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REPUBLIC OF KENYA

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Tuesday 5.7.2018



THE NATIONAL ASSEMBLY

TWELTH PARLIAMENT – SECOND SESSION, 2018

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE PETITION FOR THE INTRODUCTION OF A  
RETIREMENT AGE OF 70 YEARS FOR PERSONS DESIROUS AT  
CONTESTING FOR THE PRESIDENTIAL ELECTIONS BY MOHAMED  
MOHAMUD SHEIKH

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

JULY, 2018

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**CHAIPRESON'S FOREWARD**

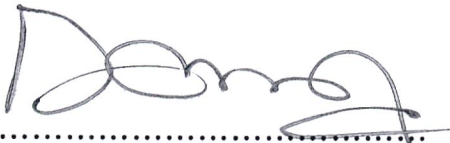
The Petition was conveyed to the House by the Speaker, Hon. Justin B. Muturi, EGH, M.P. on 18<sup>th</sup> April, 2018 pursuant to the provisions of Standing Order No. 225 (2) (b). The Petitioner, Mr. Mohamed Mohamud Sheikh prays that the House amends the Article 137 of Constitution of Kenya to set the retirement age for the President at seventy (70).

After conveyance to the House, the Petition was committed the Departmental Committee on Justice and Legal Affairs for consideration and report to the House pursuant to the provisions of the Standing Order 227.

While considering the Petition, the Committee held two sittings within the precincts of Parliament. The first sitting was held on 17<sup>th</sup> May, 2018 in Committee Room 12, Main Parliament Building during which the Petitioner appeared before the Committee and made oral submissions in support of his Petition. The Petitioner also presented written submissions. The second sitting was held on 13<sup>th</sup> of June, 2018 in Committee Room 9, Main Parliament Building during which the Committee considered and unanimously adopted its report.

May I take this opportunity to commend Committee Members for their resilience and commitment to duty, Offices of the Clerk and Speaker for providing guidance and leadership and the Committee secretariat for providing technical and logistical support. It's through their effort that the consideration of the Petition and production of this report was a reality.

On behalf of the Committee and pursuant to the provisions of Standing Order 199(6) it's my duty and privilege to present to the House a report of the Committee on the Petition by Mr. Ezekiel Njeru Namu.



Signed.....  
**HON. WILLIAM CHEPTUMO, M.P,**  
**Chairperson, Departmental Committee on Justice and Legal Affairs**

Date ..... 04.7.18 .....



**CHAPTER ONE**  
**PREFACE**

**1.1. Mandate of the Committee**

The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows:-

- (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 analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (e) *investigate and enquire 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;*
- (f) *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);*
- (g) *examine treaties, agreements and conventions;*
- (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
- (j) *examine any questions raised by Members on a matter within its mandate.*

The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, 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.

## 1.2. Committee Membership

The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	–	<b><i>Chairperson</i></b>
Hon. Alice Muthoni Wahome, M.P.	–	<b><i>Vice Chairperson</i></b>
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuya, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Johana Ng'eno, M.P.		
Hon. William Kamoti Mwamkale, M.P.		
Hon. Ben Orori Momanyi, M.P.		
Hon. Peter Opondo Kaluma, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Gladys Boss Shollei, CBS, M.P.		
Hon. John Munene Wambugu, M.P.		
Hon. George Gitonga Murugara, M.P.		
Hon. Anthony Githiaka Kiai, M.P.		
Hon. John Kiarie Waweru, M.P.		
Hon. Japheth Mutai, M.P.		
Hon. Adan Haji Yussuf, M.P.		
Hon. Zuleikha Hassan, M.P.		

## 1.3. Committee Secretariat

Mr. George Gazemba	-	Senior Clerk Assistant and Head of Secretariat
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Doreen Karani	-	Legal Counsel II
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. James Macharia	-	Media Liaison Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms

## CHAPTER TWO

### **3.0 EVIDENCE**

The Committee commenced its consideration of the Petition by meeting the Petitioner on 17<sup>th</sup> May 2018. During the meeting, written and oral evidence was adduced as recorded hereunder:-

#### **2.1 Submissions by the Petitioner Mr. Mohamed Mohamud Sheikh**

In his petition, Mr. Mohamed Mohamud Sheikh, sought to draw the attention of the House to the following:

- (i) On the strength of Article 256 of the Constitution of Kenya, it was desirable, reasonable and constitutionally tenable that the House amends the Constitution in Article 137 on the qualifications and disqualifications for election as President and set the retirement for the President at the age of seventy years on the following grounds -
  - (a) The president is a State officer by dint of Article 260 of the Constitution;
  - (b) A huge majority of State officers are exposed to a retirement age save for the political class;
  - (c) It is desirable and reasonable to have a retirement age of the Presidential hopefuls;
  - (d) The productivity of individuals above the aforementioned age as relates to their effectiveness to discharge national functions is doubtful;
  - (e) The majority of the Kenyan population is largely the youths and whose rate of productivity is higher than that of citizens above the age of seventy (70) years;
  - (f) Science has it that persons above the age of seventy (70) years are more susceptible to chronic illnesses and other lifestyle diseases.

The particulars constituting the grounds are as follows-

- (i) Pursuant to Article 260 of the Constitution, the President is categorized as a State Officer, who like other state officers does exercise delegated authority from the people of Kenya. While other State Officers have a retirement age, for instance judges under Article 167 of the Constitution and other public officers, the retirement age of the political class is nonexistent and left at the whim of individual choices therefore making Kenyans susceptible to a recycled crop of leaders who are often unwilling to surrender the political space to the younger generation;
- (ii) On the strength of Article 24 of the Constitution, it is reasonable and justifiable in an open and democratic society like Kenya to introduce a



retirement age for the president and concisely set an age limit as a qualification for the election as president. It is therefore desirable that the political rights as enshrined under Article 38 of the constitution be limited to the extent of introducing a bar to presidential hopefuls above the age of seventy (70) years. There is no dearth of scientific research showing that with age, productivity levels of human beings reduce;

- (iii) It is in the best interest of the Republic which is aptly captured in the Latin *Maxi Salus populi Suprema lex*<sup>1</sup> to introduce a retirement age of seventy (70) years for the person serving or wishing to serve as the President;
- (iv) There is also a parallel need to introduce age limitations on the qualification and disqualification for the election of a president for in doing so the democratic space will undeniably grow at a more desirable speed;
- (v) The introduction of the presidential age limit will be so crucial in the build up to a strong nation with a healthy democracy. It will also establish preconditions for more competitive democratic elections in this great Republic;
- (vi) The Constitution of Kenya permits positive discrimination. The introduction of the presidential age limit amounts to positive discrimination.
- (vii) Though unfortunate, the undeniable reality is that aging comes with a fair share of health challenges that are often costly to manage. As such, it makes even more desirable to introduce a retirement age which will serve to cushion the Republic from unnecessary expenditure and or disruptions as it strives towards the eradication of poverty, disease, ignorance and corruption;
- (viii) The 2011 World Report on Disability is elaborate in its introductory remarks on Understanding Disability and aptly documents that old age comes with increasing difficulty in functioning thus it would countermand the interest of the Republic to have a president who is unable or often under strenuous difficulty in handling national assignment either locally or internationally.

Based on the cited grounds, the Petitioner made the following prayers-

- (i) The National Assembly amends Article 137 of the Constitution of Kenya 2010 on the qualifications for eligibility to run for election as

president and to set the retirement age of the President at the age of seventy (70) years.

- (ii) The National Assembly enacts legislation specifically dealing with qualifications for election as President and the Office of Presidency in general and precisely limiting Article 38 of the Constitution.
- (iii) The proposed amendments do operate *mutatis mutandis*<sup>2</sup> to the qualifications and disqualification of the Deputy President.
- (iv) The National Assembly finds that this Petition raises serious, and overwhelming issues relating to governance and the general wellbeing of this great Republic.



## CHAPTER THREE

### COMMITTEE OBSERVATIONS, FINDINGS AND RECOMMENDATIONS

#### **3.1 Committee findings and observations**

Upon hearing the Petitioner, the Committee made the following findings and observations-

- (i) The Petitioner noted that the Presidential age limits can be set for the following reasons-
  - a) demographics and representation in that the majority of Kenyans are of a youthful age hence the head of state would resonate with them if he or she were of a similar age group;
  - b) health concerns and fitness for office;
  - c) fostering internal party democracy;
  - d) discrimination on the basis of age; and
  - e) the international standards applicable to the right to vote and be elected.
- (ii) With respect to the Petitioner's prayer that the National Assembly does enact legislation specifically dealing with qualifications for election as president and the office of presidency in general and precisely limiting Article 38 of the Constitution, it is within the authority of the House to make provisions having the force of law as it is so empowered under Article 94 and 95. The rights stipulated under Article 38 are political rights, which may be limited in accordance with Article 24;
- (iii) The Committee noted with concern that there appears to be a trend where the country appears to be celebrating the youth and belittling, disparaging and demeaning the elderly;
- (iv) The rights of older members of the society to fully participate in affairs of the society, pursue personal development, live in dignity and respect free from abuse as enshrined under Article 57 of the Constitution ought to be upheld in equal measure as those of the youth. To require that such persons cannot run for political office owing to their age would be tantamount to discrimination;
- (v) Article 144 of the Constitution provides for removal of a President on grounds of incapacity or infirmity should an office holder become ill and incapable of discharging his or her duties;
- (vi) It is not factual that every person experiences medical challenges and life-threatening diseases as they age. Indeed, some older members of society are fruitful and very productive in their old age;

- (vii) Certain state officers such as Judges and Magistrates are subjected to a retirement age except political offices because these are unique offices of leadership and wisdom, both traits that advance with age.

### 3.2 Committee Recommendations

The Committee recommends as follows-

- (i) The prayer to amend Article 137 of the Constitution of Kenya 2010 on the qualifications for eligibility to run for election as president and to set the retirement age of the President at the age of seventy (70) years be disallowed as it is discriminatory;
- (ii) The prayer to enact legislation specifically dealing with qualifications for election as President and the Office of Presidency in general and precisely limiting Article 38 of the Constitution cannot be granted for the reason that the first prayer is denied and the Constitution makes provision regarding the qualifications for election as President.
- (iii) As to the prayer that the proposed amendments do operate *mutatis mutandis*<sup>3</sup> to the qualifications and disqualification of the Deputy President, the prayer cannot be granted as the preceding prayers to which this prayer is pegged, have been declined .

Sign.......... Date.....04.7.18.....

**Hon. William Cheptumo, MP**  
**Chairman, Departmental Committee on Justice and Legal Affairs**

# **ANNEXURE 1**

**(Adoption List)**



KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS





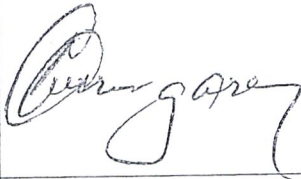
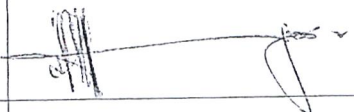


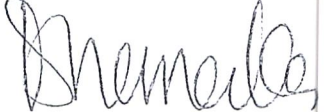



ATTENDANCE REGISTER FOR MEMBERS

DATE... 13/6/18 ..... TIME... 11:30am.....

VENUE... Committee Room 9.....

NAME	SIGNATURE
Hon. William Cheptumo, M.P. - Chairperson	
Hon. Alice Wahome, MP. - Vice Chairperson	
Hon. John Olago Aluoch, MP.	
Hon. Roselinda Soipan Tuya, MP.	
Hon. Ben Momanyi, MP.	
Hon. William Kamoti, MP.	
Hon. Charles Gimose, MP.	



8.	Hon. Zuleikha Hassan, MP.	
9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Peter Opondo Kaluma, MP.	
11.	Hon. John Kiarie Waweru, MP.	
12.	Hon. George Gitonga Murugara, MP.	
13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	
16.	Hon. Jennifer Shamalla, MP.	
17.	Hon. Beatrice Adagala, MP.	
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	

GEORGE GAZEMBA, ACI Arb  
 For: CLERK OF THE NATIONAL ASSEMBLY



# **ANNEXURE 2**

**(Minutes of the Committee Sitings)**



**MINUTES OF THE FORTIETH SITTING OF THE DEPARTMENTAL  
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON THURSDAY, 17<sup>TH</sup>  
MAY, 2018 AT 10:00 A.M. IN THE COMMITTEE ROOM 12, MAIN PARLIAMENT  
BUILDING**

**PRESENT-**

Hon. William Cheptumo, M.P.	-	<b>Chairperson</b>
Hon. Alice Muthoni Wahome, M.P.	-	<b>Vice Chairperson</b>
Hon. Roselinda Soipan Tuya, M.P.		
Hon. John Olago Aluoch, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Adan Haji Yussuf, M.P.		
Hon. George G. Murugara, M.P.		
Hon. Anthony G. Kiai, M.P.		
Hon. Japheth Mutai, M.P.		

**ABSENT WITH APOLOGIES-**

Hon. Ben Momanyi Orori, M.P.  
Hon. William K. Mwamkale, M.P.  
Hon. Charles Gimose, M.P.  
Hon. Peter O. Kaluma, M.P.  
Hon. John M. Wambugu, M.P.  
Hon. Gladys Boss Shollei, CBS, M.P.  
Hon. Jennifer Shamalla, M.P.  
Hon. Johana Ng'eno, M.P.  
Hon. Zuleikha Hassan, M.P.  
Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE**

**PETITIONERS**

Mr. Ezekiel Njeru Namu	-	Petitioner
Mr. Mohamed Mohamud Sheikh	-	Petitioner
Mr. Peter Githaiga Munyeki	-	Petitioner

**COMMITTEE SECRETARIAT**

Ms. Halima Hussein	-	Third Clerk Assistant
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Ms. Doreen Karani	-	Legal Counsel
Mr. Abdirahim Omar	-	Fiscal Analyst
Mr. Ian Otieno	-	Audio Officer

**MIN No. 145/2018:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10:00a.m which was followed by a word of prayer from Hon. Yussuf Haji, MP and a round of introduction.

**MIN No.146/2018:**

**MEETING WITH PETITIONERS**

**Petition by Mr. Ezekiel Njeru Namu for amendment of the Constitution to allow for equitable representation of electorate and fulfillment of gender parity in Legislature**

Mr. Ezekiel Njeru Namu appeared before the Committee and submitted that Parliament-

- a) Amends the constitution by repealing Article 97 section 1 (a) to increase the number of constituencies to three hundred.
- b) Creates mega-constituencies composed of three constituencies in which three candidates, one of which is from other gender and representing a single constituency shall offer a joint candidature for election and upon election represent their constituencies.
- c) Amends the constitution by repealing article 98 section 1 (b) and eliminate the position of nominated woman senator.
- d) Creates Mega-counties by pairing all counties except for Nairobi in which two candidates each from other gender and representing individual counties shall offer themselves for election on joint candidature.
- e) Amends the Constitution to repeal article 177 section 1 (b) to eliminate the position of nominated member a county assembly special seat for gender.
- f) Creates mega-wards composed of three wards for purpose of election in which tree candidates one of which is from other gender and each representing a single ward shall offer a joint candidature for election and upon election shall represent a ward in the County Assembly.
- g) Amends Article 120 (1) of the Constitution to allow for the adoption of African languages in County Assembly was practicable.
- h) Amends the Constitution to increase the term of senator to seven years and
- i) Amends the Constitution to increase the term of National Assembly to six years.
- j) Reduces the presidential term to four years to coincide with that of the County Assembly.
- k) Reduces the term of County Assembly to four years to coincide with the presidential term.
- l) Amends the Elections Act to remove all academic qualifications for election as members of National Assembly, Senate and Members of County Assembly.



Upon hearing him, the Committee directed that the petitioner submits written submissions to expound on his prayers.

**Petition by Mr. Peter Githaiga Munyeki to parliament to amend the Kenya School of Law Act 2012 Second schedule**

Mr. Peter Githaiga Munyeki appeared before the Committee and made submissions to the effect that Parliament amends the Kenya School of Law Act, 2012 in its second schedule on admission requirements to the Advocates Training Program to cater and allow progressive students who have attained their Bachelor of Laws degree to be admitted and trained as advocates at the Kenya School of Law.

**Petition by Mr. Mohamud Mohamed Sheikh regarding introduction and passage of a bill to amend the constitution to set the age limit of eligibility to run for election as President of the Republic of Kenya at seventy (70) years**

Mr. Mohamud appeared before the Committee and made the following prayers-

- a) Parliament amends Article 137 of the Constitution of Kenya 2010 on the qualifications for eligibility to run for election as president and to set the retirement age of the president at the age of 70 years
- b) Parliament enacts legislation specifically dealing with qualifications for election as president and the office of presidency in general and precisely limiting Article 38 of the Constitution.
- c) The proposed amendments do operate *mutatis mutandis* to the qualifications and disqualification of the Deputy President.

**MIN No. 147/2018:**

**ADJOURNMENT**

There being no other business to transact, the chairperson adjourned the meeting at 7.00 p.m.

Signed.....

**Chairperson**

Date.....  
04.07.18

**MINUTES OF THE FIFTEITH SITTING OF THE DEPARTMENTAL  
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY,  
13<sup>TH</sup> JUNE 2018 AT 11:30 A.M. IN COMMITTEE ROOM 9, MAIN  
PARLIAMENT BUILDING**

**PRESENT-**

Hon. William Cheptumo, M.P.	-	<b>Chairperson</b>
Hon. Alice Muthoni Wahome, M.P.	-	<b>Vice Chairperson</b>
Hon. John Olago Aluoch, M.P.		
Hon. William K. Mwamkale, M.P.		
Hon. Charles Gimose, M.P.		
Hon. John M. Wambugu, M.P.		
Hon. George G. Murugara, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Anthony G. Kiai, M.P.		
Hon. Gladys Boss Shollei, CBS, M.P.		
Hon. Adan Haji Yussuf, M.P.		

**ABSENT WITH APOLOGIES-**

Hon. Ben Momanyi, MP.  
Hon. Roselinda Soipan Tuya, M.P.  
Hon. Peter O. Kaluma, M.P.  
Hon. John Kiarie Waweru, M.P.  
Hon. Johana Ng'eno, M.P.  
Hon. Zuleikha Hassan, M.P.  
Hon. Japheth Mutai, M.P.

**IN ATTENDANCE**

**COMMITTEE SECRETARIAT**

Mr. George Gazemba	-	Senior Clerk Assistant
Ms. Doreen Karani	-	Legal Counsel II
Ms. Halima Hussein	-	Third Clerk Assistant
Ms. Fiona Musili	-	Research Officer
Mr. Omar Abdirahim	-	Fiscal Analyst

**MIN No. 177 /2018:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10:00 a.m. which was followed by a word of prayer from Hon. Alice Wahome, M.P.



**MIN No. 178/2018:**

**CONSIDERATION AND ADOPTION OF THE DRAFT  
REPORT ON THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL, 2018**

The Committee considered and adopted its report on the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bills No. 12). The adoption of the report was proposed by Hon. George Murugara and seconded by Hon Jennifer Shamalla. Hon John Olago Aluoch dissented to the proposed amendment to section 15(1) of the Judicial Service Act, 2011. The amendment provides for approval of members of the Judicial Service Commission by the National Assembly prior to their appointment by the President.

**MIN No. 179/2018:**

**CONSIDERATION AND ADOPTION OF REPORT ON A  
PETITION BY MR. PETER GITHAIGA MUNYEKI ON  
PROPOSED AMENDMENTS TO THE KENYA  
SCHOOL OF LAW ACT**

The Committee considered and adopted its report on a petition by Mr. Peter Githaiga Munyeki on proposed amendments to the Kenya School of Law Act, 2012 (No. 26 of 2012) and unanimously adopted it. The adoption of the report was proposed by Hon. George Murugara and seconded by Hon. Beatrice Adagala.

In the report, the Committee observed and recommended as follows-

1. The Petition had merit in that there is a conflict between the Kenya School of Law Act and the Legal Education Act and Regulations made thereunder. The Committee however noted that the Attorney-General had constituted a Taskforce on legal sector reforms whose mandate was to address the challenges on training of Advocates and admission requirements. The Committee was of the considered opinion that the Taskforce should be allowed to complete its work and report to the Attorney-General and Parliament on the proposed amendments to be effected;
2. Taking into cognizance that the Council for Legal Education plays a regulatory and supervisory role in the legal education sector, there is urgent need to harmonise the Kenya School of Law Act and the Legal Education Act and any conflicting laws and regulations relating to legal education in Kenya to avert a crisis in the sector;
3. There was need to urgently address the issues raised in the Petition through substantive amendments to be effected once the Taskforce discharges its mandate.

**MIN No. 180/2018:**

**CONSIDERATION AND ADOPTION OF REPORT ON A  
PETITION BY MR. EZEKIEL NJERU NAMU TO  
AMEND VARIOUS ARTICLES OF THE  
CONSTITUTION OF KENYA**

The Committee considered and unanimously adopted its report on a petition by Mr. Ezekiel Njeru Namu to amend various Articles of the constitution of Kenya. The adoption of the report was proposed by Hon. William Kamoti Mwamkale and seconded by Hon. John Wambugu.

The Committee observed that the petition lacked merit thereby recommending to the House that it be rejected.

**MIN No. 181/2018:**

**CONSIDERATION AND ADOPTION OF REPORT ON A  
PETITION BY MR. MOHAMED MOHAMUD SHEIKH  
TO SET AGE LIMIT FOR CONTESTING FOR THE  
SEAT OF PRESIDENT AT SEVENTY (70) YEARS**

The Committee considered and unanimously adopted its report on a petition by Mr. Mohamed Mohamud Sheikh proposing to set age limit for contesting for the seat of President at seventy (70) years. The adoption of the report was proposed by Hon. Jennifer Shamalla and seconded by Hon. John Olago Aluoch.

The Committee observed that the petition lacked merit thereby recommending to the House that it be rejected.

**MIN No 182/2018:**

**ADJOURNMENT**

There being no other business to transact, the Chairperson adjourned the meeting at 12.55 p.m. until Thursday, 14<sup>th</sup> June, 2018 at 10.00 a.m. in the Boardroom on 2<sup>nd</sup> Floor, Continental House, Parliament Buildings.

Signed.....

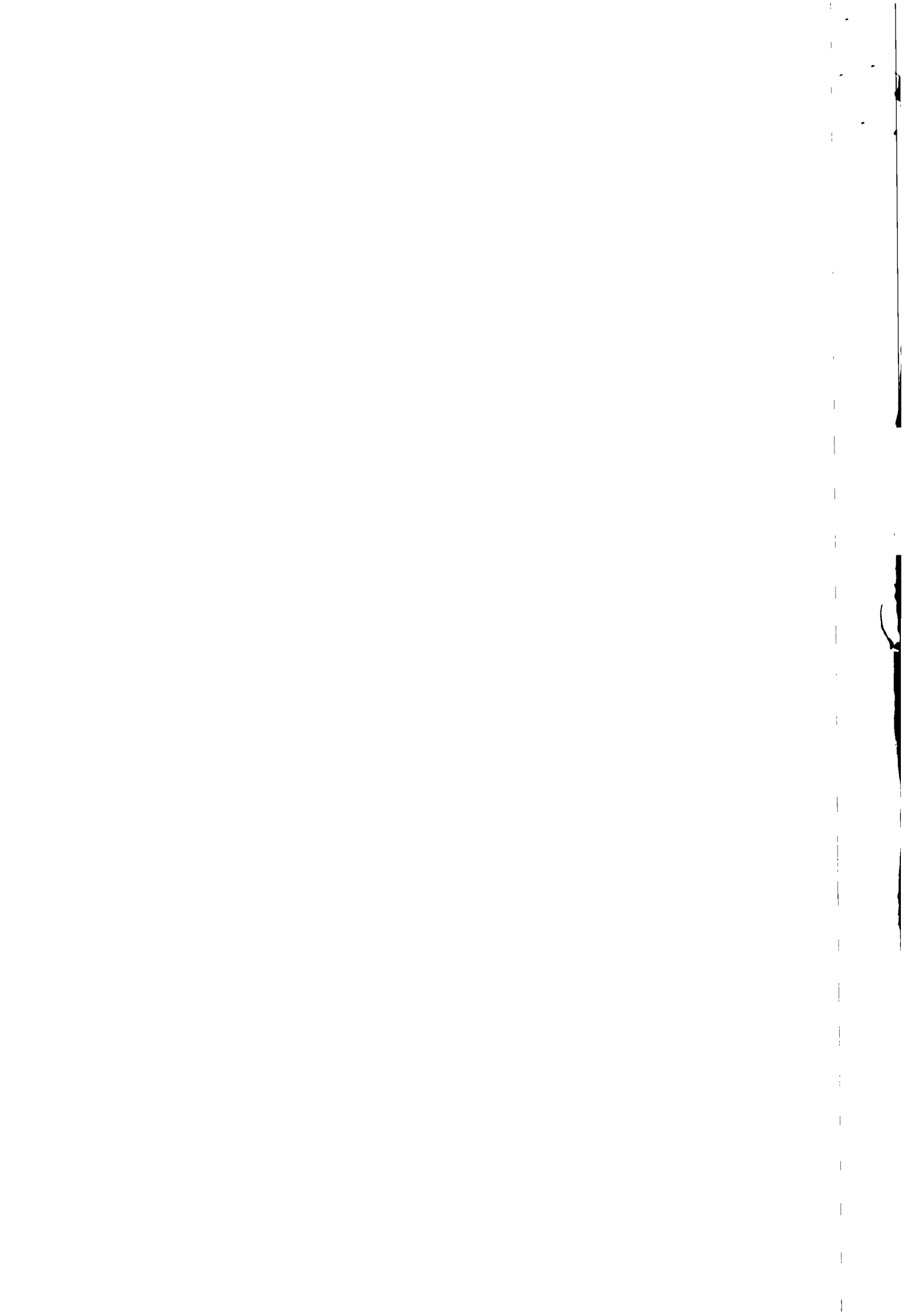
**Chairperson**

Date.....04.07.18.....

# **ANNEXURE 3**

**(Copy of the Petition)**





REPUBLIC OF KENYA



TWELFTH PARLIAMENT  
(SECOND SESSION)  
THE NATIONAL ASSEMBLY

PETITION

(No.015 of 2018)

CONVEYANCE OF A PETITION ON THE REVIEW OF ARTICLES 137  
OF THE CONSTITUTION ON QUALIFICATION AND  
DISQUALIFICATIONS FOR ELECTION AS PRESIDENT

Honourable Members,

Pursuant to Standing Order 225 (2) (b), I wish to convey to the House that my office is in receipt of a Petition signed one Mr. Mohamed Mohamed Sheikh, a resident of Wajir County. The Petitioner is praying that National Assembly to exercise its legislative authority under Article 95 and 256 (1) of the Constitution, by introducing and passing a Bill to amend the Constitution to set the age lime of eligibility to run for election as President of the Republic of Kenya at seventy (70) years.

Honourable Members,

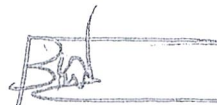
The Petitioner contends that Article 260 of the Constitution classifies a President as a State Officer and by extension a Public Officer, who like other State Officers, does exercise delegated authority from the people of Kenya. He further contends that other State Officers are subjected to a retirement age, and therefore it is reasonable and justifiable, in an open and democratic society, to introduce a retirement age for the President and set age limit to qualify as a Presidential candidate.

Honourable Members,

This Petition therefore stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee is requested to consider the Petition and report its findings to the Petitioner and the House in

accordance with Standing Order 227 (2). The Committee is also at liberty to introduce a Bill to the House, proposing to make the amendments as proposed by the Petitioner and should undertake to hear the Petitioner.

I, Thank you!



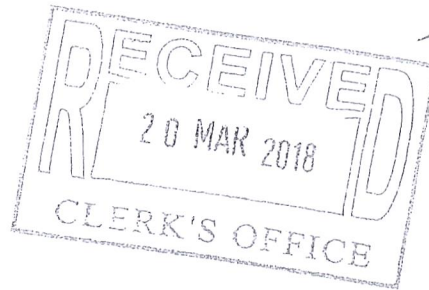
THE HON. JUSTIN B.N. MUTURI, EGH, MP  
SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, April 18<sup>th</sup> 2018

PETITION FOR THE INTRODUCTION OF A RETIREMENT AGE OF 70 YEARS FOR PERSONS DESIROUS AT CONTESTING FOR THE PRESIDENTIAL ELECTIONS:THE SUBSEQUENT AMENDMENT OF ARTICLE 137 OF THE CONSTITUTION AND THE INTRODUCTION OF LEGISLATION TO CONCISELY SET THE QUALIFICATIONS AND DISQUALIFICATIONS FOR ELECTION AS PRESIDENT AND A LIMITATION ON ARTICLE 38 OF THE CONSTITUTION.

TO:

THE NATIONAL ASSEMBLY,  
REPUBLIC OF KENYA,  
MAIN PARLIAMENT BUILDINGS  
NAIROBI, KENYA.



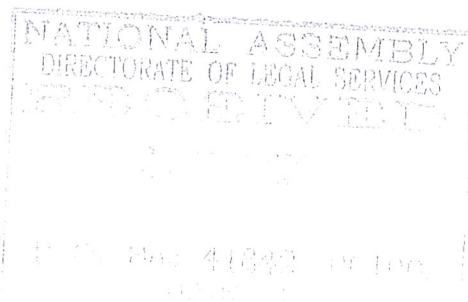
*DLS*  
*To advise*  
*CNA*  
*20/3/18*

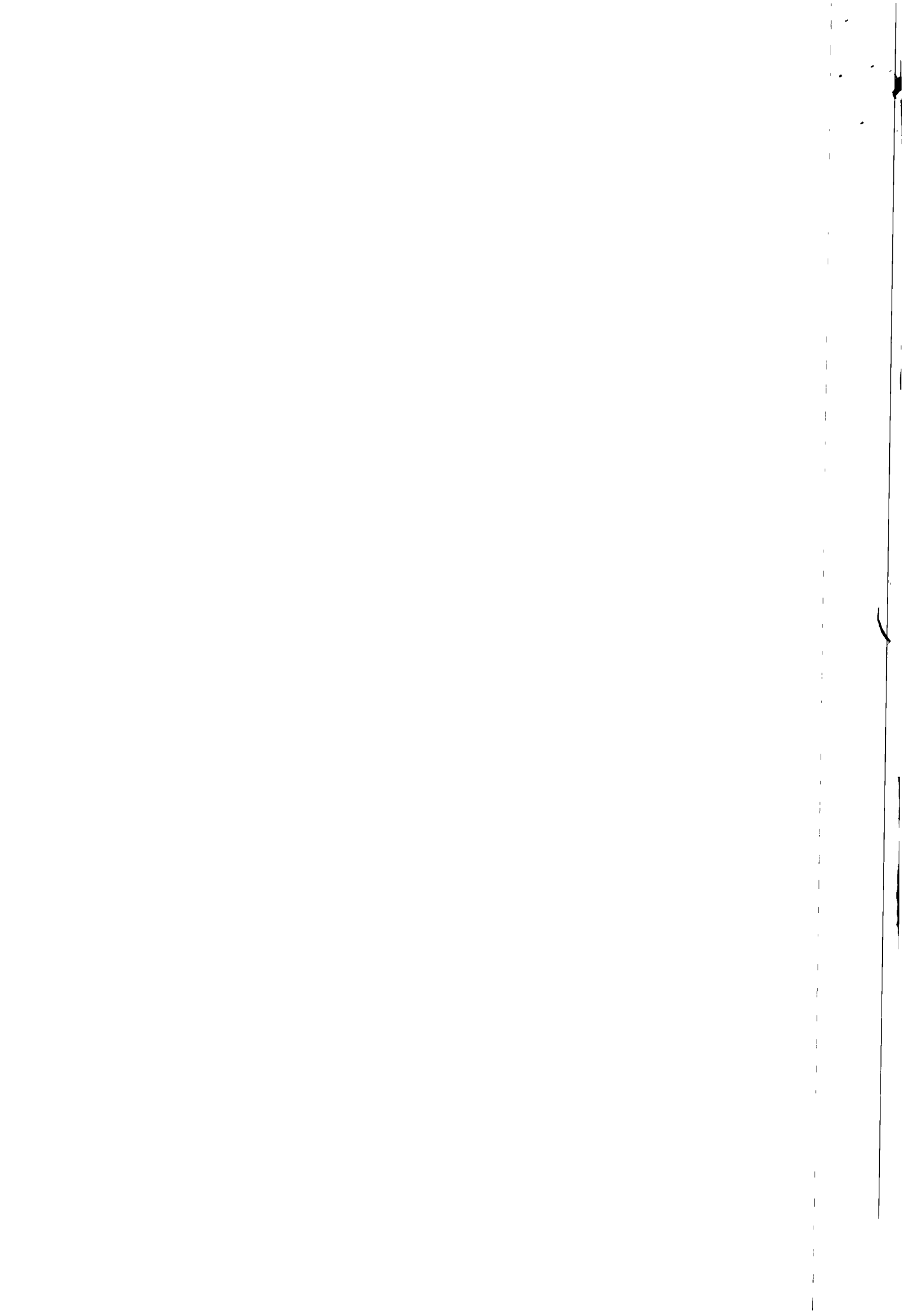
I, the undersigned, **MOHAMED MOHAMUD SHEIKH** a citizen of the Republic of Kenya, a businessman, a gallant defender of the Constitution and a resident of Wajir county:

**DRAW the attention of the House to the following:**

1. **THAT** on the strength of Article 256 of the Constitution of Kenya, it is desirable, reasonable and constitutionally tenable that this Honourable House does attend with a signal of the utmost urgency to amend the Constitution, to wit, Article 137 on the qualifications and disqualifications for election as President and set the retirement for the President at the age

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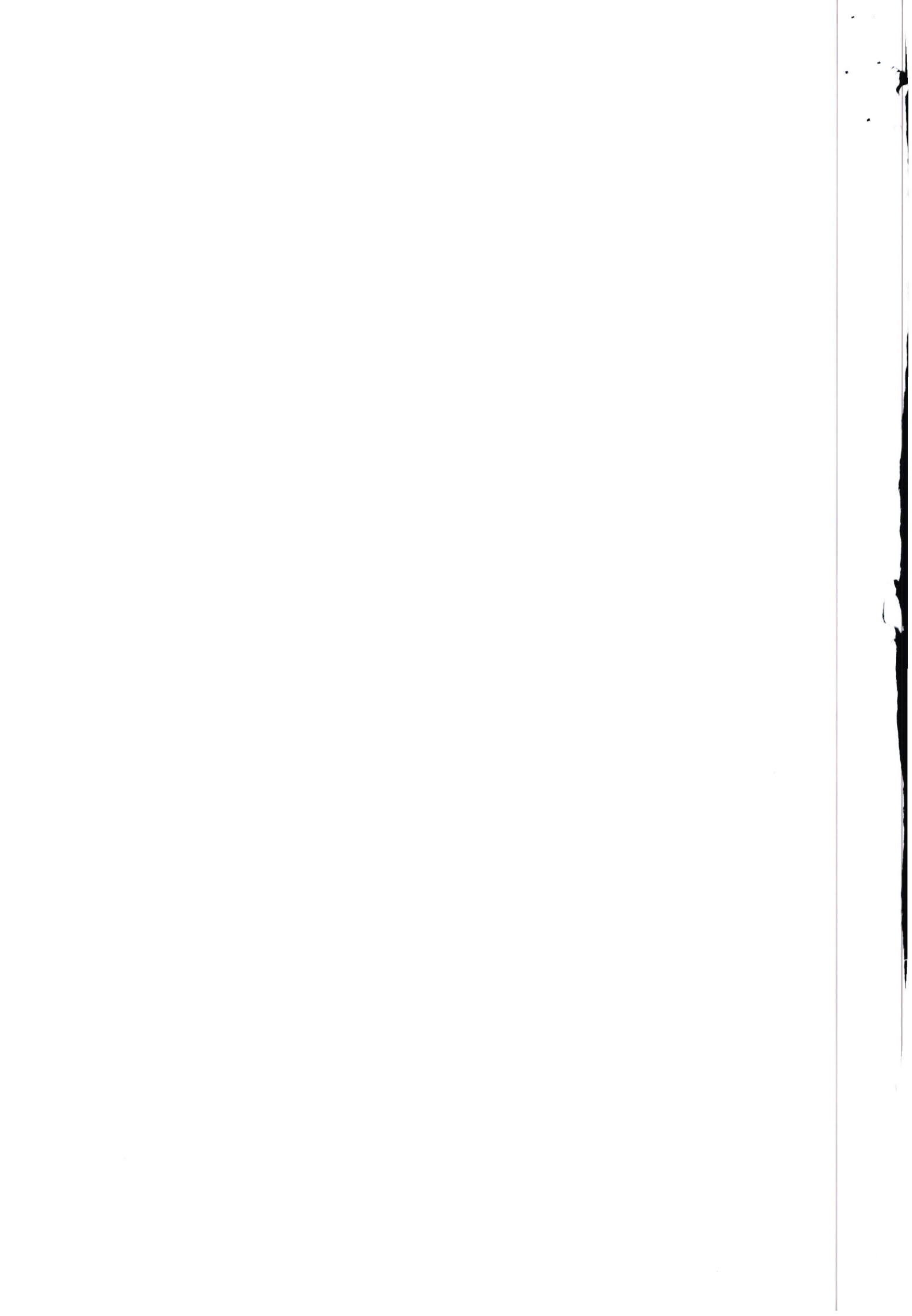
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of 70 years on the grounds that:

- a. The President is a State officer by dint of Article 260 of the Constitution.
- b. A huge majority of State officers are exposed to a retirement age save for the political class.
- c. It is desirable and reasonable to have a retirement age of the President and all presidential hopefuls.
- d. The productivity of individuals above the aforementioned age as relates to their effectiveness to discharge national functions is doubtful.
- e. The majority of the Kenyan population is largely the youths and whose rate of productivity is higher than that of citizens above the age of 70 years.
- f. Science has it that Persons above the age of 70 years are more susceptible to chronic illnesses and other lifestyle diseases.

The Particulars constituting the grounds are as follows:

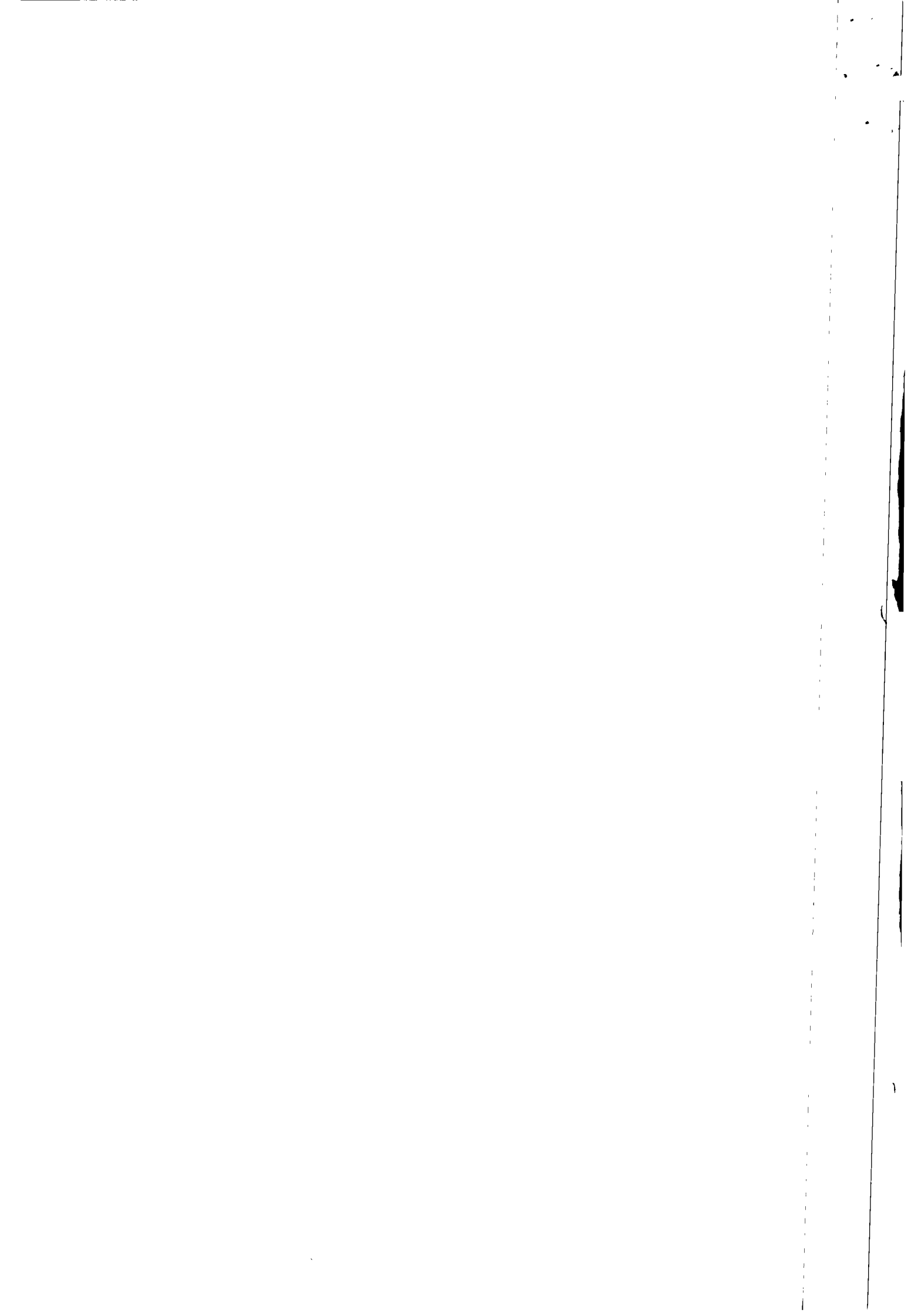
2. **THAT** pursuant to Article 260 the President is categorized as a State



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Officer and is by extension a Public officer, who like other state officers' does exercise delegated authority from the people of Kenya.

3. **THAT** while other State Officers are exposed to a retirement age, for instance judges under article 167 of the Constitution and other Public officers, the retirement age of the political class is unrestricted and unfettered and left at the whim of individual choices therefore making Kenyans susceptible to a recycled crop of leaders who are often unwilling to surrender the political space to the younger generation.
4. **THAT** on the strength of Article 24 of the Constitution, it is reasonable and justifiable in an open and democratic society like Kenya to introduce a retirement age for the President and concisely set an age limit as a qualification for the election as president. It is therefore desirable that the political rights as captured under Article 38 of the Constitution be limited to the extent of introducing a bar to Presidential hopefuls above the age of 70 years.





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5. **THAT** there is no dearth of scientific research showing that with age, productivity levels of human beings reduce.
6. **THAT** consequently, it is in the best interest of the Republic which is aptly captured in the Latin Maxi-*Salus populi Suprema lex*- to introduce a retirement age of 70 years for the person serving/wishing to serve as the President.
7. **THAT** there is also a parallel need to introduce age limitations on the qualification and disqualification for the election of a President for in doing so the democratic space will undeniably grow at a more desirable speed.
8. **THAT** the introduction of the presidential age limit will be so crucial in the build up to a strong Nation with a healthy democracy.
9. **THAT** it will establish preconditions for more competitive democratic elections in this great Republic.
10. **THAT** the Constitution of Kenya permits positive discrimination.
11. **THAT** introduction of the presidential age limit amounts to positive discrimination.
12. **THAT** though unfortunate, the undeniable reality is that aging comes with



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a fair share of health challenges that are often costly to manage. As such, it makes it even more desirable to introduce a retirement age which will serve to cushion the Republic from unnecessary expenditure and/or disruptions as it strives towards the eradication of poverty, disease, ignorance and corruption.

12. **THAT** the 2011 World Report on Disability (Page 3) is elaborate in its introductory remarks on Understanding Disability and aptly documents that old age comes with increasing difficulty in functioning thus it would countermand the interest of the Republic to have a president who is unable or often under strenuous difficulty in handling national assignment either locally or internationally.

**HEREFORE** your humble petitioner prays that the National assembly finds;

1. **THAT** the National assembly be pleased to amend Article 137 of the Constitution of Kenya 2010 on the qualifications for eligibility to run for election as president and to set the retirement age of the president at the age 70 years.





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- 2. THAT the National Assembly be pleased to enact legislation specifically dealing with qualifications for election as president and the office of presidency in general and precisely limiting Article 38 of the Constitution.
- 3. THAT the proposed amendments do operate mutatis mutandis to the qualifications and disqualification of the Deputy President.
- 4. THAT the National Assembly be pleased to find that this petition raises serious, and overwhelming issues relating to governance and the general wellbeing of this great Republic.

and your PETITIONER will ever pray

NAME OF PETITIONER MUHAMMAD MUHAMMAD SHARAFU

FULL ADDRESS 224-70200 NAJIR

NATIONAL I.D NO. 22538568

SIGNATURE [Signature]

Dated at NAIROBI this 20<sup>th</sup> day of APRIL 2018

