

Approved for tabling.

~~BA~~ SNA
25/10/18

REPUBLIC OF KENYA



paper laid by the chairman
JLAC
myself
Thurs 25/10/2018

THE NATIONAL ASSEMBLY

TWELTH PARLIAMENT – SECOND SESSION, 2018

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

REPORT ON THE PETITION BY DR. GIBSON MACHANGA
MAREKA TO AMEND ARTICLES 81,138,144,145 AND 148 OF THE
CONSTITUTION OF KENYA

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2018

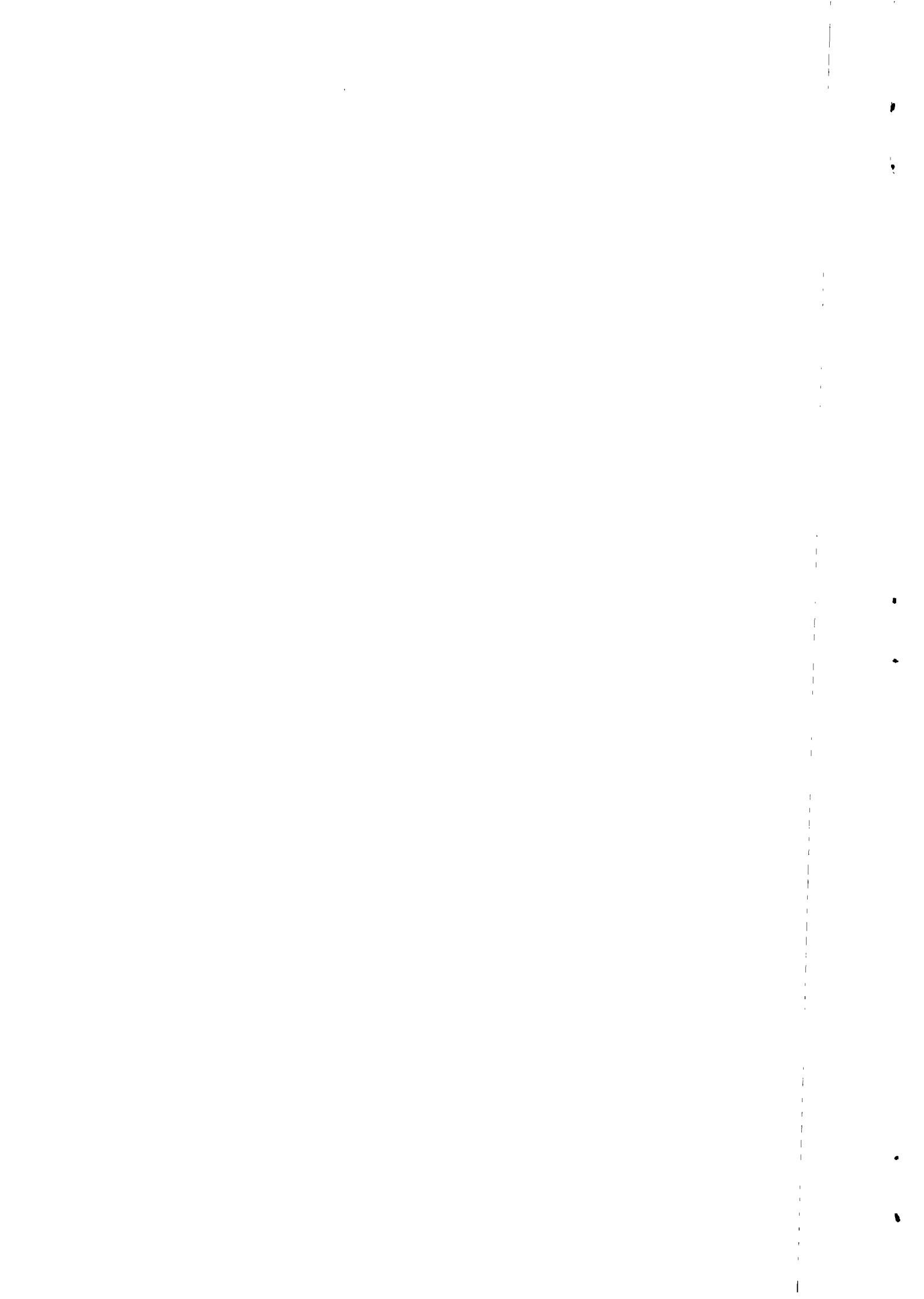


Table of Contents

ANNEXURES	3
CHAIRMAN'S FOREWORD	4
CHAPTER ONE	5
1.0 PREFACE.....	5
1.1. Mandate of the Committee	5
1.2. Committee Membership.....	6
1.3. Committee Secretariat.....	6
CHAPTER TWO	7
2.0 CONSIDERATION OF THE PETITION	7
2.1 Submissions by the Petitioner Dr. Gibson Machanga Mareko	7
CHAPTER THREE.....	11
3.0 COMMITTEE FINDINGS AND RECOMMENDATIONS.....	11
3.1 Committee Findings.....	11
3.2 Committee Recommendation	12

ANNEXURES

- A. Adoption List**
- B. Committee Minutes**
- C. Copy of the petition**

CHAIRMAN'S FOREWORD

The Speaker, Hon. Justin Muturi, conveyed this petition to the House on 1st August 2018. This is in accordance with the provisions of Standing Order No. 225 (2) (b). In summary, the Petition seeks to amend Article 81, 138, 144, 145 and 148 of the Constitution to provide, among other things, that-

- i. No person shall hold the same elective office for more than two terms;
- ii. A person shall be elected President of the Republic if they receive more than 70% of all valid votes cast in an election;
- iii. If the threshold is not reached, the two leading candidates should be declared first and second Presidents, having garnered at least 30% of valid votes cast, and each serve one term.

The Petition was thereafter referred to the Departmental Committee on Justice and Legal Affairs for consideration and preparation of a report within sixty days in line with the requirements of Standing Order 227.

In considering the Petition, the Committee, during one of its sittings on 28th August 2018, held a meeting with the Petitioner Dr. Gibson Machanga Mareka. The meeting was aimed at inquiring into the issues raised in the Petition.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my duty to table on the Floor of the House the Report of the Committee on the petition.

Hon. William Cheptumo, MP

Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1.0 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, 14th December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	-	<i>Chairperson</i>
Hon. Alice Muthoni Wahome, M.P.	-	<i>Vice Chairperson</i>
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuya, M.P.		
Hon. Charles Gimose, M.P.		
Hon. JohanaNg'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

2.0 CONSIDERATION OF THE PETITION

The Committee commenced its consideration of the Petition by meeting the Petitioner on 28th August 2018. During the meeting, written and oral evidence were adduced as noted hereunder:-

2.1 Submissions by the Petitioner Dr. Gibson Machanga Mareko

In his petition, Dr. Gibson Machanga Mareko, sought to draw the attention of the House to the need to amend the Constitution of Kenya in accordance with Article 256 (Amendment of the Constitution by parliamentary initiative) as follows-

1. Amend article 81 by inserting sub clause (f)

(f) No person shall hold the same elective office for more than two terms.

The amendment is intended to prevent persons from being in the same office for prolonged period of time therefore impeding development. It was his argument that by the time an individual has served for two terms they have had adequate opportunity to implement their ideas for development and therefore should make room for someone else with new ideas.

2. Amend Article 138 by amending sub article 4 (a) and 5 and repeal sub articles 6 and 7 as follows-

Article 138(4) A candidate shall be declared elected as President if the candidate receives-

(a) More than 70% of all the valid votes cast in the election

The petitioner submitted that the current threshold of 'more than half of the votes cast' for one to win the presidency is too low. It is even lower than the constitutional one-third (67%) required for the passage of some bills in Parliament. There is need to raise the threshold to 70% so that a President represents a true majority drawn from a wide cross section of the country. Raising the threshold will force political parties to form

poly-ethnic coalitions thus creating inter- ethnic glue which will help eliminate negative ethnicity in the Country. Further the winning margin had been too low resulting in the loser complaining continuously until the next election. However if the threshold is set at 70%, there would be an outright winner and the runner-up is not likely to grumble.

Article 138(5) be amended to read-

If no candidate is elected, the two leading candidates shall be declared first and second presidents, provided that both of them have garnered at least 30% of the votes cast in the election, to serve first and second terms proportionate to their percentage vote; the first to serve being the one with the highest vote percentage.

The petitioner submitted that the amendment aims at addressing the current constitutional dispensation where only one group can rule after any given political cycle. For example following the last General Election (2017) Uhuru Kenyatta garnered 50.51% of the votes while Raila Odinga, his closest competitor got 43.7% of the vote. It was the opinion of the petitioner that this was too big of a constituency to be ignored. If the situation was allowed to persist, the country would be courting political disaster of monumental proportions. This amendment would remove the need for a run-off or a situation where the loser goes to court claiming election malpractices. It would result in having two presidents at the cost of one general election, saving the money that would have been spent on a runoff and make every Kenyan a loser and a winner in equal measure.

It was the opinion of the petitioner that the advantages of this amendment include-ensuring governance inclusivity; promoting political tolerance; fostering political maturity; promoting nationalism; and detribalizing the Kenyan psyche.

3. Amend article 144(3)(a) as follows-

Article 144(3)(a)- three persons, *two of whom must be psychiatrist*, who are qualified to practice medicine under the laws of Kenya, nominated by the body which by law is responsible for regulating the professional practice of medicine.

The purpose of the provision is to assess the mental and physical capabilities of the President in terms of performing the functions of the office. This is best done by psychiatrists.

4. Amend Article 144 by amending sub article (8) and repealing sub articles (9) and (10) as follows-

Article 144(8) The report of the tribunal shall be final and not subject to appeal and if the tribunal reports that the president is capable *or not capable* of performing the functions of the office, the speaker of the National Assembly shall so announce in the National Assembly.

The petitioner submitted that clause 9 and 10 should be repealed as they would be in contravention of clause 8 once amended. The National Assembly, by voting, was in effect introducing an appeal to the report of the tribunal through the backdoor. It was his opinion that the National Assembly should embrace the report of the tribunal whatever the verdict. Providing a window for voting while the tribunal, composed of experts, had given its verdict defeats the purpose of setting up the tribunal. Also the voting process was open to abuse.

5. Amend article 145 by amending sub-article (6)(b) and repealing sub article 7 as follows-

Article 145(6)-If the special committee reports that the particulars of any allegation against the President-

(b) have been substantiated, the president shall cease to hold office.

The petitioner submitted that there was no need for the Senate to vote on an impeachment charge against the President if the special committee substantiates the allegations for the impeachment. The voting process would be open to abuse.

6. Amend article 148 by inserting sub article (9) as follows-

Article 148(9) - A person shall not hold office as the president if he has served as deputy president for two terms.

The petitioner was of the opinion that this would ensure that the country's governance was not dominated by one person for twenty years, that is, ten years as deputy president and then ten years as president. Also the deputy president would have undue advantage over other candidates when he/ she ran for the office of the President because he/she would have access to government resources.

The petitioner confirmed that the issues in respect of which the petition was made were not before any court of law or any legal body.

The Petitioner therefore prays that Parliament introduces the proposed constitutional amendments in a Bill in accordance with Article 256 (1) of the Constitution of Kenya, 2010 and publicizes it in accordance with Article 256 (2).

CHAPTER THREE

3.0 COMMITTEE FINDINGS AND RECOMMENDATIONS

3.1 Committee Findings

The Committee made the following observations from the evidence adduced in the meetings-

1. On the proposed amendment to Article 81 (*on general principles for the electoral system*) by inserting sub clause (f) to ensure that no person shall hold the same elective office for more than two terms *the Committee was of the view that the proposal lacks merit.*
2. On the proposed amendment to Article 138(4) (*on procedure at a presidential election*) to require that a candidate shall be declared elected as President if the candidate receives more than 70% of all the valid votes cast in the election, *the Committee was of the view that the proposal was untenable, unrealistic and utopian.*
3. On the proposed amendment to Article 144(3)(a) (*on removal of the president on grounds of incapacity*) to provide the inclusion of *two psychiatrists* who are qualified to practice medicine under the laws of Kenya, nominated by the body which by law is responsible for regulating the professional practice of medicine in the tribunal to determine the physical and mental capacity of a President to serve in office, *the Committee was of the view that the technical details relating to the area of specialization required of the doctor to serve in the tribunal are matters that would be best dealt with in legislation since the Constitution mainly outlines principles in a broad framework.*
4. On the proposed amendment to Article 144(8) (*on removal of the president on grounds of incapacity*) on the report of the tribunal to provide that it shall be final and not subject to appeal and if the tribunal reports that the president is capable *or not capable* of performing the functions of the office, the Speaker of

the National Assembly shall so announce in the National Assembly *the Committee was of the view that the proposed additional words are superfluous.*

5. On the proposed amendment to Article 145(6) (*on removal of president by impeachment*) to require that if the special committee reports that the particulars of any allegation against the President have been substantiated, the president shall cease to hold office, *the Committee was of the view that the proposal seeks to overthrow the jurisdiction of Parliament to consider and vote on the matter.*

6. On the proposed amendment to Article 148(9) (*on election and swearing in of Deputy President*) to provide that a person shall not hold office as the president if he has served as deputy president for two terms, *the Committee opined that it was undemocratic as it attempts to fetter the rights of a person to vie for political office. The right to seek political office and the qualifications/disqualifications to run for office of president are set out in the Constitution.*

7. The House had previously expressed itself on the same matters which were presented to the Committee of Justice and Legal Affairs of the Eleventh Parliament which found the Petition as lacking merit.

3.2 Committee Recommendation

In response to the prayers by the Petitioner, the Committee recommends that **the petition be rejected.**

Sign.......... Date.....24.10.18.....

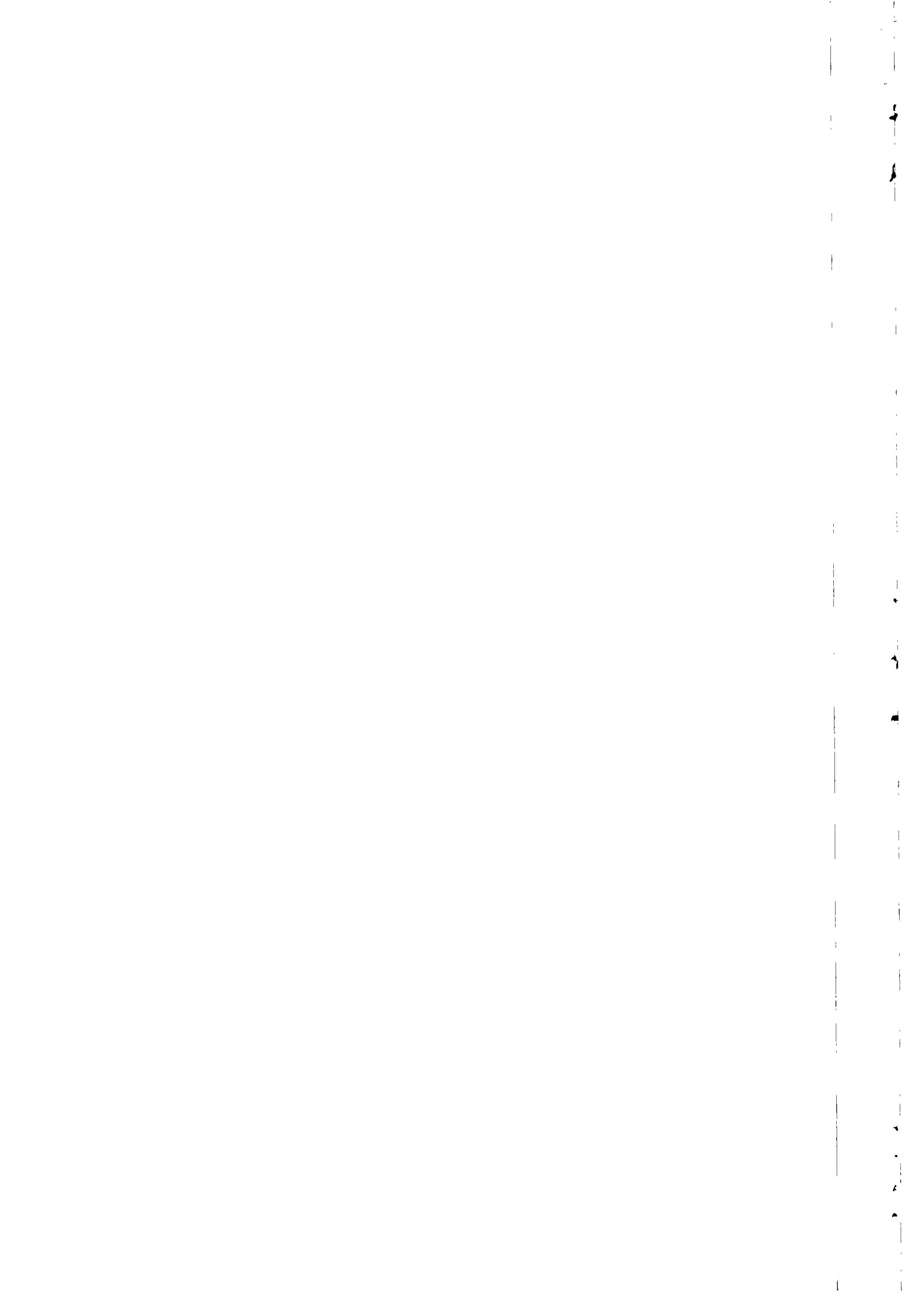
Hon. William Cheptumo, MP

Chairman, Departmental Committee on Justice and Legal Affairs
















ANNEXURE A

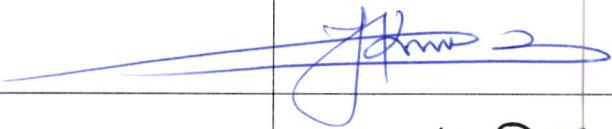

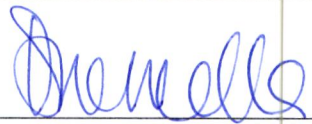



ADOPTION LIST



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**ADOPTION LIST FOR THE REPORT ON PETITION BY MR. GIBSON MACHANGA MAREKO
TO AMEND THE CONSTITUTION OF KENYA**

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. - Chairperson	
2.	Hon. Alice Wahome, MP. - Vice Chairperson	
3.	Hon. John Olago Aluoch, MP.	
4.	Hon. Roselinda Soipan Tuya, MP.	
5.	Hon. Ben Momanyi, MP.	
6.	Hon. William Kamoti, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Zuleikha Hassan, MP.	
9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Charles Gimose, 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.	

ANNEXURE B

COMMITTEE MINUTES



MINUTES OF THE SIXTY- SIXTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 28TH AUGUST, 2018 AT 10:00A.M. IN THE COMMISSION BOARDROOM, FIRST FLOOR,COUNTY HALL, PARLIAMENT BUILDINGS

PRESENT

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. Alice Muthoni Wahome, M.P. - **Vice Chairperson**
3. Hon. Ben O. Momanyi, MP.
4. Hon. George G. Murugara, M.P
5. Hon. John Olago Aluoch, M.P.
6. Hon. William K. Mwamkale, M.P.
7. Hon. Peter O. Kaluma, M.P.
8. Hon. Beatrice Adagala, M.P
9. Hon. Gladys Boss Shollei, CBS, M.P
10. Hon. Jennifer Shamalla, M.P.
11. Hon. Anthony G. Kiai, M.P.

ABSENT WITH APOLOGIES

1. Hon. Charles Gimose, M.P.
2. Hon. Johana Ng'eno, M.P.
3. Hon. Adan Haji Yussuf, M.P.
4. Hon. Japheth Mutai, M.P.
5. Hon. John M. Wambugu, M.P.
6. Hon. Zuleikha Hassan, M.P.
7. Hon. Roselinda Soipan Tuya, M.P.
8. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE

COMMITTEE SECRETARIAT

1. Mr. George Gazemba - Principal Clerk Assistant II
2. Ms. Doreen Karani - Legal Counsel II
3. Ms. Halima Hussein - Third Clerk Assistant
4. Ms. Fiona Musili - Research Officer III
5. Mr. Omar Abdirahim - Fiscal Analyst III

PETITIONERS

1. Mr. Geoffrey Otieno Ogola - Petitioner
2. Dr. Gibson Maachanga Mareko - Petitioner

MIN No. 239 /2018

PRELIMINARIES

The Chairperson called the meeting to order at 10:23 a.m. which was followed by a word of prayer from himself.

The Chairperson informed the meeting as follows-

- (i) The Independent Electoral and Boundaries Commission (IEBC) was scheduled to appear before the Committee on Thursday, 30th August, 2018 at 10.00 a.m. to discuss; the aftermath of the court case which declared the resignation of three (3) Commissioners as irregular, enhancing accountability and public confidence restoration by the Commission following the 2017 general elections among other issues;
- (ii) The Independent Electoral and Boundaries Commission had invited the Committee to accompany it on election observation missions as follows-

No	COUNTRY	ELECTION	DATE
1.	Rwanda	Legislative elections	2 nd to 4 th Sept, 2018
2.	Sweden	General election	9 th Sept, 2018
3.	Canada-New Brunswick	General election	24 th Sept, 2018
4.	Canada-Qeubec	General election	1 st Oct, 2018
5.	Brazil	General election	28 th Oct, 2018
6.	Thailand	General election	Nov, 2018
7.	United States of America (USA)	Gubernatorial elections	6 th November, 2018
8.	South Sudan	Presidential, National Assembly and Local elections	By 31 st Dec, 2018
9.	India	Lok Sabha	May, 2018

The Committee considered the invitation and resolved to send three (3) Members each to Canada-Quebec and United States of America (USA) elections. The meeting tasked the Chairperson and Vice Chairperson to determine which Members to travel and advise the Committee.

- (iii) The Committee also resolved to send three (3) Members to the International Bar Association (IBA) Annual Conference scheduled for 7th to 12th October, 2018 in Rome, Italy and tasked the Chairperson and Vice Chairperson to determine which Members to attend.

MIN No.240 /2018:-

CONFIRMATION OF MINUTES

Minutes of the sixty-fourth sitting held on 14th August, 2018 at 10.00 a.m. in the Mini Chamber, County Hall were confirmed as true record of proceedings and signed by the Chairperson after

being proposed by Hon. John Olago Aluoch, M.P. and seconded by and Hon. Beatrice Adagala, MP. There were no matters arising from the minutes.

MIN No.241/2018:- **CONSIDERATION OF PETITIONS BEFORE THE COMMITTEE**

(i) Petition by Mr. Geoffrey Otieno Ogola

The Petition sought to amend the Constitution to establish an elected jury system to take over the role of rendering verdicts and setting penalties from the judges and judicial officials of subordinate courts to fulfil the requirements of Article 1 (2) with a view to ending the unconstitutional exercise of sovereign power of the people by the judicial officials.

The Petitioner Mr. Geoffrey Otieno Ogola, a physiotherapist by profession appeared before the Committee and made submissions in support of his Petition as follows-

- a) Article 1 (2) of the Constitution states that all the judicial officers currently exercising judicial authority in the Judiciary are doing so as representatives of the people of Kenya and them having not been democratically elected, were exercising the sovereign power of the people illegally;
- b) That Parliament should amend Chapter 10 of the Constitution to remove the ambiguities that have led to gross misinterpretation and misapplication of the Constitution;
- c) That if an elected jury system is introduced, it would complement the dictates of clause 2 Article 1 and 10 of the Constitution as this will ensure that judicial officers exercise the will of the people.

(ii) Petition by the Law Society of Kenya (LSK)

The Petition sought to remove the 15 years' experience limit for eligibility to contest for election as representative of the Society at the Judicial Service Commission. The Law Society of Kenya did not appear before the Committee but wrote stating that its written submissions accompanying the petition were enough for the Committee to decide on the Petition.

The Committee resolved to use the written submissions as presented in determining the fate of the Petition during the retreat scheduled for 30th August to 4th September, 2018 in Mombasa.

(iii) Petition by Dr. Gibson Maachanga Mareko

He submitted the following amendments to various Articles of the Constitution;

- a) Article 81 of the Constitution to ensure no person holds same elective post for than two terms to prevent persons from being in the same office for prolong period of time.
- b) Article 138 of the Constitution to ensure that in a presidential election the winner must garner more than 70% of all the valid votes cast and if no candidates get the 70% plus

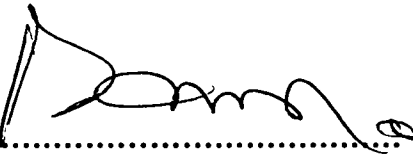
the two leading candidates be declared first and second presidents. He submitted this will reduce election tension and promote political tolerance in the country.

- c) Article 144 (3) (a) to include psychiatrists in the medical panel that examines presidential candidates to ensure the mental and capabilities of the person is assessed by the right doctors.
- d) Amending Article 144 (8) to provide options
- e) Article 145 (6) (b) to ensure after have been substantiated the president cease to hold office to prevent the voting stage.
- f) Article 148 by inserting 148 (9) to ensure a person does not hold office as president if he or she has served as Deputy President for two terms this will ensure that the country's governance is not dominated by one person for twenty years.

MIN No.242/2018:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 11.30 a.m. to a date to be communicated later.

Signed.....

Chairperson

Date..... 09.10.18

MINUTES OF THE SEVENTY-FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 4TH SEPTEMBER, 2018 AT 10:00 A.M. IN MUDUGUNI ROOM, PRIDE INN PARADISE HOTEL, MOMBASA

PRESENT

- | | | |
|------------------------------------|---|-------------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. George G. Murugara, M.P. | | |
| 4. Hon. John Olago Aluoch, M.P. | | |
| 5. Hon. William K. Mwamkale, M.P. | | |
| 6. Hon. Charles Gimose, M.P. | | |
| 7. Hon. Peter O. Kaluma, M.P. | | |
| 8. Hon. Beatrice Adagala, M.P. | | |
| 9. Hon. Jennifer Shamalla, M.P. | | |
| 10. Hon. Anthony G. Kiai, M.P. | | |
| 11. Hon. Adan Haji Yussuf, M.P. | | |
| 12. Hon. Japheth Mutai, M.P. | | |
| 13. Hon. John Kiarie Waweru, M.P. | | |

ABSENT WITH APOLOGIES

1. Hon. Ben Momanyi, MP.
2. Hon. Gladys Boss Shollei, CBS, M.P.
3. Hon. John M. Wambugu, M.P.
4. Hon. Roselinda Soipan Tuya, M.P.

ABSENT

1. Hon. Zuleikha Hassan, M.P.
2. Hon. Johana Ng'eno, M.P.

IN ATTENDANCE

COMMITTEE SECRETARIAT

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Ms. Doreen Karani | - | Legal Counsel II |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |
| 4. Ms. Fiona Musili | - | Research Officer III |
| 5. Mr. Omar Abdirahim | - | Fiscal Analyst III |

MIN No. 272/2018:

PRELIMINARIES

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

MIN No. 273/2018: **DRAFT REPORT ON A PETITION BY MR. GEOFFREY OTIENO OGOLA**

The Committee considered the draft report on the petition regarding amendment to the Constitution of Kenya to establish an Elected Jury System to take over the role of rendering verdicts and setting penalties from judicial officers.

The Committee observed that vetting by Parliament would offer an opportunity for public participation in the appointment of judicial officers as the people's representatives would vet and approve the body responsible for overseeing the human resource function in the Judiciary.

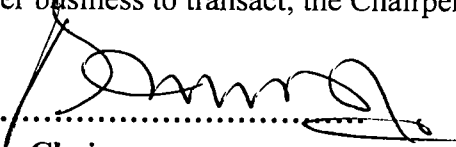
MIN No. 274/2018: **DRAFT REPORT ON A PETITION BY DR. GIBSON MACHANGA MAREKO**

The Committee considered the draft report on the petition regarding amendment to various Articles of the Constitution of Kenya and observed as follows-

- a. The amendment the petitioner proposed could be provided in enabling legislation and not Constitutional amendment
- b. The proposed amendment to Article 148(9) (*on election and swearing in of Deputy President*) was undemocratic as the right to seek for elective posts had been clearly provided for in the Constitution.

MIN No. 275/2018: **ADJOURNMENT**

There being no other business to transact, the Chairperson adjourned the meeting at 1.20 p.m.

Signed.....
Chairperson

Date.....24.10.18.....

MINUTES OF THE EIGHTIETH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 16TH OCTOBER, 2018 AT 10.30 A.M. IN COMMITTEE ROOM 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDING

PRESENT-

- | | | |
|------------------------------------|---|-------------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluoch, M.P. | | |
| 4. Hon. Peter O. Kaluma, M.P. | | |
| 5. Hon. William K. Mwamkale, M.P. | | |
| 6. Hon. Adan Haji Yussuf, M.P. | | |
| 7. Hon. Jennifer Shamalla, M.P. | | |
| 8. Hon. Japheth Mutai, M.P. | | |
| 9. Hon. Beatrice Adagala, M.P. | | |
| 10. Hon. Anthony G. Kiai, M.P. | | |

ABSENT WITH APOLOGIES

1. Hon. Ben Momanyi Orori, M.P.
2. Hon. Charles Gimose, M.P.
3. Hon. George G. Murugara, M.P.
4. Hon. Roselinda Soipan Tuya, M.P.

ABSENT

1. Hon. Johana Ngeno, M.P.
2. Hon. Zuleikha Hassan, M.P.
3. Hon. John M Wambugu, M.P.
4. Hon. Gladys B. Shollei, CBS, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE

1. Ms. Doreen Karani
2. Ms Halima Hussein

COMMITTEE SECRETARIAT

- | | |
|---|---------------------|
| - | Legal Counsel II |
| - | Clerk Assistant III |

MIN No.294/2018:

PRAYERS AND PRELIMANARIES

The Chairperson called the meeting to order at 10.30 a.m. with a word of prayer from himself

MIN No.295/2018:

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

- a. Minutes of the Seventy-Eight Sitting held on Tuesday 9th October, 2018 at 10.50 am in Committee Room 4th Floor, Continental House were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Japheth Mutai, M.P and seconded by Hon. John Olago, MP.
- b. Minutes of the Seventy-ninth Sitting held on Thursday 11th October, 2018 at 10:30 am in Committee Room 4th Floor, Continental House were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago MP and seconded by Hon. Beatrice Adagala, MP

MIN No.296/2018:

MEETING THE ATTORNEY GENERAL TO RESPOND TO QUESTION No. 060/2018 BY MEMBER FOR KIHARU CONSTITUENCY (HON. NDINDI NYORO, MP.)

The Attorney General was invited to appear before the Committee to respond to Question No. 060/2018 by Member for Kiharu Constituency (Hon. Ndindi Nyoro, MP.) however, the Attorney General sent his apology and the meeting was rescheduled to Thursday 25th October, 2018.

MIN No.297/2018:

ADOPTION OF REPORTS ON LEGISLATIVE PROPOSALS AND PETITIONS

The Committee adopted the reports of six legislative proposals and two petitions as follows

- a. The report on the petition to amend Articles 8, 138, 144, 145 and 148 of the Constitution of Kenya by Dr. Gibson Machanga was adopted on a proposal by Hon. Jeniffer Shamalla, MP and seconded by Hon. Alice Wahome, MP.
- b. The report on the petition to amend the Constitution of Kenya to establish an elected jury system by Mr. Geoffrey Otieno Ogola was adopted on a proposal by Hon. Jeniffer Shamalla, MP and seconded by Beatrice Adagala, MP
- c. The report on the Legislative Proposal for Elections (Amendment) Bill, 2018 that proposes to amend section 35 of the Election Act No. 24 of 2011 to change the time for submission of party lists by Political Parties for persons elected under Article 90 of the Constitution from “at least forty-five (45) days from the date of the General Election to “within twenty-one (21) days after the General Election by Hon. Florence Mutua, MP was adopted on a proposal by Hon. William Kamoti, MP and seconded by Hon. Japheth Mutai, MP.
- d. The report on the Legislative Proposal on the Constitution of Kenya (Amendment) Bill, 2018 that seeks to amend the Constitution of Kenya, 2010 in Article 140 clause (2) by increasing the timeline for the hearing of the presidential election petition by the Supreme Court from fourteen (14) to thirty (30) days by Hon. Christopher Aseka Wangaya was adopted on a proposal by Hon. William Kamoti, MP and seconded by Hon. John Olago, MP.

- e. The report on the Legislative Proposal on the Constitution of Kenya (Amendment) Bill, 2018 that proposes to amend the Constitution of Kenya, 2010 in Article 137 BY Hon. Zuleikha Hassan, MP was adopted on a proposal by Hon. Alice Wahome, MP and seconded by Hon. Japheth Mutai, MP.
- f. The report on the Legislative Proposal for Constitution of Kenya (Amendment) Bill, 2018 that seeks to guide the president on the age limit when nominating or appointing persons to the offices of Principal Secretaries, Ambassadors, High Commissioners, Diplomatic and Consular Representatives and other State and Public Officers by Hon. Benjamin Mwangi, MP was adopted on a proposal by Hon. Japheth Mutai, MP and seconded by Hon. Beatrice Adagala, MP
- g. The report on the Legislative Proposal for Parliamentary Service (Amendment) Bill, 2018 that seeks amend the Parliamentary Service Act to ensure that during recruitment and appointment of staff by Hon. Julius Melly, MP was adopted on a proposal by Hon. William Kamoti, MP and seconded by Hon. John Olago, MP.

MIN No.298/2018:

ANY OTHER BUSINESS

The Committee discussed an article that appeared in the Daily Nation on Friday 12th October, 2018 where Chief Justice was reported accusing the National Assembly for failing the Judiciary during the budget-making process. The Committee was concerned with the report and noted that during its joint retreat held in Mombasa with Judiciary in September, 2018 issues regarding judiciary budget cut were resolved.

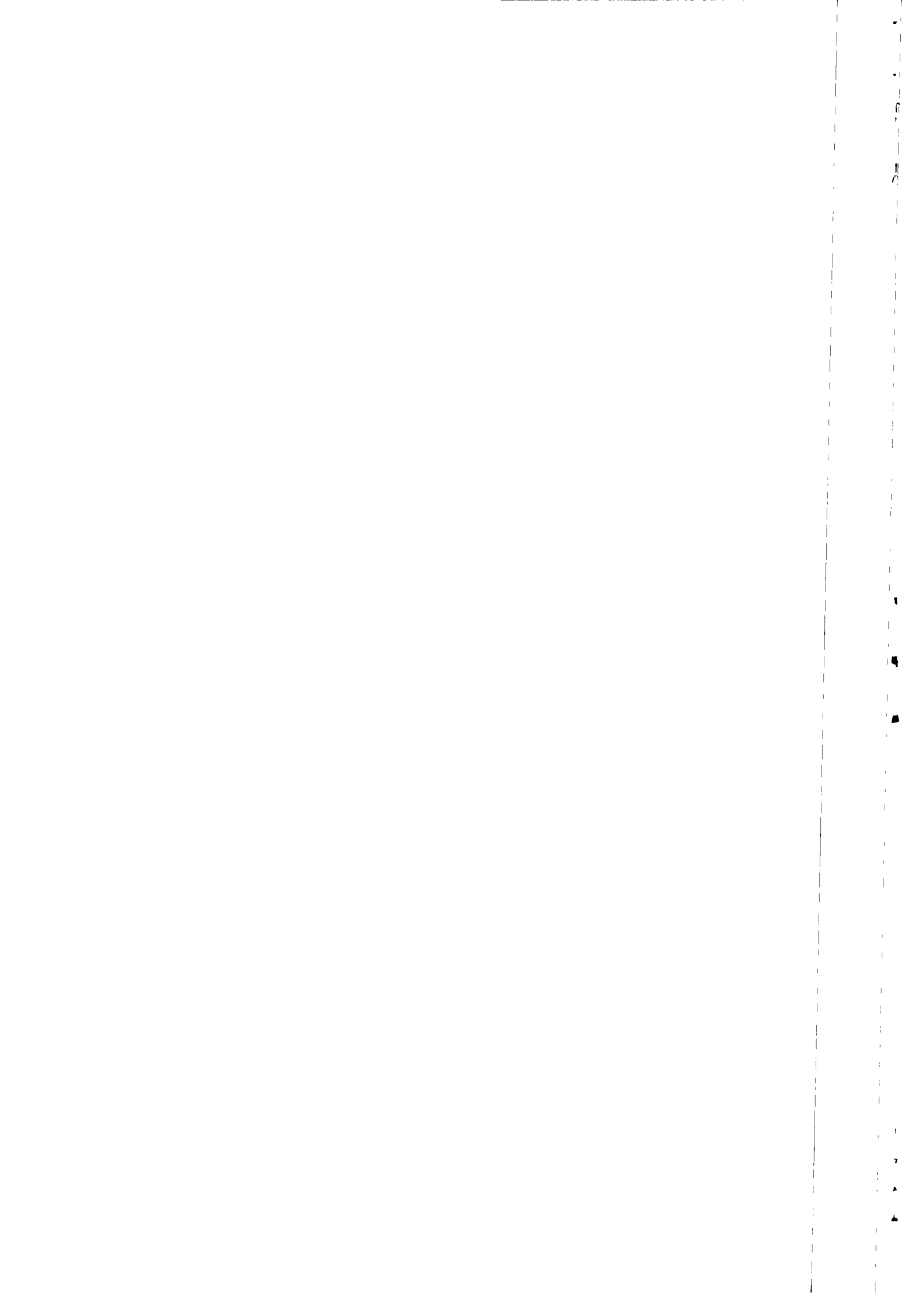
MIN No.299/2018:

ADJOURNMENT

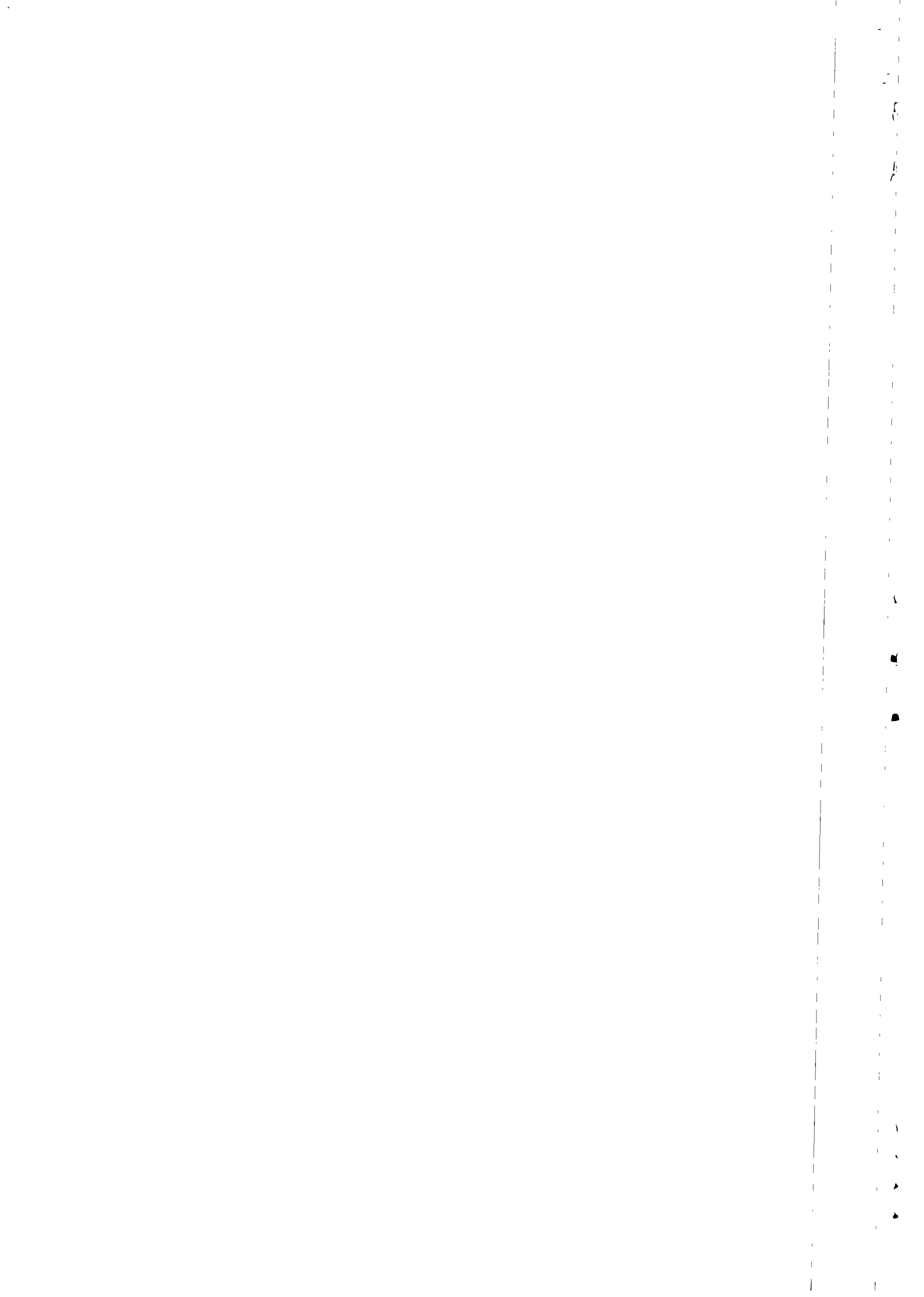
There being no Any Other Business to transact, the Chairperson adjourned the meeting at 12.00 pm.

Signed.....
Chairperson

Date.....24.10.18.....



ANNEXURE C
COPY PETITION

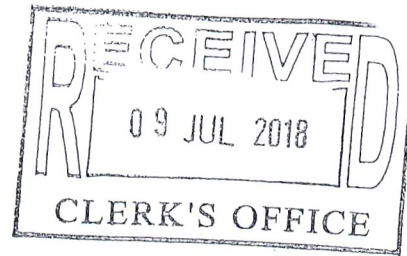


Dr. Gibson Machanga Mareko
P.O. Box 26-00202
Tel: 0724481658

Email: machangamarekpg@gmail.com

My Ref: IVI/NATASSEMB/001

Date: 03/07/2018



The Clerk,
National Assembly
P.O. Box 41842, Nairobi.

**RE: PETITION TO THE NATIONAL ASSEMBLY TO AMEND THE
CONSTITUTION OF KENYA 2010.**

Pursuant to article 119 of the constitution of Kenya 2010, and in accordance with the Petitions to Parliament (Procedure) Act, 2012, I, the undersigned, a Kenyan citizen, ID NO. 6485106, hereby draw 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. Amend article 81 by inserting sub clause (f).

81 (f). No person shall hold the same elective office for more than two terms.

Justification

This will prevent persons from being in the same office for prolonged periods of time therefore stymieing development.

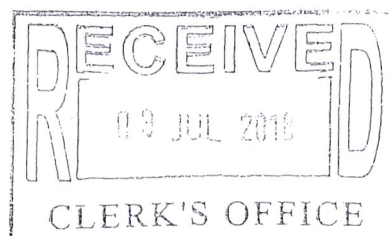
2. Amend Article 138 by amending sub article 4 (a) and 5 and repealing sub articles 6 and 7, as follows.

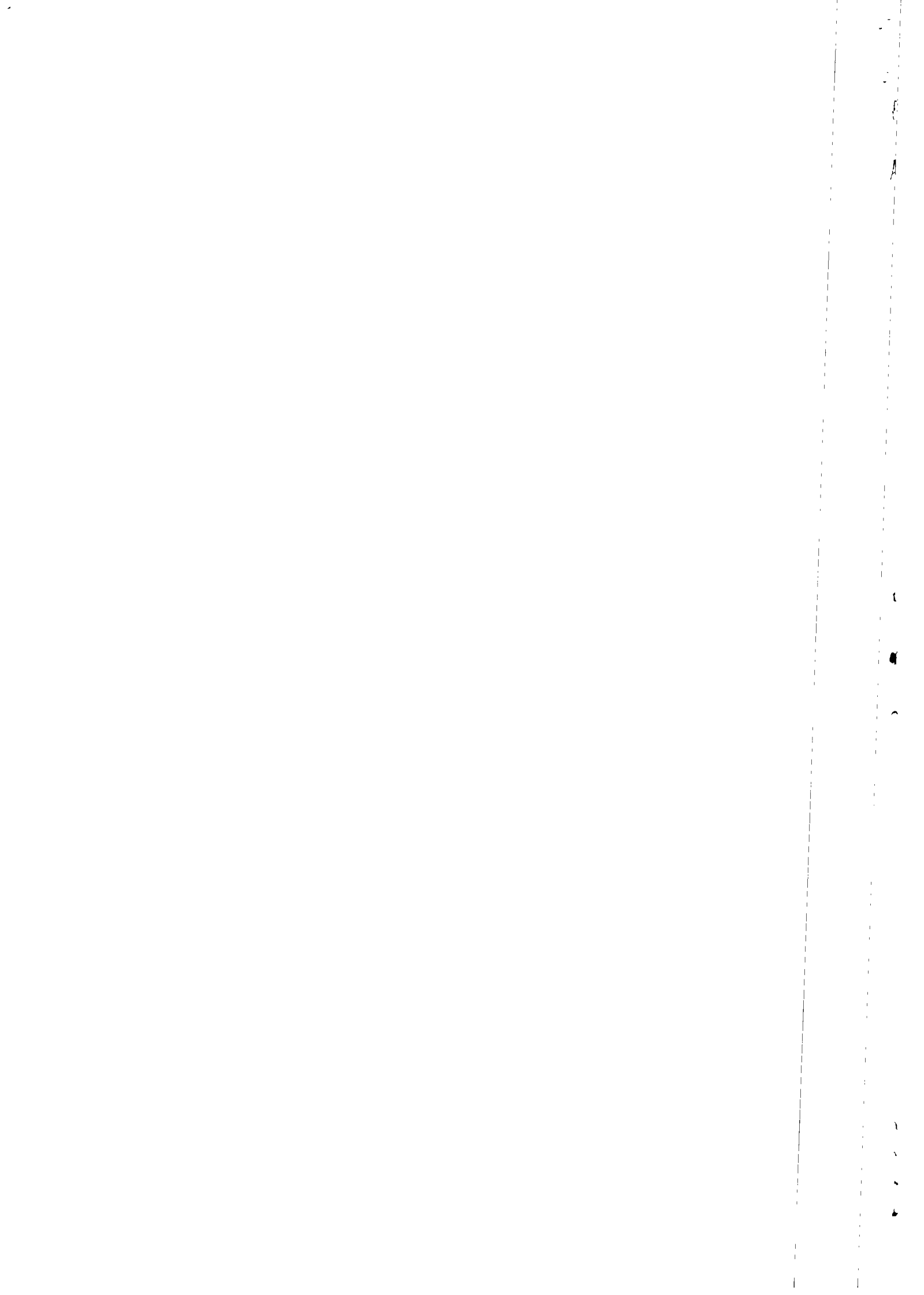
138 (4) (a). more than 70% of all the ((valid)) votes cast in the election;

138 (5). If no candidate is elected, the two leading candidates shall be declared first and second presidents, provided that both of them have garnered at least 30% of the votes cast in the election, to serve first and second terms proportionate to their percentage vote; the first to serve being the one with the highest vote percentage.

Justification

The country finds itself in unusual political circumstances (calling for unusual political solutions) characterized by ethnic political groupings all with their political eyes set on the presidency. Unfortunately, only one group can rule in any given political cycle of five years under the current constitutional dispensation. In the last general elections, Uhuru got 50.51% and Raila 43.7%. Under this constitution, we ignored 43.7% of the voters in governance for this five years. This is too big a constituency for this country to ignore and if we continue this





PETITION TO THE NATIONAL ASSEMBLY TO AMEND THE CONSTITUTION OF KENYA 2010.

way, as it may well play out in the next several general elections, we shall be definitely courting political disaster of monumental proportions.

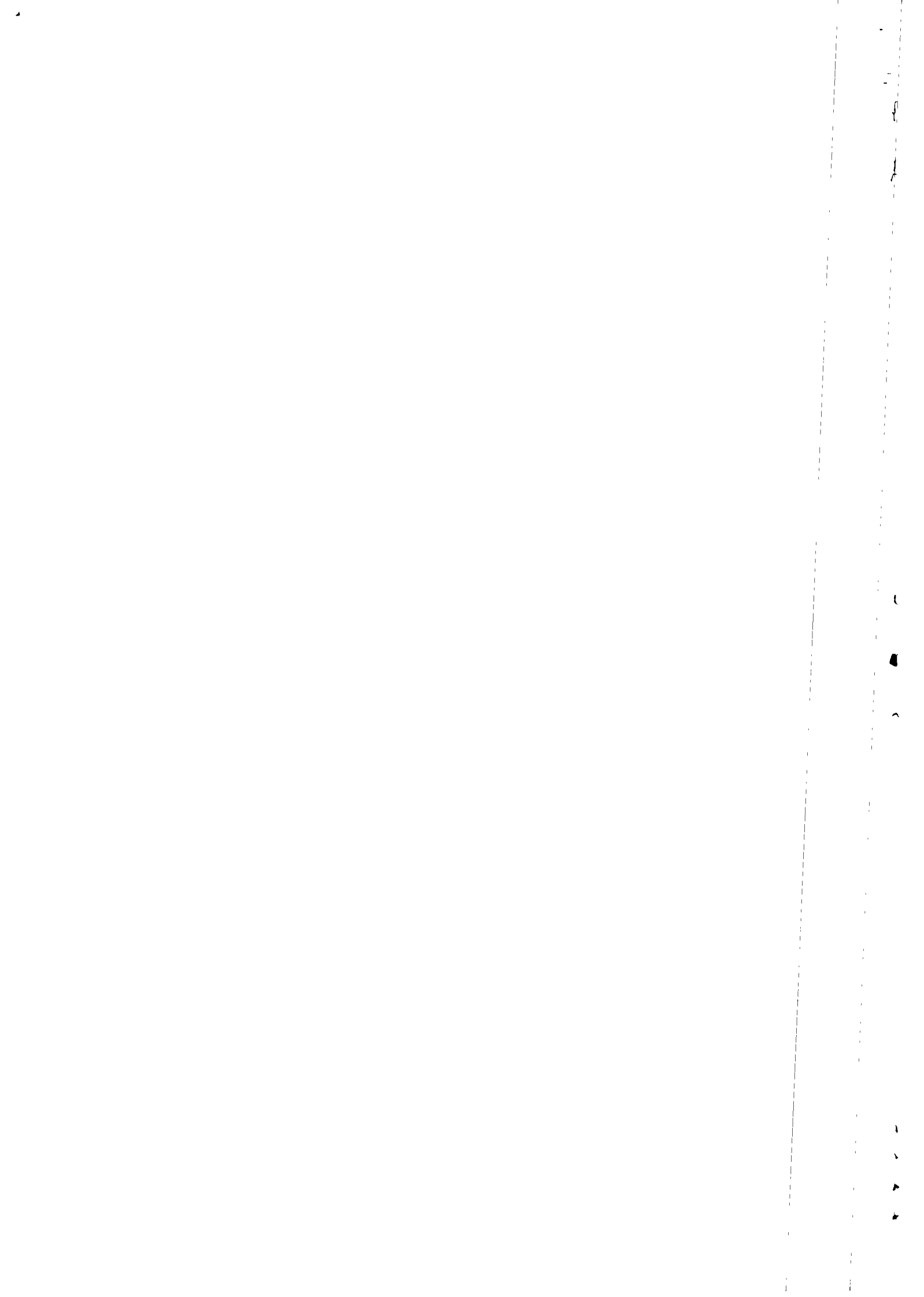
This should worry us as a country because there is a real danger of a certain political ethnically constituted group ruling for prolonged durations at the expense of other less populous and similarly ethnically constituted groups. This state is unsustainable as it creates a fertile ground for revolutions, social unrests, or coups.

The current threshold for the presidency is too low. This makes the crafting of the winning plan too easy. Just two ethnic groups is all it takes. This needs to be raised to 70% so that a president represents a true and not a false majority, drawn from a wider cross section of the country. This threshold is even lower than the constitutional one of two thirds for the passage of some bills in parliament. A vote meant to decide the president of this country ought to be higher than 67%, the basis for the proposed 70%. This threshold will force political parties to form coalitions that are poly ethnic-thus creating the inter-ethnic glue that we so desperately need in our quest to eliminate negative ethnicity. Several previous presidential election winning margins have been too low even to be explained by election malpractices and this status is likely to prevail for the next several presidential elections. As witnessed in the past, the loser continues grumbling until the next elections. This is politically unhealthy and should be sorted out one way or the other.

Even in the event that there is no outright winner, the margin between the two top contenders will be too small and under the current constitutional dispensation, there should be a run off. Because the difference is too small both sides will be highly charged to win. This creates a situation where the loser will grudgingly concede or go to court claiming nullification of the election on grounds of election malpractices. In the meantime, the country shall be burning. Even after the election case is amicably resolved, the loser will continue grumbling until the next general election, giving the winner a very hard time to rule, as have been witnessed in the last ten years. This is certainly unhealthy for the country and it should be avoided as much as possible. Additionally, given our history, we should avoid runoffs at all costs. But if the winner gets at least 70% of the votes, the Runners up will almost certainly not grumble. With this amendment, we shall have two presidents at the cost of one general election, save money for run off, prevent the country from burning and make every Kenyan a loser and a winner in equal measure.

Advantages

1. Ensure governance inclusivity.
2. Promote political tolerance.
3. Foster political maturity.
4. Promote nationalism.
5. Detribalize the Kenyan psych.



PETITION TO THE NATIONAL ASSEMBLY TO AMEND THE CONSTITUTION OF KENYA 2010.

3. Amend article 144 (3) (a) to read as follows.

144 (3) (a). Three persons, two of whom must be psychiatrists, who are qualified to practice medicine under the laws of Kenya, nominated by the body which by law is responsible for regulating the professional practice of medicine.

RE: PETITION TO AMEND THE CONSTITUTION OF KENYA 2010.

Justification

The purpose of this provision is to assess the mental and physical capabilities of the person. As it is in this article, any doctor is qualified-this is not true.

4. Amend article 144 by amending sub article (8) and repealing sub article (9) and (10) as follows.

144 (8). The report of the tribunal shall be final and not subject to appeal and if the tribunal reports that the president is capable or not capable of performing the functions of the office, the speaker of the National Assembly shall so announce in the National Assembly.

Justification

Clause 9 and 10 is a contravention of clause 8. The National Assembly, by voting, is in effect introducing an appeal through a legislative back door. The National Assembly should embrace the tribunal report either way. Providing a window for voting while the tribunal composed of experts have given its verdict defeats the purpose of setting up the tribunal in the first place, not to mention that such a process is open to abuse. Imagine if a tribunal reported that the president is incapable and the National Assembly voted that he continues performing! The country would then be under his handlers who haven't taken any oath. This would surely be a disaster.

5. Amend article 145 by amending sub-article (6) (b) and repealing sub article 7 as follows.

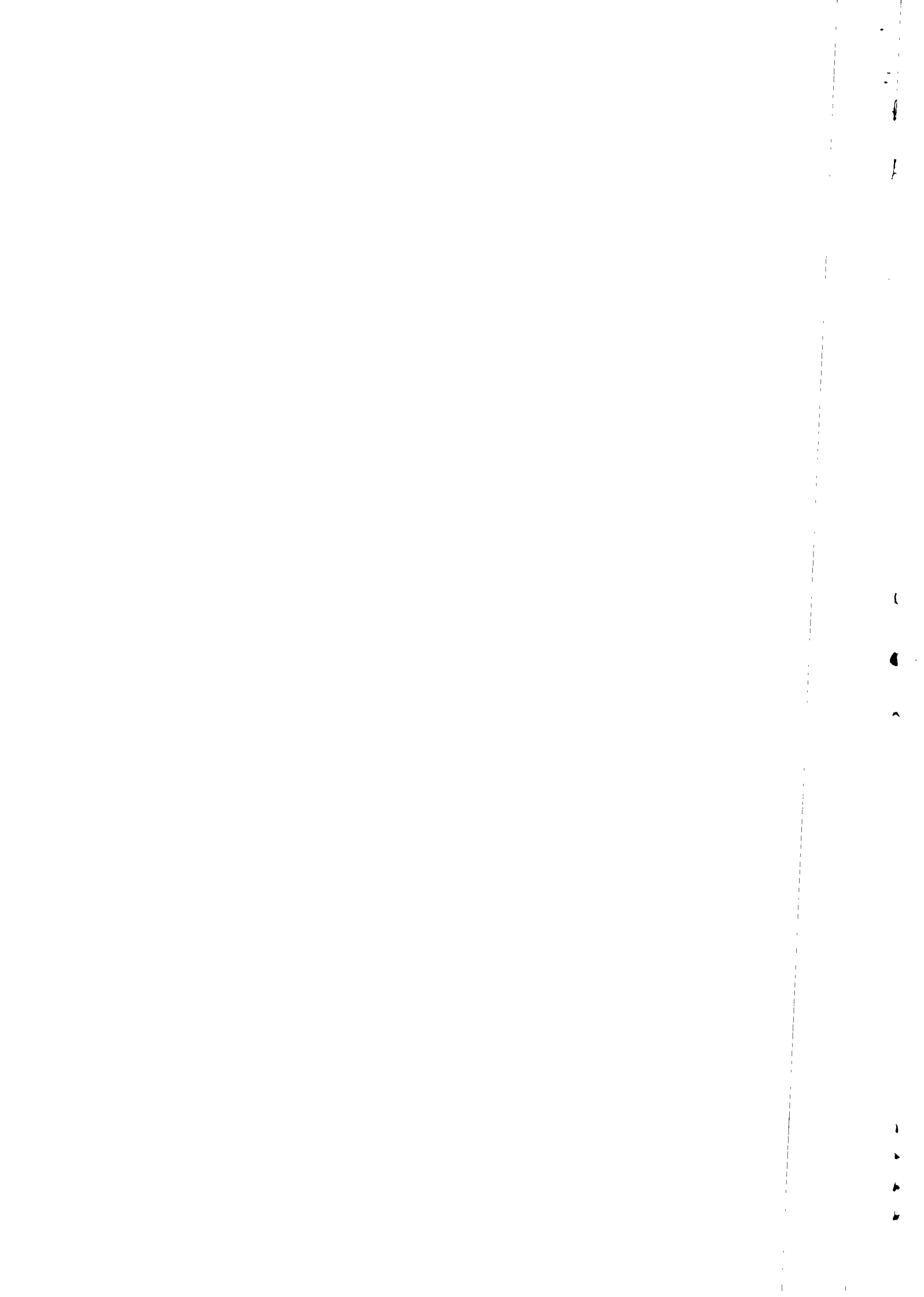
145 (6) (b). have been substantiated, the president shall cease to hold office.

Justification

The voting is unnecessary and it can be abused.

6. Amend article 148 by inserting sub article (9)

148 (9). A person shall not hold office as president if he has served as vice president for two terms.



**PETITION TO THE NATIONAL ASSEMBLY TO AMEND THE CONSTITUTION
OF KENYA 2010.**

Justification

This is to ensure that the country's governance is not dominated by one person for twenty years- ten as vice president and ten as deputy vice president.

THAT

Efforts have been made to have the matter addressed by the National Assembly but with non-satisfactory results.

THAT

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

AND HEREFORERE YOUR HUMBLE PETITIONER PRAY THAT:

Parliament (Senate) introduces these proposed constitutional amendments in a Bill, in accordance with Article 256 (1) of the Kenyan Constitution and publicises it in accordance with Article 256 (2) of the Kenyan Constitution, 2010.

AND YOUR HUMBLE PETITIONER WILL EVER PRAY.



GIBSON MAACHANGA MAREKO

ID 6485106

P.O Box 26, 00202, Nairobi.

email: machangamarekog@gmail.com

