

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: csenate@parliament.go.ke



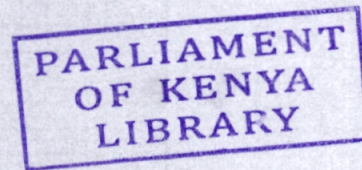
Clerk's Chambers
The Senate
Parliament Buildings
P. O. Box 41842 -00100
Nairobi, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN./PETITIONS/CORR./2017

5th June, 2017

Mr. David O. Gesicho,
P.O. Box 1838-50100,
KAKAMEGA.
Email: mjadalaafrikakenya@gmail.com
Tel: 0722552191



Dear *SW*,

**RE: PETITION TO THE SENATE CONCERNING THE LEGAL FRAMEWORK
FOR ANTI PRESIDENTIAL VOTE SUPPRESSION DURING GENERAL
ELECTIONS.**

I acknowledge with thanks receipt of your revised Petition on the above subject matter.

While the Petition does raise important issues regarding the legal framework for the conduct of Presidential elections in the country, it is noted that the remedies sought therein would require an amendment to the Constitution to realize them.

It is also noted that the issues raised in the Petition have been the subject of previous Petitions by yourself to both the National Assembly and the Senate, and that the respective Reports thereon have been forwarded to you. Further, you have previously presented your views to the Joint Parliamentary Select Committee on Electoral Reforms. The outcome of the review was the Election Laws (Amendment) Bill and the Electoral Offences Bill, which have since been enacted by Parliament.

Noting that not all your proposals may be adopted and enacted into law by Parliament, you were advised, via the Report of the Senate Standing Committee on Legal Affairs and Human Rights, to exercise the right under the Constitution for amendment of the Constitution by way of popular initiative.

It is noted that there has been no material change since then to warrant admission and reconsideration of your present Petition on review of the electoral laws. Consequently, I regret to advise that the Petition is not admissible for consideration by the Senate.

Yours *Sincerely,*

M. A. MOHAMED,
SENIOR DEPUTY CLERK,
FOR: CLERK OF THE SENATE

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: csenate@parliament.go.ke



Clerk's Chambers
The Senate
Parliament Buildings
P. O. Box 41842 -00100
Nairobi, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN./PETITIONS/CORR./2017

5th June, 2017

Mr. David O. Gesicho,
P.O. Box 1838-50100,
KAKAMEGA.
Email: mjadalaafrikakenya@gmail.com
Tel: 0722552191

Dear *SW*,

**RE: PETITION TO THE SENATE CONCERNING THE LEGAL FRAMEWORK
FOR ANTI PRESIDENTIAL VOTE SUPPRESSION DURING GENERAL
ELECTIONS.**

I acknowledge with thanks receipt of your revised Petition on the above subject matter.

While the Petition does raise important issues regarding the legal framework for the conduct of Presidential elections in the country, it is noted that the remedies sought therein would require an amendment to the Constitution to realize them.

It is also noted that the issues raised in the Petition have been the subject of previous Petitions by yourself to both the National Assembly and the Senate, and that the respective Reports thereon have been forwarded to you. Further, you have previously presented your views to the Joint Parliamentary Select Committee on Electoral Reforms. The outcome of the review was the Election Laws (Amendment) Bill and the Electoral Offences Bill, which have since been enacted by Parliament.

Noting that not all your proposals may be adopted and enacted into law by Parliament, you were advised, via the Report of the Senate Standing Committee on Legal Affairs and Human Rights, to exercise the right under the Constitution for amendment of the Constitution by way of popular initiative.

It is noted that there has been no material change since then to warrant admission and reconsideration of your present Petition on review of the electoral laws. Consequently, I regret to advise that the Petition is not admissible for consideration by the Senate.

Yours *sincerely,*

M. A. MOHAMED,
SENIOR DEPUTY CLERK,
FOR: CLERK OF THE SENATE

178 797
DAVID O. GESICHO
P.O BOX 1883-50100
KAKAMEGA
EMAIL:mjadalaafrikakenya@gmail.com
Tel:0722552191
25th May 2017

DLPS
Please Facilitate
Madd
29/5/17

YOUR REF: SEN/PETITION/CORP/2017

The Clerk

The Senate of the Republic of Kenya

P.O BOX 41842-00100

Nairobi-Kenya



② Mr. Amalo
ps review this petition and
reply by Friday, 2nd June.
8/02/18
34/5/17

Dear Sir,

**RE: PETITION TO THE SENATE CONCERNING THE LEGAL FRAMEWORK FOR
ANTI PRESIDENTIAL VOTE SUPPRESSION DURING GENERAL ELECTIONS**

I acknowledge with thanks receipt of your letter dated 18th May 2017 on the above subject matter.

It was noted in your letter that,

- i. There is no demonstration that any efforts have been made to have the matter addressed by a relevant body and whether there has been any response therefore, or whether such response has been unsatisfactory as required by Standing Order 223 (f); and
- ii. The petition does not contain a clear and proper prayer or recite the definite object of the petitioner in regard to the matter which it relates as required by Standing Order 223 (h).

I have taken note of the omissions and lack of clarity in the prayers and have made the necessary corrections.

I hope that the revised petition will be admissible for consideration by the Senate before it goes on recess side die on 15th June 2017.

Attached is the revised petition

Thank you.

Yours faithfully,

DAVID O. GESICHO
PETITIONER



Mr. Amalo
Please review and bring on file
hwp
31/5

**PETITION TO PARLIAMENT OF THE REPUBLIC OF KENYA ON THE LEGAL
FRAMEWORK FOR ANTI PRESIDENTIAL VOTE SUPPRESSION DURING
GENERAL ELECTIONS**

The Senate
Republic of Kenya
C/O
The Clerk of the Senate of Kenya
P.O. Box 41842 – 00100
Nairobi, Kenya

**RE: PETITION TO PARLIAMENT (PROCEDURES) ACT NO. 22 OF 2012 CHAPTER
7C LAWS OF KENYA.**

I, the undersigned citizen of the Republic of Kenya draw the attention of the House to the following:

THAT an election is a formal decision-making process by which a population chooses an individual to hold public office.

THAT elections of public office holders is an important exercise that determines how a ward, constituency, county and country are to be governed and represented.
General elections are held to determine the will of the electorate and the direction that they wish to take.

THAT the true will of the people cannot be determined if there is no equity in access to information and civic education, access to instruments used for the registration of persons to be eligible to vote, access to voter registration points and access to voting stations.

THAT in many countries with weak rule of law, the most common reason why elections do not meet international standards of being “free and fair” is interference from the incumbent government.

Members of a particular faction in a legislature may use the power of the majority or super-majority (passing criminal laws, defining the electoral mechanisms including eligibility and district boundaries) to prevent the balance of power in the body from shifting to a rival faction due to an election.

Among the problems that prevent an election from being “Free and fair” are unfair rules, interference with campaigns and tampering with the election mechanisms.

Tampering with the election mechanisms takes the form of confusing or misleading voters about how to vote, violating of the secret ballot, ballot stuffing, tampering with voting machines, destruction of legitimately cast ballots, voter suppression, voter registration fraud, failure to validate voter residency, fraudulent tabulation of results, and use of physical force or verbal intimidation at polling stations.

THAT all other factors being constant, even with the shortcomings experienced during general elections in the Republic of Kenya, the will of the people usually manifests itself in the ward, constituency and county representation of Member of County Assembly, Member of National Assembly, Member of Senate (Senator), Women Representative and Governor.

PETITION TO PARLIAMENT OF THE REPUBLIC OF KENYA ON THE LEGAL FRAMEWORK FOR ANTI PRESIDENTIAL VOTE SUPPRESSION DURING GENERAL ELECTIONS

THAT the true will of the people in the presidential election in the Republic of Kenya can be obtained by having all eligible citizens register as voters and also to vote. This will effectively address the problem of voter suppression.

THAT intrigues and machinations, plots and shenanigans come to play in the National Presidential Elections. Incumbency gives undue advantage to access to instruments used for the registration of persons to be eligible to vote, access to voter registration points, access to voting stations and access to information and civic education.

THAT Article 81 of the Constitution of Kenya states that the electoral system shall comply with the following principles:-

- (a) Freedom of citizens to exercise their political rights under Article 38;
- (d) Universal suffrage based on the aspirations and fair representation and equality of vote; and
- (e) Free and fair elections, which are:-
 - (v) Administered in an impartial, neutral, efficient, accurate and accountable manner.

Article 38 states that:

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for:-

- (a) Any elective public body or office established under this constitution; or
- (b) Any office of any political party of which the citizen is a member.

Article 82 states that

- (i) Parliament shall enact legislation to provide for:-
- (d) The conduct of elections and referenda and the regulation and efficient supervision of elections and referenda, including the nomination of candidates for elections.

Article 83 states that:

(3) Administrative arrangements for the registration of voters and the conduct of elections shall be designed to facilitate, and shall not deny, an eligible citizen the right to vote or stand for election.

THAT universal suffrage consists of the right to vote without restriction due to sex, race, social status, education level or wealth. It typically does not extend the right to vote to all residents of a region, distinctions are frequently made in regard to citizenship, age and occasionally mental capacity or criminal convictions.

THAT voter suppression is a strategy to influence the outcome of an election by discouraging or preventing people from voting. It is distinguished from political campaigning in that campaigning attempts to change likely voting behavior by changing opinions of potential voters through persuasion and organization. Voter suppression, instead attempts to reduce the number of voters who might vote against a candidate or proposition.

The tactics of voter suppression range from minor changes to make voting less convenient, to physically intimidating prospective voters, which is illegal. Voter suppression can be effective if a significant amount of voters are intimidated or disenfranchised.

In 2013, the United States Supreme Court ruled in *Shelby V. Holder* that voting laws had resulted in voter suppression and discrimination.

PETITION TO PARLIAMENT OF THE REPUBLIC OF KENYA ON THE LEGAL FRAMEWORK FOR ANTI PRESIDENTIAL VOTE SUPPRESSION DURING GENERAL ELECTIONS

THAT in the absence of mandatory voter registration and voting in the Republic of Kenya, the next best alternative for the presidential elections would be the use of a formula that at the end of the day gets every eligible citizen of the Republic of Kenya represented irrespective of voter registration status (numbers) and turnout of voters during Election Day. This can be done by using official Government of Kenya statistics on eligible voters in each constituency or county as the baseline.

THAT for presidential elections, the presidential ballots received for each candidate will be multiplied by a factor to ensure 100% registration of eligible voters is simulated in each constituency and then 100% turnout of voters in each constituency is simulated. The resultant figures for each presidential candidate in every constituency are then added up to make the total votes for that particular candidate.

THAT for example in Vihiga County where there was only 19% of eligible persons registering as voters during the Mass Voter Registration (MVR) II, in order to get a true representation of the will of the people of Vihiga County, each presidential candidate's ballots will be multiplied by a factor of:-

$$\frac{100}{\text{Percentage of eligible voters registered in Vihiga County}} \times \frac{\text{Total No. of Registered voters in Vihiga County}}{\text{No. of voters who turn up to vote in Vihiga County}}$$

THAT for example in Kajiado County where there was 160% of eligible persons registering as voters during the Mass Voter Registration II, in order to get a true representation of the will of the people of Kajiado County, each presidential candidate's ballots will be multiplied by a factor of;

$$\frac{100}{\text{Percentage of eligible voters registered in Kajiado County}} \times \frac{\text{Total No. of Registered voters in Kajiado County}}{\text{No. of voters who turn up to vote in Kajiado County}}$$

NB: This is a poor example due to the exceeding of registration targets by a very large margin. In any case MVR II targets was just a fraction of the total county targets for voter registration. Exceeding of MVR II targets may be due to change of polling stations by registered voters leading up to the general elections.

It may also be due to changes in demographics as a result of migration.

Failure to validate voter residency is yet another cause.

But this example also gives the opportunity to see the collateral benefits of the formula. It will deter mass change of polling stations by voters just before the general elections as any percentage above 100 of eligible voters registered in a constituency or county will result in a reduction by a factor to all the ballots of the various presidential candidates with the candidate having most votes suffering more than the other candidates with lesser votes.

PETITION TO PARLIAMENT OF THE REPUBLIC OF KENYA ON THE LEGAL FRAMEWORK FOR ANTI PRESIDENTIAL VOTE SUPPRESSION DURING GENERAL ELECTIONS

THAT because of the ethnic and regional nature of Kenyan politics at this point in time, use of such a formula will ensure true representation of the will of the electorate in the Republic of Kenya. This will be true universal suffrage.

THAT this formula will be based on the voting patterns per constituency/county and will be extrapolating what could be the possible scenario had all the eligible citizens in those constituencies/counties registered as voters and voted.

THAT the success of use of such a formula will depend on the provision of accurate figures of the total number of persons eligible to be registered as voters in each constituency/county at a particular moment in time e.g. just before the 8th August 2017 General Elections.

Such figures should be audited and agreed on well before the onset of the elections.

THAT Electoral Reform describes the process of introducing fair electoral systems where they are not in place, or improving the fairness or effectiveness of existing systems.

THAT Gerrymandering in U.S. Politics is the dividing of a state, county etc., into election districts so as to give one political party a majority in many districts while concentrating the voting strength of the other party into as few districts as possible.

THAT researchers in the U.S.A. – University of Chicago Law Professor Nicholas Stephanopoulos and Eric McGhee, a fellow at the Public Policy Institute of California – have devised a formula that could set a standard for detecting when a political district has been gerrymandered. In the formula, wasted votes are counted and an efficiency gap is determined.

A party's wasted – vote total is the sum of:

- A) The number of ballots cast for the party's losing candidates and
- B) The number of ballots the party's victorious candidates received above and beyond the total each candidate needed to win.

The efficiency gap is the difference between the number of wasted votes cast for each party's candidate in a given legislative race, divided by the total number of ballots cast.

The bigger the efficiency gap, critics of partisan gerrymandering argue, the more the political map has been rigged to one party's advantage.

THAT Electoral Systems are the detailed constitutional arrangements and voting systems that convert the vote into a political decision. The first step is to tally the votes, for which various counting systems and ballot types are used.

Voting systems then determine the results on the basis of the tally. Most systems can be categorized as either proportional or majoritarian.

Among the former are party-list proportional representation and additional member system. Among the latter are First Past the Post (FPP) (relative majority) and absolute majority. Many countries have growing electoral reform movements, which advocate systems such as approval voting, single transferable vote, instant runoff voting or a Condorcet method; these methods are also gaining popularity for lesser elections in some countries where important elections still use more traditional counting methods.

**PETITION TO PARLIAMENT OF THE REPUBLIC OF KENYA ON THE LEGAL
FRAMEWORK FOR ANTI PRESIDENTIAL VOTE SUPPRESSION DURING
GENERAL ELECTIONS**

THAT the Republic of Kenya which has a history of voter suppression orchestrated by the incumbency, can pioneer the innovative use of a formula to address the problem of presidential voter suppression.

THAT the petitioner has previously petitioned the Parliament of the Republic of Kenya in a petition to the Senate dated 28th August 2015 and in National Assembly Petition No. 26 of 2015 for enactment of legislation to make voter registration and voting mandatory in the Republic of Kenya but the prayers of the petitioner had been unprocedurally dismissed by the National Assembly in a Report tabled on 28th October 2015 whereas the Senate had recommended that the petitioner initiates constitutional amendment by popular initiative at the County Assemblies Level in a Report dated 13th July 2016.

THAT the Petitioner previously petitioned the Independent Electoral and Boundaries Commission of Kenya concerning voter suppression in a Petition dated 8th February 2017 that had been copied to the Speakers of the National Assembly of Kenya and the Senate of Kenya respectively, but to date has not received any response.

THAT the parliament of the Republic of Kenya consisting of the National Assembly and the Senate is charged with the responsibility of representation, oversight and legislation.

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:-

- 1) Introduces legislation for enactment that will decisively deal with presidential voter suppression during General Elections and Partisan/Regional/Ethnic voter suppression during referenda that is usually practiced by incumbents by use of a formula that would simulate 100% voter registration and 100% voter turnout in all constituencies in the Republic of Kenya.

The formula involves multiplying each and every presidential candidate's ballots in a constituency/county by a factor of:-

$$\frac{100}{\text{Percentage of eligible voters registered in a constituency/county}}$$

X

$$\frac{\text{Total No. of Registered voters in a Constituency/County}}{\text{No. of voters who turn up to vote in a constituency/county}}$$

This will ensure **true universal suffrage**.

And your **PETITIONER** will ever pray.

**PETITION TO PARLIAMENT OF THE REPUBLIC OF KENYA ON THE LEGAL
FRAMEWORK FOR ANTI PRESIDENTIAL VOTE SUPPRESSION DURING
GENERAL ELECTIONS**

NAME	FULL ADDRESS	NAT. ID. NO.	SIGN.
David O. Gesicho	P.O. Box 1838 – 50100 Kakamega, Kenya Email:-mjadalaafrikakenya@gmail.com. Tel: 0722552191	5617488	

DATED THIS.....25th.....DAY OFMAY.....2017.

CC: The Resident Representative
United Nations Development Programme (UNDP) Kenya
UN Office in Nairobi (UNON)
P.O. Box 30218 – 00100
Nairobi, Kenya

The Mission Director
United States Agency for International Development (USAID) Kenya
P.O. Box 629 – 00621
Nairobi, Kenya

The Head of the Delegation of the European Union to Kenya
P.O. Box 45119– 00100
Nairobi, Kenya.

The County Director
Department of International Development (DFID) Kenya
P.O. Box 30456 – 00100
Nairobi, Kenya

The Head of Mission
Norwegian Agency for Development Cooperation (NORAD) Kenya
P.O. Box 46363 – 00100
Nairobi, Kenya

The Head of Mission
Danish International Development Agency (DANIDA) Kenya
P.O. Box 40412 – 00100
Nairobi, Kenya

The Head of Mission
Embassy of Finland in Nairobi
P.O. Box 30379 – 00100
Nairobi, Kenya