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REPUBLIC OF KENYA

ELEVENTH PARLIAMENT- (SECOND SESSION)

THE NATIONAL ASSEMBLY

PETITIONS

(No. 062 of 2014)

CONVEYANCE OF A PETITION TO THE NATIONAL ASSEMBLY TO
AMEND THE CONSTITUTION OF KENYA, 2010

Honourable Members,

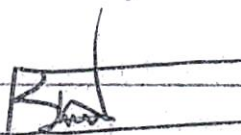
Pursuant to Standing Order 225(2) (b), I have a Petition to report to the House.

The Petition is signed by a Mr. Eric Barare Orina of P.O Box 12751-00400 Nairobi and prays for the introduction in the National Assembly, of a Bill to amend the Constitution in accordance with Article 256 (1) of the Constitution. Among the articles proposed for amendment include 81 (b), 90, 98 (1) (a) & (b), (2), 163, 177, 256, as well as the First Schedule.

Honourable Members,

This Petition 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). I must hasten to add that the Committee also undertakes to hear the Petitioner with a view to taking into account his views.

Thank you!


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

October 28, 2014

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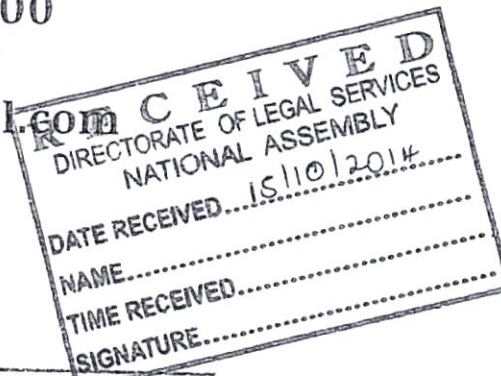
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ERIC BARARE ORINA

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Tel 0721 397 167

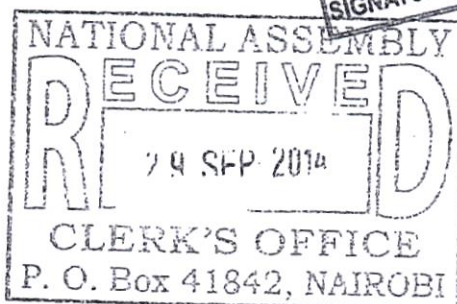
Email: orinaeric@gmail.com



My Ref: EBO/CNA/Pet.1/2014

Date: 29th September 2014

To the Clerk,
The National Assembly,
Parliament Buildings,
Parliament Road,
NAIROBI



RE: PETITION TO AMEND CONSTITUTION OF KENYA

In accordance with Article 119 of the Constitution of Kenya, and in accordance with the Petitions to Parliament (Procedure) Act, 2012, I the undersigned, a citizen of Kenya, ID NO. 10020699, hereby draws the attention of the House to the need to amend the Constitution of Kenya in accordance with Article 256 of the Constitution of Kenya as follows:

1. Repeal Article 81(b)

Rationale/ Justification: This provision, besides being impossible to implement or enforce, contradicts Article 81(d) of the Constitution. Elections must not be tailored to favour any candidate on the basis of gender or indeed on any other basis. All persons, whether male or female should be free to contest and be voted for in a free and fair election. If the article is meant to benefit women, it is excessive since women are already advantaged by Articles 97 (1) (b), 98 1(b), (c), (d), the proposed Article 98 (1) (e) and Article 177 (1) (c).

[Handwritten signature]

2. Repeal Article 90.

Rationale/ Justification: This is a very complicated provision which has experienced extreme difficulty in implementation.

3. Amend Article 97 by amending sub article 1 (b), repealing sub article (1) (c) and inserting clauses (d), (e) and (f) as follows:

b. Twelve women, each elected by the registered voters of the counties, each county constituting a single member constituency;

d. Thirty-five members elected, five by business and industry organizations, five by professional organizations, five by non governmental and civil society organizations, five by academia, five by trade unions, five by organizations representing persons with disabilities and five by youth organizations, as spelt out in an Act of Parliament;

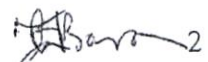
e. Seven members elected by Kenyans living outside the country as spelt out in an Act of Parliament;

f. Five members elected by marginalized ethnic and racial groups as spelt out in an Act of Parliament; and...

4. Amend Article 98 sub article (1) (a) and (b) to read as follows:

a) twelve members, each elected by the registered voters of the counties, each county constituting a single member constituency;

b) five women who shall be nominated, one by women's organizations, one by professional organizations, one by non governmental and civil society organizations, one by academia, and one by trade unions as spelt out in an Act of

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Parliament. Such elected members shall at all times reflect ethnic diversity.

5. Amend Article 98 sub article (1) to insert clauses (e) and (f)

e. Twelve members, (one man and one woman for each Diaspora region) representing Kenyans living outside the country, as spelt out in an Act of Parliament. Such elected members shall at all times reflect ethnic diversity.

f. Five members representing marginalized ethnic and racial groups as spelt out in an Act of Parliament.

6. Amend Article 98 (2) to read as follows:

The members referred to in clause (1) c) and (d) shall be elected by organizations representing persons with disabilities and youth, and as spelt out in an Act of Parliament. Such elected members shall at all times reflect ethnic diversity.

Rationale/ justification:

- The National Assembly and Senate should not be left entirely to persons elected or nominated through political parties.
- The second liberation and the new constitution were attained through the immeasurable contribution of professional organizations, non governmental organizations, civil society organizations, academia and trade unions.
- Members directly elected by and answerable to professional organizations, non governmental organizations, civil society organizations, academia and trade unions can enrich debate, law-making and strengthen Parliament's oversight role.

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- Kenyans in the Diaspora have played and continue to play a significant role in the country's economic, political and social development and deserve representation in the National Assembly and Senate.
- Some racial groups like Asians and Europeans and ethnic groups like Ogiek and Waswahili are completely sidelined in elections within the purely-politically delineated constituencies.

7. Amend Article 138 sub-article 8 (b) and (c), to allow the Presidential elections to proceed even if a candidate or their running mate has died.

Rationale/ justification: According to these provisions, should any presidential candidate or their running mate die once the election has been scheduled, the election would be cancelled and the waiting period for a new date could be more than 120 days, regardless of the rating of the candidate. This is inordinately long and unnecessary, and can cause instability, tension and chaos. As the tragedy where Presidential candidate Prof George Saitoti died showed, life has to go on!

8. Amend Article 140 (1) & (2) to extend the period within which a petition challenging a presidential election may be filed, heard and determined.

140 (1) A person may file a petition in the Supreme Court to challenge the election of the President-elect within twenty one (21) days after the date of the declaration of the results of the presidential election.

(2) Within forty-five days after the filing of a petition under clause (1) the Supreme Court shall hear and determine the petition and its decision shall be final.

Rationale/ justification: The current period provided is too short for any substantive litigation to be conducted, as the experience of the 2013 presidential petition showed.



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9. Amend Article 152 (3) to provide for Members of the National Assembly to be Cabinet Secretaries.

153 (3) A Cabinet Secretary shall be a member of the National Assembly.

Rationale/ justification: The current system of non-parliamentary Cabinet Secretaries has not been successful.

10. Amend Article 163 (1) to provide for Supreme Court judges to serve on a part-time basis.

163 (1) (d) All Supreme Court judges shall serve on a part-time basis, as and when the Supreme Court is constituted for the purpose of hearing and determining a matter.

Rationale/ Justification: The jurisdiction of the Supreme Court does not provide sufficient justification for full time Supreme Court judges.

11. Repeal Article 177 (1) (b), (2) & (3).

Rationale/ Justification: In line with the repeal of Article 81(b). The creation of an unknown number of seats to satisfy a politically artificial gender balance will pose severe problems for an economy that is yet to adjust to the new expanded governance structure. Members of either gender have an equal right to get elected and it is upon them to claim this right. Otherwise they can simply sit out an election and wait to be nominated, and then the county assembly ends up with additional, politically sterile persons (voting machines) who will be servile to the political party leaders that nominated them.

12. Amend Article 256 to insert sub article (6)

(6) "All legislation required subsequent to amendments to the constitution shall be enacted within six months of the amendment being assented to and published."

M. Adams

13. Amend Article 262 sub article 23 (2) to read as follows:

23 (2) A removal, or a process leading to the removal, of a judge or magistrate from office by virtue of the operation of legislation contemplated under subsection (1) shall be subject to review by the East African Court of Justice.

14. Amend Article 262 sub article 23 to insert sub article (3)

23 (3) Any judge or magistrate removed by the process envisaged in subsection (1) and who applies for review according to subsection (2) shall continue to enjoy full benefits until the matter is concluded.

Rationale/ Justification: The current provisions deny the judges and magistrates being vetted the right to appeal, which contravenes Article 50 of the constitution.

15. Amend the First Schedule (Article 6 (1)) COUNTIES to read as follows:

1. **Coast:** To comprise the current Mombasa, Kwale, Kilifi, Lamu and Taita Taveta counties;
2. **South Eastern:** To comprise the current Tana River, Garissa, Kitui and Makueni counties;
3. **North Eastern:** To comprise the current Isiolo, Wajir and Mandera counties;
4. **Mount Kenya:** To comprise the current Meru, Tharaka Nithi, Embu, Kirinyaga, and Nyeri counties;
5. **North Rift:** To comprise the current Marsabit, Samburu, Turkana and West Pokot counties;
6. **South Rift:** To comprise the current Laikipia, Nyandarua, Nakuru and Narok counties;
7. **Central Rift:** To comprise the current Uasin Gishu, Elgeyo Marakwet, and Baringo counties;
8. **West Rift:** To comprise the current Bomet, Kericho and Nandi counties;



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9. North Nyanza: To comprise the current Kisumu, Siaya and Vihiga counties;

10. South Nyanza: To comprise the current Kisii, Nyamira, Homabay and Migori counties;

11. Western: To comprise the current Kakamega, Bungoma, Trans Nzoia and Busia counties;

12. Nairobi: To comprise the current Nairobi City, Murang'a, Machakos, Kiambu, and Kajiado counties;

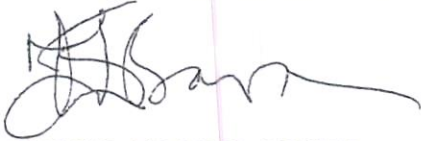
Rationale/ Justification: The current 47 counties are either unviable or extremely expensive for the economy as it is today. The experience over the past two or so years is that they engender national disunity rather than national unity.

THAT: I confirm that the issues in respect of which this petition is made are not pending before any court of law or constitutional or legal body;

AND HEREOFRE YOUR HUMBLE PETITIONER PRAYS THAT:

Parliament (National Assembly) introduces these proposed constitutional amendments in a Bill, in accordance with Article 256 (1) of the Constitution and publicises the Bill in accordance with Article 256 (2) of the Constitution.

AND YOUR PETITIONER WILL EVER PRAY.



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