

Approved for tabling in the House.

~~BN~~ SNA

3/3/2022




REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

REPORT ON PETITION REGARDING REPEAL OF SECTIONS OF THE  
UNIVERSITIES' ACT 2012, PERTAINING TO THE ELECTIONS OF UNIVERSITY  
STUDENT LEADERS PRESENTED BY MR. AMOS KAMOTHO

 THE NATIONAL ASSEMBLY PARLIAMENT BUILDINGS NAIROBI	
DATE:	03 MAR 2022
	DAY: THURSDAY
TABLED BY:	CHAIRPERSON, EDUCATION HON. FLORENCE MUTUA, MP
CLERK-AT-THE-TABLE:	C. NDIRITU

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March, 2022

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## **CHAIRPERSON'S FOREWORD**

This Report contains the Committee's proceedings on the consideration of a Petition proposing repeal of the Universities Act, 2012, pertaining to the elections of University Student Leaders. The Petition was presented to Parliament pursuant to Article 119 of the Constitution, Standing Order 220 and Section 4(1b) of the Petition to Parliament (Procedure) Act No. 22 of 2012 submitted by Mr. Amos Kamotho on behalf of a group of university students.

The Petition was presented to the House on 28<sup>th</sup> September, 2022 and committed to the Departmental Committee on Education and Research for consideration.

The Petitioner sought the intervention of the House to repeal Sections 41 (1C), (1D), and (1E) of the Universities Act, 2012 to replace the electoral college system of election university student leaders with direct voting based on universal suffrage in the elections of university students' leaders.

The Petitioner based his concerns on Article 81 of the Constitution which provides for the freedom of citizens to exercise their political rights fair representation and equality of vote; free and fair elections through universal suffrage and secret ballot and ensuring that the vote is free from improper influence, conducted by an independent body and administered in a transparent and impartial, neutral, efficient, accurate and accountable manner.

The Petitioner decried the introduction of electoral college system in the Universities Act in 2016 as a system of electing university student leaders. This has led to alleged interference in Student Council elections by university administrators and entrenching corruption in the Student Council elections.

In considering the Petition the Committee held a total of six (6) sittings. During the Sittings the Committee received oral and written submissions from the Petitioner, the Cabinet Secretary for the Ministry of Education, Vice Chancellor Forum and the Chairs of Councils of Universities. The Committee thereafter deliberated and responded to the prayers of the Petitioner as contained in this Report.

The records of evidence adduced, documents and notes received by the Committee form the basis of the Committee's observations/findings and recommendations as outlined in the Report can be obtained in the Parliament Library.

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the National Assembly for logistical and technical support accord to it during the consideration of the Petition. Further, I wish to express my appreciation to the Honourable Members of the Committee who made useful contributions towards the preparation and production of this report.

On behalf of the Members of the Departmental Committee on Education and Research, it's my pleasant privilege and honour to present to this House the Report on a Petition regarding Petition proposing repeal of the Universities Act, 2012, pertaining to the elections of University Student Leaders submitted by Mr. Amos Kamotho pursuant to Standing Order 227(2).

**Hon. Florence Mutua, CBS, MP**

## **1.0 PREFACE**

### **1.1 Establishment of the Committee**

1. The Departmental Committee on Education and Research is established under the National Assembly Standing Order 216 (5). The Committee is mandated, among others, to: -
  - (i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
  - (ii) study the programmes and policy objectives of Ministries and departments and the effectiveness of the implementation;
  - (iii) study and review all legislation referred to it;
  - (iv) study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
  - (v) 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;
  - (vi) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
  - (vii) examine treaties, agreements and conventions;
  - (viii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - (ix) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and,
  - (x) examine any questions raised by Members on a matter within its mandate.

### **1.2 Mandate of the Committee**

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider Education, Training and Research.
3. In executing its mandate the Committee oversees the Ministry of Education and the Teachers Service Commission.



### 1.3 Committee Membership

4. The Committee comprises of the following Members: -

#### **Chairperson**

Hon. Florence Mutua, CBS, MP  
Busia County

**Orange Democratic Movement Party**

#### **Vice-Chairperson**

Hon. Ngunjiri Wambugu, CBS, MP  
Nyeri Town Constituency

**Jubilee Party**

Hon. Geoffrey Makokha Odanga, MP  
Matayos Constituency  
**Orange Democratic Movement Party**

Hon. Omboko Milemba, MP  
Emuhuya Constituency  
**Amani National Congress**

Hon. (Dr.) Pamela Ochieng, MP  
Migori County  
**Orange Democratic Movement Party**

Hon. Peter Lochakapong, MP  
Sigor Constituency  
**Jubilee Party**

Hon. (Eng.) Nzambia Kithua, MP  
Kilome Constituency  
**Wiper Democratic Movement Kenya**

Hon. Wilson Sossion, MP  
**Nominated Member**

Hon. (Prof.) Zadoc Abel Ogutu, MP  
Bomachoge Borabu Constituency  
**Independent**

Hon. (Dr.) Wilson Kogo, MP  
Chesumei Constituency  
**Jubilee Party**

Hon. Eric Muchangi Njiru, MP  
Runyenjes Constituency  
**Jubilee Party**

Hon. (Dr.) Daniel Kamuren Tuitoek, MP  
Mogotio Constituency  
**Jubilee Party**

Hon. Eve Obara, MBS, MP  
Kabondo Kasipul Constituency  
**Orange Democratic Movement Party**

Hon. Gichuki Mugambi, MP  
Othaya Constituency  
**Jubilee Party**

Hon. Jackson Lekumontare, MP  
Samburu East Constituency  
**KANU Party**

Hon. Paul Mwirigi, MP  
Igembe South Constituency  
**Independent**

Hon. Jerusha Mongina Momanyi, MP  
Nyamira County  
**Jubilee Party**

Hon. Ali Mohammed Lokiru, MP  
Turkana East Constituency  
**Orange Democratic Movement Party**

Hon. Joseph Tonui, MP  
Kuresoi South Constituency  
**Jubilee Party**

#### **1.4 Committee Secretariat**

5. The Committee secretariat comprises of : -

Mr. Philip Lekarkar  
**Clerk Assistant II**  
**Lead Clerk**

Ms. Grace Wahu  
**Clerk Assistant III**

Ms. Mercy Wanyonyi  
**Legal Counsel I**

Mr. Eric Kanyi  
**Fiscal Analyst II**

Ms. Winnie Kulei  
**Research Officer II**

Ms. Catherine Mukunyi  
**Sergeant At Arms**

## **2.0 CONSIDERATION OF THE PETITION**

### **2.1 MEETING WITH THE PETITIONER MR. AMOS KAMOTHO**

6. The Petitioner Mr. Amos Kamotho appeared before the Committee in his Petition (ANNEX I) and drew the attention of the Members to the following:
7. That there are 71 universities in Kenya both public and private and over 250 Technical Vocational Education and Training Institutions (TVETs) all with a membership of over 6.3 million students nationwide.
8. That Article 2(4) of the Kenyan Constitution stipulates that any law, including customary law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.
9. That Article 3(1) of the Constitution provides that every person has an obligation to respect, uphold and defend the Constitution.
10. That Article 10(1)(b) of the Constitution provides that national values and principles of governance binds all state organs, state officers, public officers and all persons whenever any of them enacts, applies or interprets any law.
11. That Article 27 of the Constitution provides that;
  - (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
  - (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
  - (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
  - (4) 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, color, age, disability, religion, conscience, belief, culture, dress, language or birth.
12. That Article 38 (2) provides that 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.
13. That Article 43 (1) (f) stipulates that every person has the right to education.
14. That Article 47 (1) provides for the right to fair administrative action.
15. That Article 55 states that the State shall take measures, including affirmative action programmes, to ensure that the youth have opportunities to associate, be represented and participate in political, social, economic and other spheres of life.
16. That Article 55 states that the State shall take measures, including affirmative action programmes, to ensure that the youth—
  - (a) access relevant education and training;

- (b) have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
17. That Article 81 states that the electoral system shall comply with the following principles—
- (a) freedom of citizens to exercise their political rights under Article 38;
  - (b) not more than two-thirds of the members of elective public bodies shall be of the same gender;
  - (c) fair representation of persons with disabilities;
  - (d) universal suffrage based on the aspiration for fair representation and equality of vote; and (e) free and fair elections, which are—
    - (i) by secret ballot;
    - (ii) free from violence, intimidation, improper influence or corruption;
    - (iii) conducted by an independent body;
    - (iv) transparent; and
    - (v) administered in an impartial, neutral, efficient, accurate and accountable manner.
18. That Section 8 of the Parliamentary Powers and Privileges Act provides that Parliament or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person.
19. That achieving the Big 4 Agenda, the Kenya Vision 2030, the Africa Agenda 2063 and the 2030 Agenda will require strong partnerships between the young people and all stakeholders so that the challenges faced by the youth are addressed, their contributions recognized and they are included at all levels of decision-making.
20. That the amendment to the Universities Act, 2012 interfered with student leaders' elections and the process is now riddled with corruption, interference by university managers and rampant abuse of students' rights by the university administrators.
21. That for one to get an elective position, it largely depends on one's economic status rather than one's capability to lead. Most university administrations have taken advantage of the process to disqualify students who they feel don't cooperate with them.
22. That the amendments to the Universities Act, 2012 passed in 2016 introduced electoral college system as a system to elect university student leaders contrary to Article 81 of the Constitution. The amendment denies the students the right to directly participate in election of their student leaders.
23. The justification for the amendments was to ensure peaceful elections and restrict on the multiple terms of office in the students' organizations of various universities such as Student Organization of Nairobi University (SONU).
24. The Act as amended required that student councils to be chosen by electoral colleges, rather than by direct popular vote.

25. That Electoral colleges are designed to limit the voice of actual people. Electoral colleges do not take into account the numbers of students.
26. That the disenfranchising element of the electoral colleges is that it makes manipulation of student elections even easier, rather than more difficult. Once the electoral college representatives are chosen, the representatives can sell their vote to the highest bidder running for office. It also means that unscrupulous deals and negotiations becomes more rampant as students seeking office or administrations seeking to manipulate the vote have fewer students to appeal to.
27. That the Petitioner had addressed the relevant authorities with no success.
28. That the matter in question is not pending before any court of law or any constitutional body and hence it does not violate the *sub – judice* rule.
29. The Petitioner prayed that the National Assembly through the Departmental Committee on Education and Research to consider repealing sections 41 (1C), (1D) and (1E) of the Universities Act in order to replace the electoral college system with direct voting based on universal suffrage.

## **2.2 SUBMISSION BY THE CABINET SECRETARY, MINISTRY OF EDUCATION**

30. The Cabinet Secretary for the Ministry of Education appeared before the Committee and informed the Members that University student leaders are the link between the university students and the university administration.
31. The students' leaders should therefore be elected democratically through universal suffrage and participation of all students to elect leaders to represent their interests.
32. The Cabinet Secretary proposed that regulations should be formulated by individual universities to guide on peaceful fair and transparent conduct of elections of student leaders.

## **2.3 SUBMISSION BY THE VICE-CHANCELLORS COMMITTEE OF PUBLIC UNIVERSITIES AND CHAIRS OF COUNCILS**

The Vice Chancellors Committee and the Chairs of University Councils informed the Committee as follows:-

33. That the existing provisions in the Universities Act, 2012 on election of university student leaders have streamlined and brought order to students' elections in the Universities.
34. That Universal suffrage is facilitated at the university faculty level where every student participates in the election of three delegates per faculty who then participate in the election of university students' organisation officials.
35. That the current collegiate electoral system of electing student leaders should be retained as it is in the Universities Act.
36. That the Justification is that the collegiate electoral system has brought peace and harmony in the university sector.



### 3.0 COMMITTEE FINDINGS

The Committee made the following findings:-

1. That the Petitioner prayer to repeal of Sections 41 (1C), (1D) and (1E) of the Universities Act to provide that election of the members of the students' council for be conducted through universal suffrage as opposed to current delegate system are within the authority of the National Assembly.
2. That Sections 41(1C), (1D) and (1E) the Universities Act, 2012 provides the guidelines for conducting elections of the University student council. Currently, for purposes of conducting the election of the members of the University student council, the students' association constitutes itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate. The representatives of each electoral college elect the members of the student council.
3. That the electoral system as a system of electing the students' council is not in tandem with the Constitution where national elections are done through universal suffrage.

### 4.0 COMMITTEE RECOMMENDATIONS

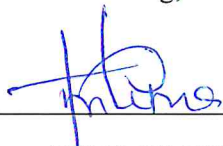
In response to the Petitioners prayer, the Committee recommends that:-

1. That the Universities Act, 2012 be amended to provide for election to the student's council through election by the students' association comprising of all students as opposed to electoral colleges as follows-

Amend Section 41 of the Universities Act, 2012 by—

- (a) deleting subsection (1C) which provides for the election of the members of the student council through electoral colleges
  - (b) deleting subsection (1D) which provides for the election of three representatives from each electoral college; and
  - (c) deleting subsection (1E) which provides for the election of the members of the student council by representatives of each electoral college.
2. The Committee further recommends that each University in consultation with the student's association of the University formulate and enact regulations on good academic standing to govern the conduct of elections including regulation of campaigns, election financing, offences and penalties.

SIGN \_\_\_\_\_



DATE \_\_\_\_\_

02/03/2022

**HON. FLORENCE MUTUA, CBS, MP  
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION AND  
RESEARCH**



## ANNEXURES

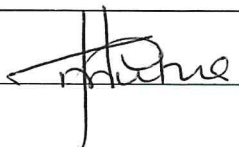

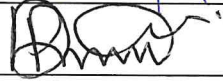





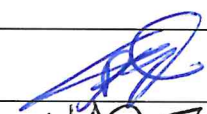


1. Report Adoption List
2. Minutes
3. Copy of the Petition



KENYA NATIONAL ASSEMBLY

COMMITTEE ON EDUCATION AND RESEARCH

Adoption of the Report on the Petition Regarding Repeal of Sections of the Universities Act, 2012, Pertaining to the Elections of University Student Leaders

	NAME	
1.	Hon. Florence Mutua, CBS, MP - Chairperson	
2.	Hon. Ngunjiri Wambugu, CBS, MP - Vice Chairperson	
3.	Hon. Geoffrey Odanga, MP	
4.	Hon. (Dr.) Pamela Ochieng, MP	
5.	Hon. (Eng.) Nzambia Kithua, MP	
6.	Hon. (Prof.) Zadoc Ogutu, MP	
7.	Hon. Eric Muchangi, MP	
8.	Hon. Eve Obara, MBS, MP	
9.	Hon. Jackson Lekumontare, MP	
10.	Hon. Jerusha Momanyi, MP	
11.	Hon. Joseph Tonui, MP	
12.	Hon. Omboko Milemba, MP	
13.	Hon. Peter Lochakapong, MP	
14.	Hon. Wilson Sossion, MP	
15.	Hon. (Dr.) Wilson Kogo, MP	
16.	Hon. (Dr.) Daniel Kamuren Tuitoek, MP	
17.	Hon. James Gichuki Mugambi, MP	
18.	Hon. John Paul Mwirigi, MP	
19.	Hon. Mohammed Ali Lokiru, MP	





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY (FIFTH SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 043 of 2021)

**PROPOSING THE REPEAL OF SECTIONS OF THE  
UNIVERSITIES ACT, 2012, PERTAINING TO THE  
ELECTIONS OF UNIVERSITY STUDENT LEADERS**

Honourable Members, Standing Order 225(2)(b) requires the Speaker to report to the House any petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, Honourable Members, I wish to report to the House that my office has received a petition from Mr. Amos Ndung'u Kamotho of P.O. Box 24814 Nairobi calling for "repeal of sections 41(1C), (1D) and (1E) of the Universities Act, 2012."

The Petitioner bases his concerns on Article 81 of the Constitution which provides for the freedom of citizens to exercise their political rights, universal suffrage, fair representation and equality of vote; free and fair elections through a secret ballot, and ensuring that the vote is free from improper influence, conducted by an independent body and administered in a transparent and impartial, neutral, efficient, accurate and accountable manner.

The Petitioner decries the introduction of Electoral College system leading to interference in Student Council elections by University Administrations, and entrenching corruption in Student Council elections.

Hon. Speaker,  
You may approve  
Arup Kimani  
AK

The Petitioner seeks the intervention of this House to consider repealing sections 41(1C), (1D) and (1E) of the Universities Act, 2012 in order to replace the Electoral College system with direct voting based on universal suffrage.

**Honourable Members**, having determined that the matters raised by the Petitioner are well within the authority of this House, I order that, pursuant to the provisions of Standing Order 227(1), this petition be committed to the Departmental Committee on Education and Research. The Committee is required to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

I thank you!



**THE HON. JUSTIN B.N. MUTURI, EGH, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

**Tuesday, September 28, 2021**

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PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 18 1C, 18 1D & 18 1E OF THE UNIVERSITIES ( AMENDMENT) ACT ; PURSUANT TO ARTICLES 2, 3, 10, 27, 38, 43, 47, 55, 81 & 119 OF THE CONSTITUTION OF KENYA 2010, THE PARLIAMENTARY POWERS & PRIVILEGES ACT, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS.

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4. THAT article 3(1) of the constitution provides that every person has an obligation to respect, uphold and defend this constitution.
5. THAT article 10(1b) of the constitution provides that natural values and principles of governance in this article binds all state organs, state officers, public officers and all persons whenever any of them enacts, applies or interprets any law.
6. THAT article 27 of the constitution provides that;
  - a) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
  - b) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
  - c) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
  - d) 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.
7. THAT article 38 provides that 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.
8. THAT article 43 (1f) stipulates that every person has the right to education.

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 18 1C, 18 1D & 18 1E OF THE UNIVERSITIES ( AMENDMENT) ACT ; PURSUANT TO ARTICLES 2, 3, 10, 27, 38, 43, 47, 55, 81 & 119 OF THE CONSTITUTION OF KENYA 2010, THE PARLIAMENTARY POWERS & PRIVILEGES ACT, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS.

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9. THAT article 47 provides for the right to fair administrative action.
10. THAT article 55 states that the State shall take measures, including affirmative action programmes, to ensure that the youth have opportunities to associate, be represented and participate in political, social, economic and other spheres of life.
11. THAT article 55 states that the State shall take measures, including affirmative action programmes, to ensure that the youth—
  - (a) access relevant education and training;
  - (b) have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
12. THAT article 81 states that the electoral system shall comply with the following principles--
  - (a) freedom of citizens to exercise their political rights under Article 38;
  - (b) not more than two-thirds of the members of elective public bodies shall be of the same gender;
  - (c) fair representation of persons with disabilities;
  - (d) universal suffrage based on the aspiration for fair representation and equality of vote; and
  - e) free and fair elections, which are—
    - (i) by secret ballot;
    - (ii) free from violence, intimidation, improper influence or corruption;
    - (iii) conducted by an independent body;

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 18 1C, 18 1D & 18 1E OF THE UNIVERSITIES ( AMENDMENT) ACT ; PURSUANT TO ARTICLES 2, 3, 10, 27, 38, 43, 47, 55, 81 & 119 OF THE CONSTITUTION OF KENYA 2010, THE PARLIAMENTARY POWERS & PRIVILEGES ACT, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS.

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(iv) transparent; and

(v) administered in an impartial, neutral, efficient, accurate and accountable manner.

13. THAT section 18 of the parliamentary powers and privileges act provides that Parliament or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person.

THE FACTS constituting the same include;

14. THAT Achieving the Big 4 Agenda, the Kenya Vision 2030, the Africa Agenda 2063 and the 2030 Agenda (SDGs) will require strong partnerships between the young people who are the key drivers for their successful implementation and all stakeholders so that the challenges faced by the youth are addressed, their contributions recognized and they're included at all levels of decision-making.
15. THAT the amendment interfered with student leaders' elections and the process is now riddled with corruption, interference by university managers and rampant abuse of students' rights by the university administrators.
16. THAT for one to get an elective position, it all depends on the depth of the pocket rather than one's capability to lead. Most administrations have taken advantage of the process to disqualify students who they feel don't cooperate with them.

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 18 1C, 18 1D & 18 1E OF THE UNIVERSITIES ( AMENDMENT) ACT ; PURSUANT TO ARTICLES 2, 3, 10, 27, 38, 43, 47, 55, 81 & 119 OF THE CONSTITUTION OF KENYA 2010, THE PARLIAMENTARY POWERS & PRIVILEGES ACT, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS.

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17. THAT the regulation of engineering education in Kenya has evolved with the wider education sector. Growth of universities from one to over 70 led to establishment of the Commission for University Education (CUE) with the mandate to accredit university programmes. Concurrently, the Engineering Act of 2011 mandated the Engineering Board of Kenya (EBK) to approve and accredit engineering programmes. The duality in accreditation led to uncoordinated and sometimes contradicting directives. To address the duality, the University (Amendment) Act No. 48 of 2016 has vested accreditation mandate on CUE superseding any other law.
18. THAT the Act negates the struggles that led us to the constitution which the Kenyan people promulgated after decades of struggle, blood, sweat and tears. And worse, it reifies the painful legacy of slavery that still haunts Africa and her descendants in the world's most powerful country.
19. THAT the amendments to the University Acts is a serious blow to constitutionality in Kenya. The need for university students to entrench these undemocratic requirements into their constitutions is the opposite of the path that led to the 2010 constitution. Unlike the constitution that was the fruit of struggles for freedom, the Kenyan university students are being forced by law to deny themselves their own constitutional rights.
20. THAT the amendments to the Universities Act in 2016 were made by then Education Cabinet Secretary, Fred Matiang'i, as a way

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 18 1C, 18 1D & 18 1E OF THE UNIVERSITIES ( AMENDMENT) ACT ; PURSUANT TO ARTICLES 2, 3, 10, 27, 38, 43, 47, 55, 81 & 119 OF THE CONSTITUTION OF KENYA 2010, THE PARLIAMENTARY POWERS & PRIVILEGES ACT, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS.

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to rein in the multiple and chaotic terms of office in the Students Organisation of Nairobi University (Sonu) held by Fred Ogili, commonly known Babu Owino. But rather than simply limit the terms of office of student officials, Matiang'i made one draconian addition. He drafted a law that required university student councils to be chosen by electoral colleges, rather than by direct popular vote.

21. THAT there are at least two disturbing implications of the amended Universities Act. The Kenya Parliament passed a law not on principle, but to prevent a single man from running for office. Laws are supposed to be written for the public good, not to target a single individual. This is a bad precedent, with snowballing effects already simmering with the recent proposal to amend the country's constitution based on the failed presidential ambitions of a single candidate.
22. THAT a more disturbing and perturbing aspect, of the amendments was the recourse to electoral colleges - a system that is rooted in racist slavery in the United States, and which has led to the absurdity of American presidents who do not win the popular vote. The most recent case is that of the current president Donald Trump who won the presidency but received 3 million votes less than Hillary Clinton.
23. THAT Electoral colleges are, therefore, by design, intended to limit the voice of actual people. Electoral colleges exploit the



PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 18 1C, 18 1D & 18 1E OF THE UNIVERSITIES ( AMENDMENT) ACT ; PURSUANT TO ARTICLES 2, 3, 10, 27, 38, 43, 47, 55, 81 & 119 OF THE CONSTITUTION OF KENYA 2010, THE PARLIAMENTARY POWERS & PRIVILEGES ACT, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS.

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numbers of people without allowing the same people to have an equal say in how they are governed, which continues in the United States to this day. Indeed, American legal historian Paul Finkelman was right to say that the electoral college is “the last legacy of slavery in the US constitution that is still affecting our political lives”.

24. THAT It is clear then that the intention of the Kenya government in requiring electoral colleges was to limit the voices of the students while giving students the illusion of having a say in how universities are governed.

25. THAT the disenfranchising element of the electoral colleges is that they make manipulation of student elections even easier, rather than more difficult. Once the electoral college representatives are chosen, the representatives can sell their vote to the highest bidder running for office, or the candidate’s godparent. It will also mean that unscrupulous deals and negotiating will become more rampant as students seeking office or administrations seeking to manipulate the vote have fewer students to appeal to.

26. THAT we’ve addressed the relevant authorities but our efforts have proved futile.

27. THAT this matter is not pending before any court of law and hence it does not violate the sub - judice principle.

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 18 1C, 18 1D & 18 1E OF THE UNIVERSITIES ( AMENDMENT) ACT ; PURSUANT TO ARTICLES 2, 3, 10, 27, 38, 43, 47, 55, 81 & 119 OF THE CONSTITUTION OF KENYA 2010, THE PARLIAMENTARY POWERS & PRIVILEGES ACT, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS.

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THEREFORE your humble petitioner pray;

28. THAT pursuant to article 94(1) of the constitution which provides that the legislative authority of the republic is derived from the people and, at the national level, is vested in and exercised by parliament, the honourable house committee considers this petition.

29. THAT in accordance with article 119 which encapsulates that every person has the right to petition parliament to consider any matter within its authority and Section 18 of the parliamentary powers and privileges Act which provides the power of parliament or it's committees to summon any person or body, the Honourable National Assembly to repeal Section 18 1C, 18 1D & 18 1E of the Universities ( amendment) act in order to promote universal suffrage.

AND your petitioner shall ever PRAY.

Name of the Petitioner: KAMOTHO AMOS NDUNGU

Signature: 

ID Number: 32576298

Address: 24814-00502 NAIROBI

Date: 05-08-2021

**MINUTES OF THE 6<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH HELD ON THURSDAY, 17<sup>TH</sup> FEBRUARY 2022, IN 4<sup>TH</sup> FLOOR COMMITTEE BOARD ROOM, CONTINENTAL HOUSE, AT 11.30 AM**

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**PRESENT**

1. Hon. Florence M. Mutua, CBS, MP – **Chairperson**
2. Hon. Geoffrey Odanga, MP
3. Hon. (Dr.) Pamela Ochieng, MP
4. Hon. (Eng.) Nzambia Kithua, MP
5. Hon. (Prof.) Zadoc Ogutu, MP
6. Hon. Jackson Lekumontare, MP
7. Hon. Jerusha Momanyi, MP
8. Hon. Joseph Tonui, MP
9. Hon. Peter Lochakapong, MP
10. Hon. Wilson Sossion, MP
11. Hon. (Dr.) Daniel Kamuren Tuitoek, MP

**ABSENT WITH APOLOGY**

1. Hon. Wambugu Ngunjiri, CBS, MP - **Vice- Chairperson**
2. Hon. Eric Muchangi, MP
3. Hon. Eve Obara, MBS, MP
4. Hon. Omboko Milemba, MP
5. Hon. (Dr.) Wilson Kogo, MP
6. Hon. Gichuki Mugambi, MP
7. Hon. John Paul Mwirigi, MP
8. Hon. Mohammed Ali Lokiru, MP

**COMMITTEE SECRETARIAT**

1. Mr. Philip Lekarkar – Clerk Assistant II
2. Ms. Grace Wahu – Clerk Assistant III
3. Mr. Eric Kanyi – Fiscal Analyst I
4. Ms. Winnie Kulei – Research Officer II
5. Ms. Catherine Mukunyi – Sergeant At Arms I
6. Mr. Collins Mahamba – Audio Officer

**MIN. NO. EDUC/2022/31: PRELIMINARIES**

The meeting was called to order at 11.40 am. A word of prayer was said by Hon. Jackson Lekumontare, MP. The Agenda of the meeting was adopted having been proposed by Hon. (Dr.) Daniel Kamuren Tuitoek, MP, and seconded by Hon. Joseph Tonui, MP.

**MIN. NO. EDUC/2022/32: CONFIRMATION OF MINUTES**

Confirmation of minutes was deferred to the next sitting.

**MIN. NO. EDUC/2022/33: ADOPTION OF THE REPORT ON THE PETITION REGARDING REPEAL OF SECTIONS OF THE UNIVERSITIES ACT, 2012, PERTAINING TO THE ELECTIONS OF UNIVERSITY STUDENT LEADERS**

**COMMITTEE OBSERVATIONS**

The Members considered the report and made the following findings:-

1. That the Petitioner prayer to repeal of Sections 41 (1C), (1D) and (1E) of the Universities Act to provide that election of the members of the students' council for be conducted through universal suffrage as opposed to current delegate system are within the authority of the National Assembly.
2. That Sections 41(1C), (1D) and (1E) the Universities Act, 2012 provides the guidelines for conducting elections of the University student council. Currently, for purposes of conducting the election of the members of the University student council the students' association constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate. The representatives of each electoral college elect the members of the student council.
3. That the electoral system as a system of electing the students' council is not in tandem with the Constitution where national elections are done through universal suffrage.

**COMMITTEE RECOMMENDATIONS**

In response to the Petitioners prayer, the Committee recommends that:-

1. That the Universities Act, 2012 be amended to provide for election to the student's council through election by the students' association comprising of all students as opposed to electoral colleges as follows-  
Amend Section 41 of the Universities Act, 2012 by—
  - (a) deleting subsection (1C) which provides for the election of the members of the student council through electoral colleges
  - (b) deleting subsection (1D) which provides for the election of three representatives from each electoral college; and
  - (c) deleting subsection (1E) which provides for the election of the members of the student council by representatives of each electoral college.
2. The Committee further recommends that each University in consultation with the student's association of the University formulate and enact regulations on good academic standing to govern the conduct of elections including regulation of campaigns, election financing, offences and penalties.

The Report was unanimously adopted having been proposed by Hon. (Dr.) Pamela Ochieng, MP and seconded by Hon. (Eng.) Nzambia Kithua, MP.

**MIN. NO. EDUC/2022/34: ANY OTHER BUSINESS**

There was no other business

**MIN. NO. EDUC/2022/35: ADJOURNMENT**

There being no other business, the meeting was adjourned at 1.00 pm. The next meeting will be held on notice.

SIGN  DATE 02/03/2022

**HON. FLORENCE MUTUA, CBS, MP**  
**CHAIRPERSON, COMMITTEE ON EDUCATION AND RESEARCH**

