

Approved for tabling.



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Florence Wanjau
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PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
(THIRD SESSION - 2015)

**PARLIAMENT
OF KENYA
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**THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS**

REPORT

**ON THE PETITION FOR MANDATORY VOTER REGISTRATION
AND COMPULSORY VOTING**

**CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.**

OCTOBER, 2015

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1. Minutes of the sitting of the Committee that adopted the report on the Petition
2. Attendance list of Members who attended the sitting that adopted the report
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1.0 PREFACE

Mr. Speaker Sir,

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to Standing Order 216(5), it is my pleasure and duty to present to the House, the Committee's report on the petition for mandatory voter registration and compulsory voting.

1.1 Committee Membership

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 and comprises the following:

- | | | |
|-----|--|-------------------------|
| 1. | The Hon. Samuel Chepkong'a, M.P. – | Chairperson |
| 2. | The Hon. Priscilla Nyokabi, M.P. – | Vice Chairperson |
| 3. | The Hon. Njoroge Baiya, M.P. | |
| 4. | The Hon. Muriithi Waiganjo, M.P. | |
| 5. | The Hon. Ndirangu Waihenya, M.P. | |
| 6. | The Hon. Florence Kajuju, M.P. | |
| 7. | The Hon. Kang'ata Irungu, M.P. | |
| 8. | The Hon. Benson Mutura, M.P. | |
| 9. | The Hon. John Njoroge Chege, M.P. | |
| 10. | The Hon. William Cheptumo, M.P. | |
| 11. | The Hon. Mohamed Abdi Haji, M.P. | |
| 12. | The Hon. James Bett, M.P. | |
| 13. | The Hon. Sammy Koech, M.P. | |
| 14. | The Hon. Moses Cheboi, M.P. | |
| 15. | The Hon. Paul Bii, M.P. | |
| 16. | The Hon. Charles Gimose, M.P. | |
| 17. | The Hon. Johana Ng'eno, M.P. | |
| 18. | The Hon. Boniface Otsiula, M.P. | |
| 19. | The Hon. David Ouma Ochieng, M.P. | |
| 20. | The Hon. Neto Agostinho, M.P. | |
| 21. | The Hon. Kaluma Peter, M.P. | |
| 22. | The Hon. Fatuma Ibrahim Ali, M.P. | |
| 23. | The Hon. Ben Momanyi Orori, M.P. | |
| 24. | The Hon. T. J. Kajwang', M.P. | |
| 25. | The Hon. (Bishop) Mutua Mutemi, M.P. | |
| 26. | The Hon. Olago Aluoch, M.P. | |
| 27. | The Hon. Christine Oduor Ombaka, M.P. | |
| 28. | The Hon. Munuve G. Mati, M.P. | |
| 29. | The Hon. Mwamkale William Kamoti, M.P. | |

1.2 Committee's Mandate

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 216(5) which defines functions of the Committee as being to:

- a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- c) *study and review all legislation referred to it;*
- d) *study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;*
- e) *investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister;*
- f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those understanding order 204 (Committee on appointments); and*
- g) *make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

In accordance with Second Schedule of the Standing Orders, the subjects within the jurisdiction of the Committee are as follows:-

- a) Constitutional Affairs;
- b) The administration of law and justice;
- c) The Judiciary;
- d) Public prosecutions;
- e) Elections;
- f) Ethics, integrity and anti-corruption; and
- g) Human rights.

Mr. Speaker Sir,

The Petition for mandatory voter registration and compulsory voting is dated 28th August, 2015 and signed by one Mr. David O. Gesicho, who prays that Parliament:

- a. Introduces legislation for enactment that will make it mandatory for every eligible Kenyan to be registered as a voter and thus shift the burden of voter registration from the individual to the state.

- b. Introduces legislation for enactment that will make it obligatory for all eligible persons of the Republic of Kenya to vote.

The Petitioner draws the attention of the National Assembly to the following:-


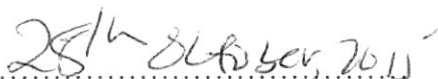
- a. That there is a general apathy by a significant number of Kenyan populations to vote;
- b. That a democratic government has a duty to facilitate and promote civic participation since it receives legitimacy through elections;
- c. That compulsory voting system can confer a high degree of political legitimacy because of higher voter turnout.

The Petition was committed to the Departmental Committee on Justice and Legal Affairs pursuant to provisions of Standing Order 227, the Constitution of Kenya and other enabling laws.

1.3 Acknowledgements

The Committee wishes to express gratitude to Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

And on that note, it is now my pleasant duty and privilege, on behalf of the Committee to present this report to the House.

SIGNED.......... DATE..........
Hon. Samuel Chepkong'a, M.P
(Chairperson)
Departmental Committee on Justice and Legal Affairs

2.0 BACKGROUND

The petition signed by one Mr. David O. Gesicho is dated 28th August, 2015 and addressed to the National Assembly, praying for the House to introduce legislation providing for mandatory voter registration and compulsory voting.

3.0 CONSIDERATION OF THE PETITION AND FINDINGS

During its sitting of the 21st September, 2015, the Committee considered the Petition and determined as follows:-

- a. If a citizen believes there are no suitable candidates in the list, then one should be allowed to decide not to vote;
- b. The House may use the petition to ensure citizens are registered, although not necessarily for voting;
- c. The National Identity Card could be used as a voting card as well;
- d. The Petition is good in principle, but difficult to implement; and
- e. In the event that voting becomes compulsory, it will remain difficult to impose a penalty against those who will not vote, a matter that makes the entire idea quite unworkable and affects the democratic rights of citizens.

4.0 RECOMMENDATIONS

Having considered the petition in line with the Constitution and the provisions of the Petitions to Parliament (Procedure) Act, and the Standing Orders, the Committee recommends as follows:

1. The prayers to pass legislation making voter registration and voting mandatory are hereby dismissed;
2. The House adopts a resolution that the Ministry in-charge of registration of persons makes the process of acquiring national Identity Cards and voting cards less burdensome for secondary school students who turn eighteen while in school. It is also noted that the proposal to issue identity cards to persons of 16 years and above is currently being considered by the Departmental Committee on Justice and Legal Affairs and the Commission for the Implementation of the Constitution.

..... **END**

APPENDIX 1

**MINUTES OF THE SIXTY SIXTH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 22ND OCTOBER, 2015
AT 10.30 A.M. AT THE MEDIA CENTRE, MAIN PARLIAMENT BUILDING**

PRESENT

Hon. Samuel Chepkonga, M.P. - **Chairperson**
Hon. Priscilla Nyokabi, M.P. - **Vice Chairperson**
Hon. Neto Agostinho, M.P.
Hon. Ben Momanyi, M.P.
Hon. Benson Mutura, M.P.
Hon. Charles Gimose, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johanna Ngeno, M.P.
Hon. John M. Waiganjo, M.P.
Hon. Olago Aluoch, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Moses Cheboi, M.P.
Hon. Paul K. Bii, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. Ndirangu Waihenya, M.P.

APOLOGIES:-

Hon. Njoroge Baiya, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. David Ochieng, M.P.
Hon. John Njoroge Chege, M.P.
Hon. James Bett, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. Munuve Mati John, M.P.
Hon. Peter Kaluma, M.P.
Hon. William Cheptumo, M.P.
Hon. Florence Kajuju, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Sammy Koech, M.P.

SECRETARIAT

Ms. Ella Kendi - Clerk Assistant III
Mr. Ronald Walala - Legal Counsel II
Mr. Yezzel Jillo - Serjeant-at-arms

MIN No. 221/2015:-

PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past ten in the morning with a word of prayer from himself. He informed Members that the only agenda for the meeting was consideration and adoption of reports on Petitions.

MIN No. 222/2015:-

REPORT ON THE PETITION ON THE ELECTION OF THE CHAIRPERSON OF THE AGRICULTURAL SOCIETY OF KENYA (ASK)

The Committee considered and adopted the report, the same having been proposed by Hon. Charles Gimose and seconded by Hon. Moses Cheboi. No Member dissented to the adoption.

MIN No. 223/2015:-

REPORT ON THE PETITION ON ENACTMENT OF LEGISLATION TO PROVIDE FOR THE REGISTRATION OF PROPERTIES IN KENYA

The Committee considered and adopted the report, the same having been proposed by Hon. Johanna Ng'eno, MP and seconded by Charles Gimose. No Member dissented to the adoption.

MIN No. 224/2015:-

REPORT ON THE PETITION ON REVIEW OF CRIMINAL LAWS (PENAL CODE AND CRIMINAL PROCEDURE CODE) TO ALIGN THEM WITH THE CONSTITUTION OF KENYA

The Committee considered and adopted the report, the same having been proposed by Hon. Moses Cheboi, MP and seconded by Hon. Charles Gimose. There was no dissenting voice to the adoption of the report.

MIN No. 225/2015:-

REPORT ON THE PETITION TO AMEND THE CONSTITUTION OF KENYA, 2010

The Committee considered and adopted the report, the same having been proposed by Hon. Johanna Ng'eno and seconded by Hon. Moses Cheboi. No Member dissented to the adoption.

MIN No. 226/2015:-

REPORT ON THE PETITION FOR MANDATORY VOTER REGISTRATION AND COMPULSORY VOTING

The Committee considered and adopted the report. The adoption was proposed by Hon. Agostino Neto and seconded by Hon. Muriithi Waiganjo, subject to the inclusion in the recommendations a clause that *"the proposal to issue Identity cards to persons of 16*

years and above is currently being considered by the Committee and Commission for the Implementation of the Constitution". No Member dissented to the adoption of the report.

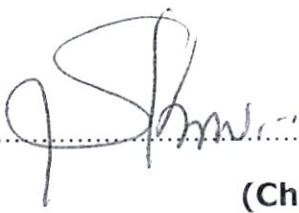
MIN No. 227/2015:- **REPORT ON THE PETITION FOR INTRODUCTION OF "ANTI-HOMOSEXUALITY BILL"**

The Committee considered adopted the report after it had been proposed by Hon. Agostino Neto and seconded by Hon. Moses Cheboi. No Member dissented to the adoption.

The Committee, at the same time, resolved to include in the recommendations, the finding that "it's against Article 45 of the Constitution".

MIN No. 228/2015:- **ADJOURNMENT**

There being no other business to transact, the sitting adjourned at forty four minutes past eleven o'clock in the morning.

Signed..........
(Chairperson)

Date..........

APPENDIX 2



**KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT**

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

MEMBERS' ATTENDANCE


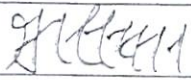
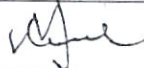


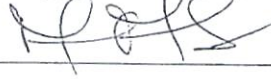


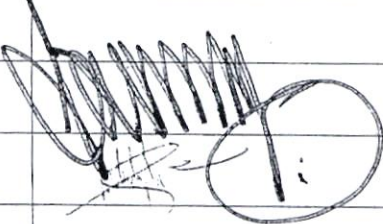
Date: 22nd October 2015

Venue: MEDIA CENTER, MAIN PARLIAMENT BUILDING

Agenda: ADOPTION OF REPORTS ON THE FOLLOWING PETITIONS:

1. ELECTION OF THE CHAIRPERSON OF THE AGRICULTURAL SOCIETY OF KENYA
2. ENACT A LEGISLATION REGARDING THE REGISTRATION OF PROPERTIES IN KENYA
3. REVIEW OF CRIMINAL LAWS (PENAL CODE AND CRIMINAL PROCEDURE CODE) TO ALIGN AND CONFORM WITH THE CONSTITUTION OF KENYA, 2010
4. AMEND THE CONSTITUTION OF KENYA, 2010
5. MANDATORY VOTER REGISTRATION AND COMPULSORY VOTING
6. LEGISLATION ON THE SUBJECT OF ANTI-HOMOSEXUALITY

	NAMES	SIGNATURE
1.	Hon. Samuel Chepkonga (Chairperson)	
2.	Hon. Priscila Nyokabi (Vice Chairperson)	
3.	Hon. Agostinho Neto	
4.	Hon. Ben Momanyi Orori	
5.	Hon. Benson Mutura	
6.	Hon. Boniface Otsiula	
7.	Hon. Charles Gimose	
8.	Hon. Christine Ombaka (Dr.)	
9.	Hon. David Ochieng'	
10.	Hon. Fatuma Ibrahim	
11.	Hon. Florence Kajuju	
12.	Hon. Irungu Kang'ata	
13.	Hon. James Bett	

14.	Hon. Johanna Ngeno	
15.	Hon. John Munuve	
16.	Hon. John M. Waiganjo	
17.	Hon. John Njoroge	
18.	Hon. John Olago Aluoch	
19.	Hon. Kamoti W. Mwamkale	
20.	Hon. Mohamed Abdi Haji	
21.	Hon. Moses Cheboi	
22.	Hon. Njoroge Baiya	
23.	Hon. Paul K. Bii	
24.	Hon. Peter Kaluma	
25.	Hon. Robert Mutemi (Bishop)	
26.	Hon. Sammy Koech	
27.	Hon. T.J. Kajwang	
28.	Hon. Waihenya Ndirangu	
29.	Hon. William Cheptumo	

George Gazemba

For: The Clerk of the National Assembly

APPENDIX 3

THE KENYA NATIONAL ASSEMBLY,
REPUBLIC OF KENYA,
P.O. BOX 41842-00100,
NAIROBI-KENYA

① D/Committees

pse process

CRA

1/9/15

⑥

REF: PETITION TO PARLIAMENT (PROCEDURES) ACT NO. 22 OF 2012
(REVISED EDITION 2012) CHAPTER 7C LAWS OF KENYA

② CIAZEMBA

pls deal

FA 02/9

I, the undersigned citizen of the Republic of Kenya.

Draw the attention of the House to the following:

That there is a general disinterest/apathy by a significant portion of the eligible Kenyan population to participate in the political affairs of the Republic of Kenya through participation in the democratic election of representatives in the various Houses/Assemblies and in the election of Office bearers in the Institutions of the Presidency and County Governments.

This has been shown by the percentage of eligible citizens of the Republic of Kenya who don't get registered as voters and further by the percentage of registered voters who don't actually turn out to vote on Election Day.

In the General Elections of the year 2013, it is estimated that 32 percent of the eligible population had not been registered as voters and of those that were registered, 14 percent did not turn out to vote on the Election Day.

That various reasons and hypotheses have been postulated to explain this state of affairs.

That a democratic government has a duty to facilitate and promote civic participation since it receives legitimacy through the consent of the governed.

That the electoral process serves crucial functions, including choosing elected representatives, setting the course for public policy and allowing individuals to express their views on the public issues that impact their lives, families and communities.

That elections don't serve these purposes well if we don't all participate.

That our voter registration system needs to be changed so it's used as a tool, not as barrier, for civic engagement.

That voter registration continues to create significant barriers to getting into the electoral system and to voting on Election Day.

That compulsory voting systems can confer a high degree of political legitimacy because they result in high voter turnout. The victorious candidate represents a majority of the population, not just the politically motivated individuals who would vote without compulsion.

That other advantages of compulsory voting are the stimulation of broader interest politics, as a sort of civil education and political stimulation, which creates a better informed population.

That there is a correlation between compulsory voting, when enforced strictly, and improved income distribution, as measured by the Gini coefficient and the bottom income quintiles of the population.

That compulsory voting also prevents disenfranchisement of the socially disadvantaged. If everybody must vote restrictions on voting are easily identified and steps are taken to remove them.

PETITION FOR MANDATORY VOTER REGISTRATION AND COMPULSORY VOTING

That the Parliament of the Republic of Kenya consisting of the National Assembly and the Senate are charged with the responsibility of legislation as well as representation.

That the issues in respect of which the petition is made are not pending before any Court of law or Constitutional or legal body that is within my knowledge.

HEREFORE your humble Petitioner Prays that parliament:-

- (i) Introduces legislation for enactment that will make it mandatory for every eligible Kenyan to be registered as a voter and thus shift the burden of voter registration from the individual to the state.
- (ii) Introduces legislation for enactment that will make it obligatory for all eligible persons of the Republic of Kenya to vote.

And your PETITIONER will ever pray.

<u>NAME</u>	<u>FULL ADDRESS</u>	<u>NAT. ID NO.</u>	<u>SIGN</u>
David O. Gesicho	P.O. Box 1838-50100 Kakamega Kenya	5617488	

DATED THISth 28 DAY OF AUGUST 2015

