy Wetangula, MP
11. The Hon. David Gikaria, MP
12. The Hon. Patrick Ole Ntutu, MP
13. The Hon. Charles Nyamai, MP
14. The Hon. Ababu Namwamba, MP

IN ATTENDANCE - COMMITTEE SECRETARIAT

- | | | |
|---------------------------|---|---------------------|
| 1. Mr. Leonard Machira | - | Clerk Assistant I |
| 2. Ms. Rose Wanjohi | - | Clerk Assistant II |
| 3. Ms. Hellen Lokwang | - | Clerk Assistant III |
| 4. Ms. Christine Odhiambo | - | Legal Counsel II |

MIN.NO.339/ANS/2016 - PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am. A prayer was said.

MIN.NO.340/ANS/2016 - CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN.NO.341/ANS/2016 - MEETING WITH THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS ON A PETITION BY CONCERNED CITIZENS REGARDING THE RECOGNITION OF PERSONS WITH GENDER DISORDER CONDITIONS

The Commission proposed that the title of the petition be amended to read intersex persons instead of persons with gender disorders noting that the title of 'persons gender disorders' was too broad. It was clarified that "Intersex" is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male bodies.

Intersex persons face a lot of stigma and families with intersex children keep them in secrecy due to superstition.

Intersex is different from transgender in that people who have intersex conditions have anatomy that is not considered typically male or female. In contrast, people who are transgendered have an internal experience of gender identity that is different from most people. Often intersex individuals are assigned a sex description at birth despite the ambiguous sexual organs because birth registration adheres to a dualistic definition of people as either a "female" or "male."

The Commission informed the Committee that some intersex infants and children were surgically or hormonally altered to create more socially acceptable sex characteristics. However, this presents a challenge given that the affected intersex person may develop a different sexual anatomy. An intersex child who appears to be a male at birth may later develop the features of a female. Therefore surgical remedies should not be imposed at an early age at birth but should be done at maturity when the affected persons have the right to make informed consent.

intersex people are investigated and alleged perpetrators prosecuted and that victims of such violation receive redress;

- (x) The Cabinet Secretary, Ministry of Education to develop guidelines and protocols for teachers and schools on how to address intersex pupils' issues and integrate gender identity knowledge and information within curricula to train teachers; and
- (xi) The Ministry of Education should appraise the Committee with information on the number of students who have dropped out of school because of their condition and what measures have been put in place to retain such children in school.

3.3 Submissions by the Ministry of Health

The Ministry of Health in written submissions signed by the Principal Secretary, dated Tuesday 28th February, 2017 acknowledged that the plight of inter persons was an emerging issue that required public sensitization to discourage stigmatization and discrimination. The Ministry recommended that parents of intersex children should also be discouraged from making premature decisions to perform surgical operations on intersex children at an early age without establishing the full facts which end up damaging the children 's sexual function and perpetuate feelings of extreme guilt among the affected children.

The Ministry also acknowledged that more research was needed to determine the best period to perform surgery on intersex children in order to minimize negative psychological effects due to surgical operations conducted during early infancy or adolescence. Therefore there was need to develop a multidisciplinary approach on the management of affected individuals encompassing surgery, endocrinology and psychosocial support.

The Ministry of Health further stated that it does not discriminate persons living with gender disorders in the provision of medical care and that currently intersex persons were eligible for surgical cover by the National Hospital Insurance Fund (NHIF).

3.4 Submissions by the Ministry of Education

The Ministry of Education in written submission signed by Cabinet Secretary, dated Monday 10th March, 2017 stated that the Ministry does not discriminate against any person on any grounds including gender and disability as envisaged by the provisions of Article 27(4) and that the Ministry had included intersex education in its curriculum as alluded by the petitioners.

On issuance of certificates with, the Ministry stated that it issues certificates strictly as

NA: Report on the consideration of a petition by concerned citizens regarding recognition of persons with gender disorder conditions

per the details contained in other statutory identification documents such as birth certificates, identity cards or passports. It was therefore the responsibility of the registration agencies to indicate the correct gender of the candidate on the documents. However, the Ministry stated that if there was a specific case of discrimination it should be directed to the Ministry for redress.

3.5 Submissions by the Cabinet Secretary, Ministry of Interior and Coordination of National Government.

The Cabinet Secretary, Ministry of Interior and Coordination of National Government in written submission dated 23rd February 2017 stated that the mandate of the Civil Registration Service was limited to registration of births based on information provided by the various informants and physiological evidence seen by the person attending the birth or information given by the informant in case of a birth that occurred at home. Where the sex of an individual cannot be determined it is only a medical practitioner who has the capacity to determine the sex category. After the sex category has been determined by a medical practitioner, the Civil Registration Service based on the provisions of Section 28 of the Births and Deaths Registration Act can correct the particulars on the birth certificate.

The Cabinet Secretary also stated that section 28 of the Births and Deaths Registration Act also provides for changing of errors that occurred during registration. This means that a child can be identified as male but later on be found to be female, the service can upon getting information from an authorized medical officer correct the particulars originally indicated in the birth certificate. In view of the above explanation the Ministry was of the opinion that there was no need to modify birth certificates to accommodate intersex as a sex marker.

The Ministry also stated there was no legal barrier to the registration of births of persons whose sex cannot be determined at birth and that all births were registered irrespective of the sex categorization of the registrants.

The Ministry further stated that every person who is a Kenyan citizen and has attained the age of 18 years is registered without any discrimination. In the event that a person has been issued with an identity card and desires to change the name appearing on the registration record, it is a requirement that the person furnishes the registration officer with documents in support of the change of name. Where a registered person desires to change the gender mark on the registration record, it is mandatory that he/she produces a letter from a medical officer of health confirming the change of gender.

4.0 COMMITTEE OBSERVATIONS


The Committee made the following observations from evidence adduced in the meetings, that:-

1. Article 27 (4) and (5) of the Constitution recognizes individual rights with regards to equality and freedom from discrimination on grounds of sex, religion, race, pregnancy, marital status, health status, ethnic or social origin colour, age and disability among others..
2. Intersex individuals are assigned a sex description at birth despite the ambiguous sexual organs because birth registration adheres to a dualistic categorization of people as either a “female” or “male”
3. Intersex persons face numerous challenges that include isolation from the society as the disorder is regarded as a result of a curse. The isolation is meant to prevent bad omen; children are denied education and those in school suffer humiliation harassment from the teachers and students.
4. Surgical remedies to create more socially acceptable sex characteristics done at birth or during early childhood deny the affected persons the right to make informed consent as an intersex child who appears to be a male at birth may later develop the features of a female.

5.0 COMMITTEE RECOMMENDATIONS

In response to the prayers by the petitioners, the Committee recommends that:-

1. **The Ministry of Interior and Coordination of National Government should take immediate administrative action to recognize the intersex persons by adding a marker 'intersex' on birth notifications and birth certificates.**
2. **The Government should roll out public awareness programmes to sensitize the public on the issue of intersex in order to eradicate stigma and discrimination.**
3. **The Ministry of Health and County Governments should consider allocating more funds to cater for special medical care for intersex persons to facilitate required corrective surgery and related procedures.**
4. **The Kenya Bureau of Statistics and the Ministry of Health should provide statistics on all the intersex persons by ensuring that that such statistics are captured in the national census and other socioeconomic surveys to facilitate effective planning for the needs of intersex persons.**
5. **The Cabinet Secretary for the Ministry of Health should develop guidelines and procedures for dealing with intersex children especially as it relates to corrective surgery and put measures in place to ensure that the surgeries are done at maturity, when the affected persons have the right to make informed consent.**
6. **The Government through the Inspector General of Police should ensure that human rights violations against intersex people are investigated and alleged perpetrators prosecuted and that victims of such violation receive redress.**

Signed.....  Date..... 30/05/2017

Hon. Asman Kamama, MGH, OGW, MP
Chairman, Departmental Committee on Administration and National Security

Adoption List

We, Members of the Departmental Committee on Administration and National Security have pursuant to Standing Order 227 adopted this report on the consideration on the Report on a petition by concerned citizens regarding recognition of persons with gender disorder conditions and affix our signatures to confirm our approval and confirm its accuracy, validity and authenticity on as per the attached adoption list.

1. The Hon. Asman Kamama, MGH, OGW, MP – Chairperson _____

2. The Hon. Alois M. Lentoimaga, MP- Vice Chairperson _____

3. The Hon. Joseph Lekuton, MP _____

4. The Hon. Alice Wahome, MP _____

5. The Hon. Zakayo K. Cheruiyot, MP _____

6. The Hon. Timothy W. Wetangula, MP _____

7. The Hon. Patrick Ole Ntutu, MP _____

8. The Hon. Ali Isaack Shaaban, MP _____

9. The Hon. Samuel Moroto, MP _____

10. The Hon.(Dr.) Humphrey Njuguna, MP _____

11. The Hon. Francis K. Mwangangi, MP _____

12. The Hon. Rashid J. Bedzimba, MP _____

13. The Hon. David Gikaria, MP _____

14. The Hon. Mohamed Shidiye, MP _____

15. The Hon. Jane Machira, MP _____

16. The Hon. Ibrahim Abdi Saney, MP

17. The Hon. Joseph O. Ndiege, MP

18. The Hon. Wanjiku Muhia, MP



19. The Hon. Akuja Protus Ewesit, MP

20. The Hon. Joseph M. Kahangara, MP

21. The Hon. Charles Nyamai, MP



22. The Hon. Grace Kiptui, MP

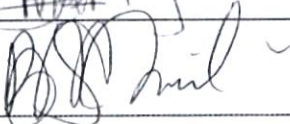
23. The Hon. George Theuri, MP



24. The Hon. James Bett, MP

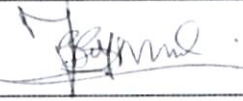


25. The Hon. Benard Shinali, MP



26. The Hon. Fatuma Ibrahim Ali, MP


27. The Hon. (Dr.) Makali Muli, MP



28. The Hon. Peter Kaluma, MP



29. The Hon. James Opiyo Wandayi, MP



Adoption List

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1. The Hon. Asman Kamama, MGH, OGW, MP – Chairperson _____

2. The Hon. Alois M. Lentoimaga, MP- Vice Chairperson _____

3. The Hon. Joseph Lekuton, MP _____

4. The Hon. Alice Wahome, MP _____

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14. The Hon. Mohamed Shidiye, MP _____

15. The Hon. Jane Machira, MP _____

16. The Hon. Ibrahim Abdi Saney, MP

17. The Hon. Joseph O. Ndiege, MP

18. The Hon. Wanjiku Muhia, MP



19. The Hon. Akuja Protus Ewesit, MP

20. The Hon. Joseph M. Kahangara, MP

21. The Hon. Charles Nyamai, MP



22. The Hon. Grace Kiptui, MP

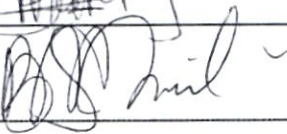
23. The Hon. George Theuri, MP



24. The Hon. James Bett, MP




25. The Hon. Benard Shinali, MP



26. The Hon. Fatuma Ibrahim Ali, MP

27. The Hon. (Dr.) Makali Muli, MP



28. The Hon. Peter Kaluma, MP



29. The Hon. James Opiyo Wandayi, MP



Copy of Petition

The Commission further stated that there was no need to develop new legislation to cater for the rights of intersex persons. The government needs to expand the definition of sex in various Acts to accommodate intersex rather than forcing the intersex person to fit in the conventional male /female categorization

The Committee was also informed that the classification of humankind into two categories of male and female and the entrenchment of the two categories in identification documents expose people who do not fit neatly into the two categories to human rights breaches.

The Commission supported the petition and proposed the following recommendations:-

- (i) The department of registration of persons should take immediate administrative action to recognize the intersex persons by adding a marker other on birth notification and birth certificates;
- (ii) Legal reform by enactment or amendment of laws to facilitate legal recognition of intersex persons e.g. the Registration of Births and Deaths Act, the Registration of Persons Act; the National Hospital Insurance Fund Act, the Keya National Examination Council Act, the Statistics Act, the Basic Education Act, the Childrens' Act among others;
- (iii) Amendment and enactment of legislation that gives effect to the provisions of Article 27(4) of the Constitution so as to guarantee non-discrimination to intersex persons in all spheres of life including in education, health care, employment, sports and access to public services and address such discrimination through relevant anti-discrimination initiatives;

MIN.NO.342/ANS/2016

ADJOURNMENT OF THE MEETING

There being no other business the meeting was adjourned at 12.40 pm and the next meeting will be held on Thursday, 18th August, 2016 at 10.00 a.m.

Signed.....

(Chairperson)

Date..... 30 | 05 | 2017

MINUTES OF THE 66TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY, 6TH OCTOBER 2016 IN COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE AT 11.00 A.M.

PRESENT

1. The Hon. Asman Kamama, MGH, OGW, MP - Chairperson
2. The Hon. Alois Lentoimaga, MP - Vice Chairperson
3. The Hon. James Bett, MP
4. The Hon. David Gikaria, MP
5. The Hon. Zakayo Cheruiyot, MP
6. The Hon. (Maj. Rtd.) John K. Waluke, MP
7. The Hon. Benard Shinali, MP
8. The Hon. Fatuma Ibrahim Ali, MP
9. The Hon. Protus Akuja Ewesit, MP
10. The Hon. George Theuri, MP
11. The Hon. Shaaban Ali Isaack, MP
12. The Hon. Ibrahim Abdi Saney, MP
13. The Hon. Joseph Ndiege, MP
14. The Hon. Rashid Bedzimba, MP
15. The Hon. Samuel Moroto, MP

APOLOGIES

1. The Hon. Joseph Lekuton, MP
2. The Hon. Joseph Kahangara, MP
3. The Hon. Francis Mwangangi, MP
4. The Hon. Dr. Makali Mulu, MP
5. The Hon. Jane Machira, MP
6. The Hon. Grace Kiptui, MP
7. The Hon. Dr. Humphrey Njuguna, MP
8. The Hon. Charles Nyamai, MP
9. The Hon. Patrick Ole Ntutu, MP
10. The Hon. Mohamed Shidiye, MP
11. The Hon. Alice Wahome, MP
12. The Hon. Wanjiku Muhia, MP
13. The Hon. Timothy Wetangula, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

Hon. Isaac Mwaura - MP

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS AND PETITIONERS

1. Mrs. Patricia Nyaundu - Chief Executive Officers KNCHR
2. Mr. Kwamboka Kibagendi - Jinsiangu Representative
3. Mr. John Chigiti - Advocate
4. Ms. Cecilia Ndungu
5. Mr. Dominic Rono - Senior Human Rights Officer
6. Mr. George Maraba - KNCHR
7. Ms. Irene Njuguna - Communications Officer GAMAFRICA
8. Mr. Tapiwa Mamhare - Katiba Institute
9. Ms. Ruth Wagui - Petitioner
10. Ms. Seath Pearce - KNCHR

COMMITTEE SECRETARIAT

1. Ms. Rose Wanjohi - Second Clerk Assistant
2. Ms. Hellen Lokwang - Third Clerk Assistant

MIN.NO.292/ANS/2016 - PRELIMINARIES

The Chairperson called the meeting to order at 11.30 a.m. with a word of prayer from Hon. Alois Lentoimaga.

MIN.NO.293/ANS/2016 - CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next meeting.

MIN.NO.294/ANS/2016 - MEETING WITH THE PETITIONERS ON A PETITION BY CONCERNED CITIZENS REGARDING THE RECOGNITION OF PERSONS WITH GENDER DISORDER CONDITIONS

The Committee was informed that sex development disorder or inter-sex is a phenomenon where children are born with sex differentiation which makes the anatomy of their bodies a typical and their sexual identity indistinct. For many children the disorder is at the chromosomal level, for others, it is at the hormonal level and for more obvious cases, it is at the genitalia level. Many of the inter-sex infants are born with ambiguous genitalia and cannot be clearly classified as male or female at birth.

Challenges facing the children with gender disorder conditions

Some of the key challenges facing the children with gender disorder conditions were highlighted as follows:-

- (a) Discrimination by family and society at large;
- (b) Isolation from the society as the disorder is regarded as a result of a curse, the isolation is meant to prevent bad omen;
- (c) Children are denied education and those in school suffer humiliation from the teachers and students;
- (d) People living with gender disorder are generally poor due to lack of education and lack the necessary skills to earn a descent living;
- (e) They lack basic documentations of citizenship e.g. ID, NHIF, NSSF, etc.
- (f) Corrective surgery is expensive for families of children living with gender disorders.
- (g) harassment at school for being inter-sexual
- (h) Parents and siblings develop mental problems due to pressure from the family and society.
- (i) Some intersex Children born as a boys starting to received menstrual periods in school. The situation becomes panicky to the boys and some cases of expulsion from school had been reported. Cases of attempted suicide and refusal to go back to school had been also reported.

Constitutional provisions supporting the recognition and protection of inter-sex children

The petitioners heighted the Constitutional provisions supporting the recognition and protection of inter-sex children as follows:-

Article 2 (1), (4) & (5)

This constitution is supreme law of the Republic of Kenya ad binds all persons ad state organs at both levels of government; Any law including customary law, that is inconsistent with this constitution is invalid and the general rules of international law shall form part of the law.

Article 10 (1), (2a & b)

The national values and principles of governance are applicable to this constitution and include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.

Article 19 (1), (2) & (3)

The Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies;

The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and realization of the potential of all human beings;

The rights and fundamental freedoms in the Bill of Rights –

- (i) Belong to each individual and are not granted by State;*
- (ii) Do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter; and*
- (iii) Are subject only to the limitations contemplated in this Constitution.*

Article 22 (1) & (2)

Every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is treated.

In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by - a person acting on behalf of another person who cannot act in their own name;

A person acting as a member of, or in the interest of, a group or class of persons;

A person acting in the public interest; or

An Association acting in the interest of one or more of its members.

Article 23 (1) & (3)

The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or treatment of, a right or fundamental freedom in the Bill of Rights;

In any proceedings brought under Article 22, a Court may grant appropriate relief, including a declaration of rights; a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24.

Article 27 (1), (2), (4), (5), (6) & (7)

Every person is equal before the law and has the right to equal protection and equal benefit of the law;

Equality includes the full and equal enjoyment of all rights and fundamental freedoms;

The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth and

A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated.

Article 28

Every person has inherent dignity and the right to have that dignity respected and protected

Article 29 (a, c, d & f)

Every person has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological and treated or punished in a cruel, inhuman or degrading manner.

Article 31 (c)

Every person has the right to privacy, which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed.

Article 43 (a)

Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.

Article 52 (1)

This part elaborates certain rights to ensure greater certainty as to the application of those rights and fundamental freedoms to certain groups of persons.

Article 53 (1 a, b, c, d & e) (2)

Every child has the right to a name and nationality from birth; to free and compulsory basic education; to basic nutrition, shelter and health care and to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.

A child's best interests are of paramount importance in every matter concerning the child.

Article 165 (3)

The high Court shall have the jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.

Article 258

Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

Article 260

The Constitution interprets "marginalized group" as a group of people who because of laws or practices before, on or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4).

Submissions by Kenya National Commission on Human Rights

The Committee was informed that the Commission supported the petition and proposed the following remedial measures:-

- (i) The department of registration of persons take immediate administrative action to recognize the intersex persons by adding a marker other on birth notification and birth certificates;
- (ii) Legal reform by enactment or amendment of laws to facilitate legal recognition of intersex persons e.g. the Registration of Births and Deaths Act, the Registration of Persons Act; the National Hospital Insurance Fund Act, the Kenya National Examination Council Act, the Statistics Act, the Basic Education Act, the Children's Act among others;
- (iii) Amendment and enactment of legislation that gives effect to the provisions of Article 27(4) of the Constitution so as to guarantee non-discrimination to intersex persons in all spheres of life including in education, health care, employment, sports and access to public services and address such discrimination through relevant anti-discrimination initiatives;
- (iv) The National Assembly to recommend a budget allocation by the Treasury targeting intersex persons for accessing the required services of corrective surgery and related procedures;
- (v) The Registrar of Persons, Kenya Bureau of Statistics and the Ministry of Health to provide statistics for all the intersex persons and if such statistics are not available to embark on measures that would ensure that such statistics are captured;
- (vi) The National Hospital Insurance Fund (NHIF) to provide insurance cover to intersex persons.
- (vii) The Cabinet Secretary, Ministry of Education to provide health care personnel with training on the health needs and human rights of intersex people and the appropriate advice and care to give to parents and intersex children, being respectful of the intersex persons' autonomy, physical integrity and sex characteristics;
- (viii) The Cabinet Secretary, Ministry of Health to develop guidelines and procedures for dealing with intersex children especially as it relates to corrective surgery and put measures in place to prohibit medically unnecessary surgery and procedures on the sex characteristics of intersex children, protect their physical integrity and respect their autonomy;

- (ix) The Inspector General of Police to ensure that human rights violations against intersex people are investigated and alleged perpetrators prosecuted and that victims of such violation receive redress;
- (x) The Cabinet Secretary, Ministry of Education to develop guidelines and protocols for teachers and schools on how to address intersex pupil's issues and integrate gender identity knowledge and information within curricula to train teachers; and
- (xi) The Ministry of Education should appraise the Committee with information on the number of students who have dropped out of school because of their condition and what measures have been put in place to retain such children in school.

Committee Recommendations

The Committee made the following recommendations:

- (i) Legislative framework to be enacted to govern the issues of intersex children;
- (ii) Establishment of special schools for intersex children;
- (iii) Establishment of special hospital for intersex cases; and
- (iv) Ministry of Education and Ministry of Health to sensitize the public on cases of intersex phenomenon.

MIN.NO.304 /ANS/2016 - ANY OTHER BUSINESS

- i. Hon. Isaac Mwaura MP informed the Committee that the Kenya National Human Rights Commission would organize a retreat with the Committee to discuss in depth the issues of persons with gender disorder conditions.
- ii. The Committee was advised to benchmark on best practices on inter-sex issues in Australia and Germany.

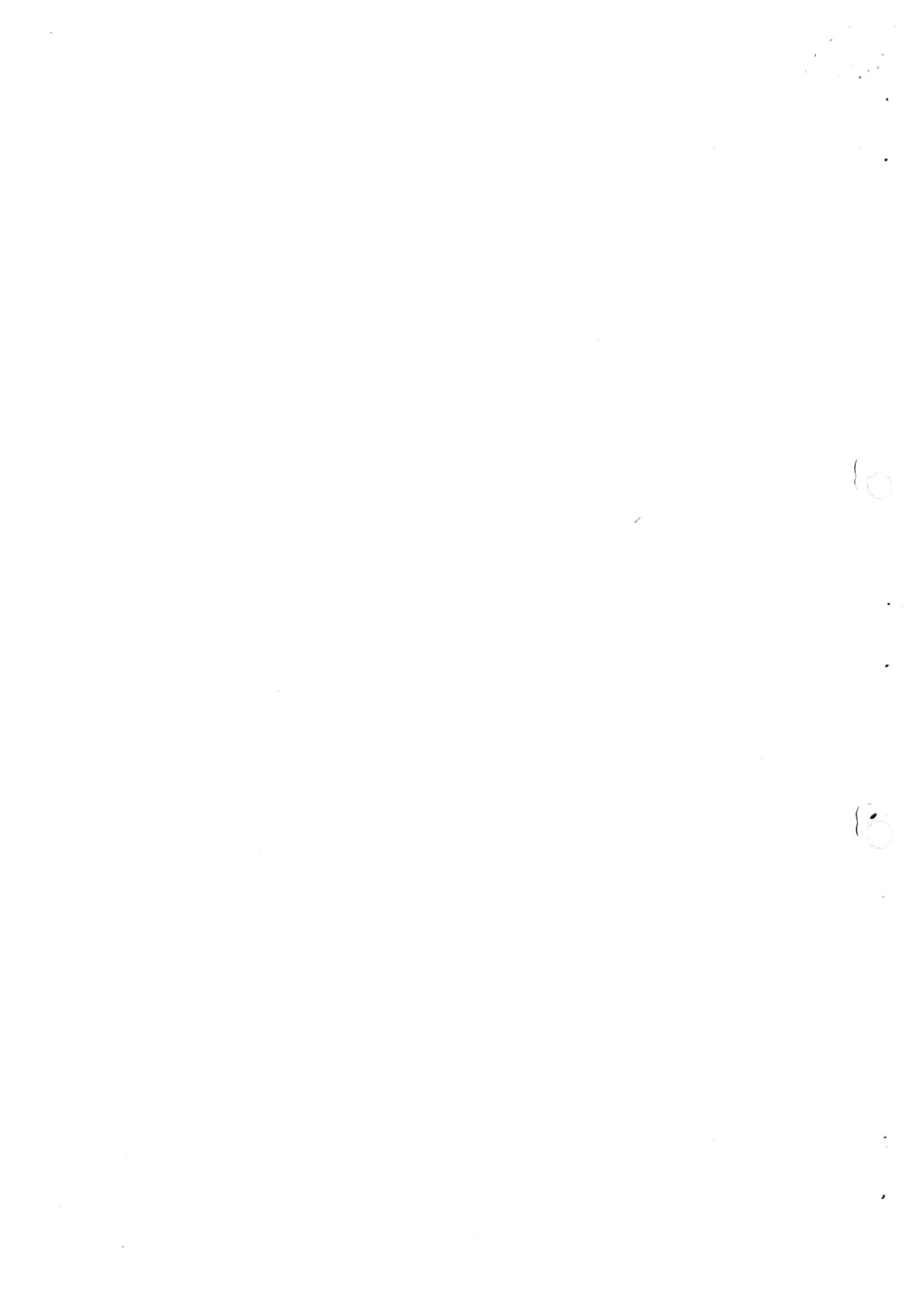
MIN.NO.305/ANS/2016 - ADJOURNMENT OF THE MEETING

There being no other business the meeting was adjourned at 1.30 am and the next meeting will be held on notice.

Signed.....

(Chairperson)

Date..... 11th Nov 2016



Appendix I

Submissions by Kenya National Commission on Human Rights

Kenya National Commission on Human Rights

PROPOSAL OF LAWS THAT NEED TO BE AMENDED IN ORDER TO PROTECT THE RIGHTS OF INTER-SEX PERSONS IN KENYA

The classification of humankind into two categories i.e. (male and female) and the entrenchment of those categories in identification documents expose people who do not fit neatly into those two categories to human rights breaches.

In a bid to rectify this position in Kenya and protect the rights of inter-sex persons, the Kenya National Commission on Human Rights calls for amendment to the following legislation:

1. **Interpretation and General Provisions Act Cap 2 Laws of Kenya**

- Amend section 3 (interpretation section) by defining the term inter-sex

Proposed definition:

"Intersex" means a person certified by a competent medical practitioner to have both male and female reproductive organs;

2. **Births and Deaths Registration Act Cap 149 Laws of Kenya**

The act does not define the term sex, however from a reading of the act it is clear that the term sex means male or female.

- Amend section 2 (interpretation section) by defining the word inter-sex. This is to ensure that there are flexible procedures in assigning or reassigning sex/gender in registration documents, registers, and prescribed forms.
- Amend the following documents, registers and prescribed forms to include inter-sex as a sex marker:
 - I. Form 1 Register of Birth
 - II. Form 2 Register for the Registration of Births
 - III. Form 3 Return of Births in a District
 - IV. Form 4 Birth certificate

- V. Form No 5- Certificate of birth (Short Form)
- VI. Form no 6 Register of Death
- VII. Form No 7 Register of Death: for use by next of kin where no medical certificate of cause of death is issues
- VIII. Form No 8 Register for Registration of Deaths
- IX. Form No 9 Fortnightly returns of Deaths in a District
- X. Form No 10 Medical Certificate of Cause of Death: for use of medical Attendant, who should fill it up in all cases
- XI. Form No 11 (Medical certificate of Cause of Death- for use of doctors carrying out post-mortem examination)
- XII. Form no 13 (Death Report)to include Intersex or other as sex marker.

3. Registration of Persons Act Cap 107 Laws of Kenya

- Amend Section 3 by including defining the word inter-sex
- Amend Form A of the first schedule to include inter-sex (I) or other (o) as sex marker on the identification card.

4. Kenya Citizenship and Immigration Act Cap 172 Laws of Kenya

- Amend section 2 by defining the word inter-sex. This will ensure that all registers, documents and prescribed forms contained in the Act include inter-sex (I) as a sex marker.

More specifically, the following registers, documents and prescribed forms ought to be amended to include inter-sex as a sex marker:

- I. Passport- Rule 13 of the Kenya Citizenship and immigration Regulations, 2012 and Form 19 Passport/Travel Document Application for a Kenya Passport/Travel Document
- II. Register for Applications for regaining Citizenship- Rule 48 Kenya Citizenship and Immigration Regulations, 2012
- III. Register for Voluntary Renunciation of Citizenship- Rule 49 Kenya Citizenship and Immigration Regulations, 2012
- IV. Register for Revocation of Kenya Citizenship- Rule 50 Kenya Citizenship and Immigration Regulations, 2012

- V. Foreign Nationals Accommodation Records – Rule 52 Kenya Citizenship and Immigration Regulations, 2012
- VI. Foreign Nationals Register- Rule 53 Kenya Citizenship and Immigration Regulations, 2012
- VII. Form 20- Entry/Departure declaration Form
- VIII. Form 22- Application for a Visa
- IX. Form 23- Application for Permanent Residence
- X. Form 25- Application for Issuance or Renewal of permit
- XI. Form 28- Application for Dependant’s Pass
- XII. Form 42- Application Form for Registration as Foreign National under Section 56

5. Marriage Act

- Amend Form MA5, application for certificate of no impediment to marriage, to include intersex as a sex marker

6. Kenya National Examination Council Act

- Amend section 2 of the Act by defining the word inter-sex.
- Include a provision that recognises inter-sex as a sex marker that should be included in the certificates issued by the Council.

7. Statistics Act

- Amend section 2 by defining the word inter-sex
- Amend the first schedule to include inter-sex as one of the areas within which statistical information may be collected, compiled, analysed, abstracted and published.

8. Children Act Cap 141 Laws of Kenya

The Children Act ought to be amended to:

- Prohibit and criminalize the forced genital normalizing surgery, involuntary sterilization of inter-sex children, reparative or corrective surgeries which are irreversible. The section should also mandate the cabinet secretary in charge of health

to make rules to govern the process of surgery for genital correction of intersex persons.

- Define inter sex persons so as to ensure that all inter-sex children are guaranteed of the rights of children under Part II of the Act.

Appendix II
Submissions by the Ministry of Health



Director - Committee
pls deal
14/3

MINISTRY OF HEALTH
OFFICE OF THE PRINCIPAL SECRETARY

Telephone Nairobi 2717077
Email: pshealthke@gmail.com
When replying please quote

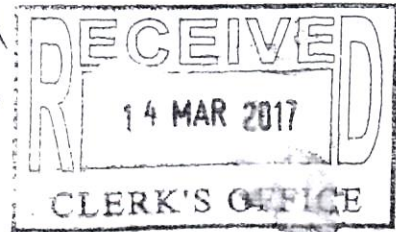
AFYA HOUSE
CATHEDRAL ROAD
P O Box 30016 - 00100
NAIROBI

Our Ref: MOH/ADM/1/1/89

28th February 2017

Mr. Justin Bundi, CBS
Clerk of the National assembly
P.O. Box 41842-00100
NAIROBI

Mr. Machira
pls TNA
14/3



Dear *Bundi*

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY-
PETITION BY CONCERNED CITIZEN REGARDING RECOGNITION OF PERSONS WITH
GENDER DISORDER CONDITIONS

We refer to your letter Ref. NA/DC.A/ANS/2017/ (30) dated 13th February, 2017 requesting the Ministry's response on the said petition regarding the recognition of persons with gender disorder conditions.

Attached please find detailed information on the same duly endorsed to be used for consideration by the Committee.

Yours *Sincerely*

Dr Nicholas Muraguri
PRINCIPAL SECRETARY





MINISTRY OF HEALTH

SUBMISSION BY THE MINISTRY ON THE PETITION BY HON. MWAURA. M. ISAAC, MP ON BEHALF OF CONCERNED CITIZENS REGARDING RECOGNITION OF PERSONS WITH GENDER CONDITIONS

OBSERVATIONS BY THE PETITIONERS

1. **THAT**, Article 27(4),(5) of the Constitution recognizes individual rights with regards to equality and freedom from discrimination on grounds of sex, religion, race, pregnancy, marital status, health status, ethnic or social origin, colour, age and disability among others;
2. **THAT**, the Ministry of Interior and coordination of National Government through the Directorate of Immigration and Registration of Persons, has failed to recognize persons living with gender disorders as duly Kenyan citizens and denies them the right to register as Kenyans;
3. **THAT**, despite the Ministry of Education, Science and Technology having intersex education covered in the curriculum, there is continued discrimination through issuance of wrong gender certificates to persons living with gender disorder conditions;
4. **THAT**, due to lack of proper registration, persons living with gender disorder conditions are denied access to public places and buildings, exercise their right to vote or practice other citizenry roles;
5. **THAT**, due to lack of awareness at any level, persons living with gender disorder continually face discrimination and ridicule from not only the public but their own family members. This lead to low self-esteem and stigma with dire results being as extreme as committing suicide;
6. **THAT**, due to lack of adequate initiative by the Ministry of Health, persons living with gender disorders receive inadequate medical checkups and are not eligible National Hospital Insurance Fund (NHIF) cover;
7. **THAT**, efforts to resolve this matter with the relevant Government agencies have been futile; and

7. If parents are to make these decisions they need the full facts or they will end up with feelings of extreme guilt for damaging their child's sexual function by having early surgery;
8. More research is needed to determine the best period to perform surgery and minimize negative psychological effects; during early infancy or adolescence;
9. This gives rise to the necessity for multidisciplinary approach to management of affected individuals encompassing surgery, endocrinology, and psychosocial support; and
10. The Ministry is not aware of any tribunal or court of law handling the subject of the petition. The National Assembly is therefore in order to consider the petition.

COMMENTS ON THE PETITIONERS' PRAYERS

Prayer (iii): Allocate Funds in the next and subsequent budgets to cater for special medical care for persons with gender disorders especially surgeries

The Ministry of Health does not discriminate persons living with gender disorder conditions; intersex people are eligible for surgical cover by National Hospital Insurance Fund.



Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

February 28, 2017

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Appendix III

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Submissions by the Ministry of Education



Republic of Kenya
MINISTRY OF EDUCATION

Telegrams: EDUCATION-NAIROBI
Telephone: Nairobi 318581
Fax: 214287
E-mail: elimu@todays.co.ke
When replying please quote

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Harambee Avenue
P. O. Box 30040 - 00100
NAIROBI

Ref. N^o: MOE.HQS/3/6/45/VOL. IX (67)

13th March, 2017

Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY:
PETITION BY CONCERNED CITIZENS REGARDING RECOGNITION OF PERSONS WITH
GENDER IDENTITY DISORDERS.

Reference is made to your letter Ref.NA/DC.A/ANS/2017/ (29) dated 13th
February, 2017 on the above subject.

Attached, please find the response to part 3 of the above mentioned
petition for your further action.

Judy Nyaga
For: PRINCIPAL SECRETARY





Republic of Kenya
MINISTRY OF EDUCATION

PUBLIC PETITION

The following petition has been committed to the Departmental Committee on Administration and National Security for consideration:-

- (i) **Petition by Hon. Isaac Mwaura, MP on behalf of persons with gender identity disorders on discrimination through issuance of wrong gender certificates.**

Response

The Ministry of Education does not discriminate against any person on any grounds including gender and disability as envisaged by the Constitution Article 27(4). As alluded by the petitioners, the Ministry has included intersex education in its curriculum.

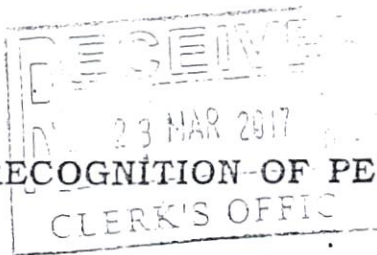
Concerning provision of certificates, the Ministry issues certificates strictly as per the details contained in other statutory legal identification documents such as birth certificate, identity card or passport. It is therefore the responsibility of the Registration Agencies for birth certificates and Identity Cards to indicate the correct gender of the candidate on these documents. However, if there is a specific case discriminated on the basis of gender disorders it should be directed to the Ministry so that it can be addressed.

Fred Matiang'i, PhD, EGH
CABINET SECRETARY

Date.....10.03.2017.....

Appendix IV

**Submissions by the Cabinet Secretary, Ministry of Interior
and Coordination of National Government**



PETITION REGARDING RECOGNITION OF PERSONS WITH GENDER DISORDER CONDITIONS

Nominated Member of Parliament, Honourable Isaac Mwaura, on behalf of persons born with gender disorder, has petitioned the National Assembly regarding the recognition of persons with gender disorder conditions. The Honourable Member has drawn the attention of the House to the following:-

- i. That, Article 27(4),(5) of the Constitution recognizes individual rights with regards to equality and freedom from discrimination on grounds of sex, religion, race, pregnancy, marital status, ethnic or social origin, colour, age and disability among others;
- ii. That, the Ministry of Interior and Coordination of National Government, through the Directorate of Immigration and Registration of Persons, has failed to recognize persons living with gender disorders as duly Kenyan citizens and denies them the right to register as Kenyans;
- iii. That, despite the Ministry of Education, Science and Technology having intersex education covered in the curriculum, there is continued discrimination through issuance of wrong gender certificates to persons living with gender disorder conditions;
- iv. That, due to lack of proper registration, persons living with gender disorder conditions are denied access to public places and buildings, exercise their rights to vote or practicing their citizenry roles;
- v. That, due to lack of awareness at any level, persons living with gender disorder continually face discrimination and ridicule from

not only the public but their own family members. This lead to low self esteem and stigma with dire results being as extreme as committing suicide;

- vi. That due to adequate initiative by the Ministry of Health, persons living with gender disorders living with gender disorders receive inadequate medical checkups and are not eligible for National Hospital Insurance Fund(NHIF) cover;
- vii. That efforts to address and resolve the matter with relevant government agencies have been futile;
- viii. That the matter in respect of which this petition is made is not pending before any court of law.

I wish to state as follows;

The issue of intersex is one of several emerging issues that are not provided for in the Births and Deaths Registration Act (Chapter 149). The Act does not define what sex is but recognizes sex of any individual as either male or female as indicted in all the registration forms shown in the schedule of the Act where sex is required to be recorded.

The mandate of Civil Registration Services (CRS) is limited to registration of births based on information received from various informants and therefore it does not determine the sex of registrants. In normal circumstances, the allocation of sex during registration is based on physiological evidence seen by the person attending the birth where a birth has occurred in a hospital or on information given by the informant in case of a birth that has occurred at home.

Where the sex of an individual cannot be determined, it is only a medical practitioner who has the capacity and therefore the mandate to

determine or assign a sex category to an individual. After the sex category has been determined by a medical practitioner, CRS, based on the provision of Section 28 of the Act can correct the particulars on the birth certificate.

Section 28 of the Act provides for changing of errors that occurred during registration upon correct facts coming to light later on in life. Additionally, there is no limit in time as to when correction of these errors can be done. This then means that where a child had been identified as male but later in life it is found that the child is female, CRS can, on getting this information from the authorized medical practitioners(s), correct the particulars originally indicated in the birth certificate. On this account therefore, we are of the opinion that there is no need to modify birth certificates to accommodate the 'others' sex.

Currently there is no legal barrier to the registration of births of persons whose sex cannot be determined at birth. No discriminatory behaviour is practiced or envisaged in the current registration regime in that all births are registered irrespective of the sex categorization of the registrants.

The acquisition of National ID cards is governed by the Registration of Persons Act, Cap 107 which stipulates that every person who is a Kenya citizen and has attained the age of 18 years should appear before a registration officer for the purpose of identification and registration. When applicants present documentary evidence on their citizenship and age, they are registered without discrimination.

In the event that a person who was registered and issued with a National ID card and desires to change the name(s) appearing on the registration record, it is a requirement that he/she furnishes the registration officer

with documents in support of the change of name. The registration officer is obligated to amend the register and issue a replacement ID card with the desired names on the strength of the supporting documents. Where a registered person desires to change the gender mark on the registration record it is mandatory that he/she produces a letter from a medical officer of health confirming the change of gender.



HON. MAJ. GEN. (RTD) JOSEPH NKAISSERRY, MGH, CBS
Cabinet Secretary
Ministry of Interior and
Coordination of National Government

23rd February, 2017

