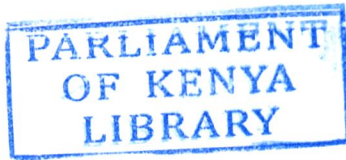


Approved for tabling. ~~Pat~~ SNA
4/7/18

REPUBLIC OF KENYA



paper read by the
Chambers JKAC
m.p.f

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 CHANGE OF THE CONSTITUTION TO
ALLOW FOR EQUITABLE REPRESENTATION OF ELECTORATE AND
FULFILLMENT OF GENDER PARITY IN LEGISLATURE BY MR. EZEKIEL
NJERU NAMU

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JULY, 2018

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LIST OF ABBREVIATIONS AND ACRONYMS

Hon	-	Honourable
IEBC	-	Independent Electoral and Boundaries Commission
LCM	-	Lowest Common Multiplier
M.P.	-	Member of Parliament
USA	-	United States of America

CHAIRPERSON'S FOREWARD

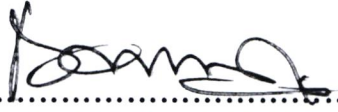
The Petition was conveyed to the House by the Speaker, Hon. Justin B. Muturi, EGH, M.P. on 19th April, 2018 pursuant to the provisions of Standing Order No. 225 (2) (b). The Petitioner, Mr. Ezekiel Njeru Namu prays that the House amends the Constitution of Kenya to provide for equitable representation of electorate and fulfilment of gender parity in the Legislature as envisaged by the constitution.

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 17th 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 13th 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

1. 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. 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

1. EVIDENCE

The Committee commenced its consideration of the Petition by meeting the Petitioner on 17th May 2018. The meeting proceeded as follows-

2.1 Submissions by the Petitioner, Mr. Ezekiel Njeru Namu

In his petition, Mr. Ezekiel Njeru Namu, sought to draw the attention of the House to the following-

- (i) The National Assembly as currently constituted does not satisfy the one- third gender rule as provided for in the Constitution of Kenya.
- (ii) The seat of the County Woman Representative to the National Assembly is discriminatory to men as they cannot offer themselves as candidates for this political seat;
- (iii) The seat of the County Woman Representative to the National Assembly discriminates against women in that a woman who has been elected by a county is remunerated as a man from a single member constituency;
- (iv) The Constitution does not clearly define the duties, responsibilities and privileges of women representatives to the National Assembly separately from those of the members of the National Assembly since both represent different constituencies;
- (v) The nomination of sixteen (16) women to the Senate is discriminatory as it assumes that the Kenyan electorate will always elect a Senate that is woman deficient;
- (vi) The nomination of sixteen (16) women senators according to article 98 (1) (b) of the Constitution is discriminatory as it offers no consideration to geographical representation;
- (vii) The nomination of members to county assemblies to satisfy the third gender rule infringes on the rights of the citizen to equal representation as it has no geographical requirement and therefore leads to representation of some areas and under representation of some areas.
- (viii) Article 120 (1) of the Constitution when applied to the counties reverses the gains of devolution as it does not endeavour to provide information to the citizen in a language they understand;

- (ix) The election law setting academic qualifications for member of county assembly at the undergraduate level is discriminatory as it isolates more than ninety percent of Kenyans from any elective seat;
- (x) The lack of equitable gender representation has been severally contested in courts of law with no immediate solution provided;
- (xi) The National Assembly has handled several petitions and bills on the same matters and the outcome has not satisfied both the law and the public.

The Petitioner's prayers to the National Assembly were as follows-

- (i) Article 97 1 (a) of the Constitution be repealed to increase the number of constituencies to three-hundred (300);
- (ii) Mega constituencies comprising three constituencies in which three (3) 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;
- (iii) Article 98 section 1 (b) of the constitution be amended and the position of nominated woman senator be scrapped.
- (iv) Mega-counties be created by pairing all counties except Nairobi in which two candidates each from other gender and representing individual counties shall offer themselves for election on joint candidature;
- (v) Article 177 1 (b) of the constitution be repealed to eliminate the position of nominated member a county assembly special seat for gender;
- (vi) Mega wards comprising of three wards for the 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;
- (vii) Article 120 (1) of the constitution be amended to provide for the use of native languages in County Assemblies;
- (viii) The constitution be amended to increase the term of Senators from five (5) to seven (7) years;

- (ix) The constitution be amended to increase the term of National Assembly Members from five (5) to six (6) years;
- (x) The constitution be amended to reduce the presidential term from five (5) to four (4) years to coincide with that of the County Assembly.
- (xi) The constitution be amended to reduce the term of County Assembly from five (5) to four (4) years to coincide with the presidential term;
- (xii) The Elections Act be amended to remove all academic qualifications for election as Members of National Assembly, Senate and Members of County Assembly.

Following the meeting with Petitioner, the Committee requested for written submissions from the Petitioner to expound on the issues raised in the Petition. In his written submissions, the Petitioner submitted as follows-

(i) Justification for increasing the constituencies from two hundred and ninety (290) to three hundred (300)

The Petitioner proposed to increase the number of constituencies from two hundred and ninety (290) to three hundred (300) to facilitate the creation of mega constituencies (as proposed in the Petition) since two hundred and ninety (290) is not divisible by three.

If approved, the Petition will accord the Independent Electoral and Boundaries Commission with an opportunity to review boundaries in places where they may have been poorly drawn due to geographical challenges especially places with rugged rugged terrain.

(ii) Justification for clustering electoral units

This will lead to achievement of the third gender principle as one of the leaders must be from the opposite gender and therefore there would be no need to nominate members on gender consideration to achieve gender parity hence reducing the wage bill. It will also eliminate the need for county women representatives in the National Assembly.

Clustering Constituencies encourages teamwork among leaders leading to less competition among units and lone ranger politics leading to enhanced development. Clustering of electoral units also encourages inter-unit co-operation leading to achievement of large projects which would be difficult for a single unit to achieve.

Clustering of electoral units leads to cheaper implementation of projects due to advantages of economies of scale. Development of clusters also reduces boundary disputes as boundaries will have lesser meaning and therefore foster good relations between various communities as they will be interdependent.

Introduction of cluster of electoral units will bring end to politics of voter buying as people will be able to influence elections in neighbouring units and if a candidate buys votes from the neighbouring electoral units, the votes will have a diminished effect on the outcome.

Introduction of clusters will foster national unity as it will force rival communities to work together for the common good of their cluster

(iii) Justification for removal of nominated gender seats

The seats are distributed without any geographical consideration and therefore create feeling that some areas are over represented while others are underrepresented. The assumption exists that the Senate shall always be women deficient and therefore it will always nominate sixteen (16) women to cater for the gender rule. This clause does not envisage a situation where the number of elected women Senators is more than that of men.

The nomination of women to special gender seats has also diluted the power of elected leaders since if they gang up with half the elected leaders they achieve the toughest constitutional threshold of two-thirds and can achieve simple majority by ganging with a quarter of elected Members plus one.

It is discriminatory to the disadvantaged gender, in this case being women themselves, as they are often compelled to vie for the seats reserved for women and are locked out of other positions such as member of Parliament, Senator, Governor.

(iv) Use of local languages in County Assemblies

This was one of the recommendations of Professor Ngugi Wa Thiong'o on his visit to Kenya after the first election under the new constitution (2010). He averred that information is best understood and best communicated in the first language.

Use of African indigenous languages in County Assemblies will increase public participation and Africanisation of County Assemblies leading to emancipation of the African mind and hence leading to increased patriotism and unlocking of the society's potential.

Use of African indigenous languages will improve our morality and make our society more responsible. Use of local languages is practiced in India Provincial States where Provincial Assemblies vote with two-thirds majority to allow the use of certain languages according to the Language Act of 1963. Bantu languages are used in South Africa, which has ten (10) official languages that are used in the Assembly.

(v) Justification of removal of education requirements

The law requiring academic qualification eliminates more than ninety percent of Kenyans from any elective position in the country yet they pay taxes. Academic qualifications have been used variously in oppression of Africans especially in the

United States of America after the Fifteenth Amendment and before the passing of the Voting Rights Act of 1965.

Academic qualifications are not proof of leadership capability as many Kenyans have demonstrated by leading their communities without academic papers.

It creates a sense of discrimination and therefore destroys the national fabric by stratifying the society between those who can run for elections and those cannot and hence destroying patriotism.

(vi) Justification for staggering elections

It will lead to distribution of political energy and therefore make electors less emotive and more peaceful. It is cheaper to stagger elections. While illustrating, the Petitioner gave the following mathematical formula:

Let the cost of conducting Election for a single seat be equal to Y

Period 420 years - Arrived at by calculating L.C.M

(since elections for all the seats can only be held concurrently again after 420 years after the first election)

Current Cost of Election – $84/5 \times 6 \text{ seats} = 504y$

Therefore=

Election Cost

President	= 420/ 4	= 105y
Senator	= 420/7	= 60y
Governor	=420/5	= 84y
MP	= 420/5	= 70y
MCA	=420/4	= 105y
		424y

Conducting various elections at different periods allows the electorate a chance to scrutinize every leader individually and therefore get better quality leadership. Staggering elections will increase understanding of the various roles of leaders in various positions and therefore has an educative value.

Staggering election reduces the work of Independent Electoral and Boundaries Commission officials on the election day leading to more accurate results and consequently to fewer election petitions.

(vii) Justification for aligning elections of MCA's with those of President

It encourages the President to campaign in every village and ward making him more informed of people's needs. It helps in aligning the national agenda with the county

agenda creating an important link in the foundations of both and hence reducing infighting.

(viii) Justification for shorter Presidential/Governor term

Allows further scrutiny of the President and his/her appointees by a longer serving Legislature. Having a shorter presidential term ensures continuity in government even when presidential elections are disputed.

Having shorter terms for Governors than for Senators will offer the Senators an opportunity to scrutinize a Governors' activities after the end of their term.

CHAPTER THREE

COMMITTEE FINDINGS AND RECOMMENDATIONS

3.1 Committee findings

Upon considering the Petition, the Committee made the following findings-

- (i) The Petition had been procedurally presented to the House by the Petitioner in exercise of his right to present a petition to Parliament as outlined under Article 119 of the Constitution;
- (ii) The prayers in the Petition relate to matters that the National Assembly has the authority to consider in view of its mandate outlined under Articles 94 and 95 of the Constitution;
- (iii) In view of the prayers sought, they relate to amendment of the Constitution and other legislation, which is a function that the National Assembly is empowered to carry out. In this regard, amendments relating to the Constitution may be so commenced by way of Parliamentary Initiative as set out under Article 256 of the Constitution; and
- (iv) An amendment relating to the term of office of the President as sought by the Petitioner is subject to a referendum as required under Article 255(1)(f).

3.1.1 Committee Recommendations

The Committee recommends as follows-

- (i) As to the prayer that the National Assembly amends the constitution by repealing Article 97 section 1 (a) to increase the number of constituencies to three hundred (300), the Committee declined to grant this prayer. IEBC is mandated to revise boundaries after a public consultative exercise and the procedures to follow depend on population boundaries. The increase of constituencies will further encumber an already overburdened economy;
- (ii) As to the prayer that the National Assembly creates mega-constituencies composed of three (3) constituencies in which three (3) candidates, one (one) of which is from other gender and representing a single constituency, offer a joint candidature for election and upon election represent their constituencies, the Committee declined to grant this prayer. The citizens of Kenya enjoy adequate representation through their Members of Parliament, Senators, County Woman Representatives, Governors and Members of County Assemblies. Whereas the proposal

appears to be achievable, the recommendation is also based on hypothetical assumptions without real research or data to back it up.

- (iii) As to the prayer that the National Assembly amends the constitution by repealing article 98 (1) (b) to eliminate the position of nominated woman senator, the Committee declined to grant this prayer. This is because the position of nominated woman senator is created as an affirmative action measure pursuant to the constitution. In the past, it was evident that women representation of women in Parliament cannot be achieved through direct elections because of unequal power and socio-cultural beliefs hence the need for affirmative action;
- (iv) As to the prayer that the National Assembly 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 the Committee declined to grant this prayer. Whereas the proposal appears to be achievable, the recommendation is also based on hypothetical assumptions without real research or data to back it up.
- (v) As to the prayer that the National Assembly amends the Constitution to repeal article 177 (1) (b) to eliminate the position of nominated member a county assembly special seat for gender, the Committee declined to grant this prayer. This is because the position of nominated member of county assembly special seat for gender is created as an affirmative action measure pursuant to the Constitution. In the past, it was evident that women representation of women in Parliament cannot be achieved through direct elections because of unequal power and socio-cultural beliefs hence the need for affirmative action;
- (vi) As to the prayer that the National Assembly creates mega-wards composed of three wards for purpose of election in which three 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 the Committee declined to grant this prayer. Whereas the proposal appears to be achievable, the recommendation is also based on hypothetical assumptions without real research or data to back it up;
- (vii) As to the prayer that the National Assembly amends Article 120 (1) of the Constitution to allow for the adoption of African languages in County Assemblies, the Committee declined to grant this prayer. This is because the use of indigenous languages will result in discrimination and alienation of other communities. Use of African languages will create a language barrier for Kenyans who may not be able to understand the indigenous language of the majority of members in a County Assembly. Since the advent of devolution, it has been apparent

that Counties have assumed that resources and jobs in public offices therein is a preserve of the local communities only. The use of local language will perpetuate the practice of ethnicity and will encourage further division throughout the nation. The two official languages under per Article 7(2) of the Constitution enjoy prominence and are taught in Kenyan schools and their use fosters unity and cohesion as everyone is able to communicate and participate in sittings of any County Assembly of the Country;

- (viii) As to the prayer that the National Assembly amends the Constitution to increase the term of senators to seven (7) years, the term of National Assembly to six (6) years, reduce the presidential term and that of the county assemblies to four (4) years, the Committee declined to grant this prayer. The proposal will subject the country into perpetual elections which will prove expensive, ineffective and inefficient as it is a well-known fact that the electioneering period in Kenya is unique and often yields negative consequences on the economy due to the adverse political situation often experienced. Conducting elections each year may perpetuate the negative political situation without offering citizens an opportunity to focus on economic growth. Further, an amendment relating to the term of office of the President as sought is subject to a referendum as required under Article 255(1)f);
- (ix) As to the prayer that the National Assembly amends the Elections Act to remove all academic qualifications for election as members of National Assembly, the Committee declined to grant this prayer as it was of the view that the law should be operationalised first and thereafter be monitored for effectiveness or review depending on the outcome and views of Kenyans.

Signed.....
HON. WILLIAM CHEPTUMO, MP
Chairman, Departmental Committee on Justice and Legal Affairs

Date.....04-7-18......

ANNEXURE 1

(Adoption List)

KENYA NATIONAL ASSEMBLY







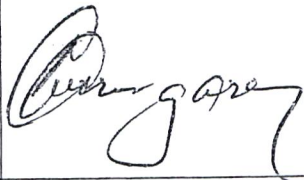
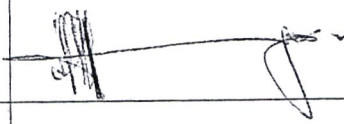


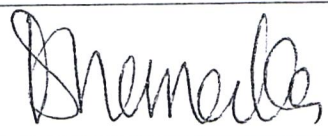

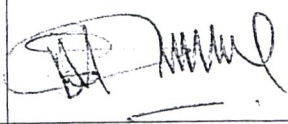

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ATTENDANCE REGISTER FOR MEMBERS

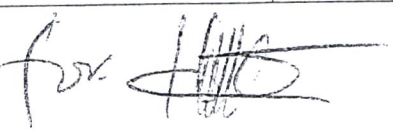
DATE... 13/6/18 TIME... 11:30am.....

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

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. 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 Sittings)

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

PRESENT-

Hon. William Cheptumo, M.P.	-	Chairperson
Hon. Alice Muthoni Wahome, M.P.	-	Vice Chairperson
Hon. Roselinda Soipan Tuyu, 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.....

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

PRESENT-

Hon. William Cheptumo, M.P.	-	Chairperson
Hon. Alice Muthoni Wahome, M.P.	-	Vice Chairperson
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**

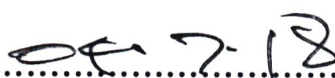
The Committee considered and unanimously adopted its report on a petition by Mr. Mohamed Mohamud Sheikh proposing to set age limit for contesting for the seat of President at seventy (70) years. The adoption of the report was proposed by Hon. Jennifer Shamalla and seconded by Hon. John Olago Aluoch.

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, 14th June, 2018 at 10.00 a.m. in the Boardroom on 2nd Floor, Continental House, Parliament Buildings.

Signed.....
Chairperson

Date..........

ANNEXURE 3

(Copy of the Petition)

REPUBLIC OF KENYA



TWELFTH PARLIAMENT
(SECOND SESSION)
THE NATIONAL ASSEMBLY
PETITION

(No.014 of 2018)

CONVEYANCE OF A PETITION ON THE REVIEW OF VARIOUS
ARTICLES OF THE CONSTITUTION

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 by one Ezekiel Njeru Namu, a resident of Embu County.

Honourable Members,

The Petitioner is proposing amendments to several Articles of the Constitution and statutes. Regarding amendments to the Constitution, he is proposing amendments to Article 89 on delimitation of electoral units, Article 98 on membership of the Senate, Article 101 on election of Members of Parliament, Article 120 (1) on official languages of Parliament, Article 136 on election of the President and Article 177 on membership and term of County Assembly. He is also proposing amendments to the electoral laws with regard to qualification for nomination and election of persons into the Offices of a Member of Parliament and Member of County Assembly.

Honourable Members,

In summary, the Petitioner recommends the following amendments to the Constitution: -

- (i) increase the numbers of constituencies from two hundred and ninety to three hundred constituencies;
- (ii) abolish the position of nominated women Senators;
- (iii) abolish the position of Members of County Assemblies nominated on the basis of gender;

- (iv) increase the term of a Member of Parliament to serve for six years in respect of a Member of National Assembly and seven years for Senators;
- (v) reduce the term of Presidency from five to four years;
- (vi) abolish all academic qualifications for election to Parliament and County Assemblies; and
- (vii) allow use of local languages in the proceedings of county assemblies.

Honourable Members,

You will agree with me that the prayers sought by the Petitioner require thoughtful consideration as they propose to fundamentally alter the architecture of our Constitution. The 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 should undertake to engage the Petitioner and may thereafter introduce necessary Bills for consideration by this House, in respect to the prayers sought by the Petitioner and should undertake to engage the Petitioner.

I, Thank you!



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

Thursday, April 19th 2018

PETITION FOR CHANGE OF CONSTITUTION TO ALLOW FOR EQUITABLE REPRESENTATION OF ELECTORATE AND FULFILLMENT OF GENDER PARITY IN LEGISLATURE

TO
THE NATIONAL ASSEMBLY
REPUBLIC OF KENYA
MAIN PARLIAMENT BUILDINGS

D Legu
8 01/03

I the undersigned, EZEKIEL NJERU NAMU, a citizen of the republic of Kenya and resident of Embu County

DRAW the attention of the house to the following:

THAT, the National Assembly as currently constituted does not satisfy the one third gender rule as expressed in the constitution.

THAT, the seat of the county woman representative to the National Assembly is discriminatory to men as they cannot offer themselves as candidates for these political seat.

THAT, the seat of the county woman representative to the National Assembly discriminates against women in that a woman who has been elected by a county is remunerated as a man elected from a single member constituency.

THAT, the constitution does not clearly define the duties responsibility and privileges of women representatives to the National Assembly separately from those of the members of National Assembly since both represent different constituencies.

THAT, the nomination of sixteen woman senators to the senate is discriminatory as it assumes that the Kenyan electorate shall always elect a senate that is woman deficient.

THAT, the nomination of sixteen women according to article 98 (1) (b) is discriminatory as it offers no consideration to geographical representation.

THAT, the nomination of members to county assembly to satisfy the third gender rule infringes on the rights of the citizen to equal representation as it has no geographical requirement and therefore leads to representation of some areas and under representation of some areas.

THAT, article 120(1) of the constitution when applied to the counties reverses the gains of devolution as it does not endeavor to provide information to the citizen in a language they understand.



Mr Wabala, L.C
please only to
submit the copy.
Wabala

PETITION FOR CHANGE OF CONSTITUTION TO ALLOW FOR EQUITABLE REPRESENTATION OF ELECTORATE AND FULFILLMENT OF GENDER PARITY IN LEGISLATURE

THAT, the election law setting academic qualification for members of county assembly at the undergraduate level is discriminatory as it isolates more than ninety percent of Kenyans from any elective seat.

THAT, the lack of equitable gender representation has been severally contested in counts of law with no immediate solution provided.

THAT, the National Assembly has handled –several petitions and bills on the some matters and the outcome has not satisfied both the law and the public.

HEREFORE your humble petitioner pray that parliament –

- (1) Amend the constitution by repealing Article 97 section 1(a) to increase the number of constituencies to three hundred
- (2) Create 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.
- (3) Amend the constitution by repealing article 98 section 1(b) and eliminate the position of nominated woman senator
- (4) Create 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 and upon election shall be represent their counties and Nairobi shall be represented by two senators one man and one woman who also shall offer themselves in a joint candidature .
- (5) Amend the constitution to repeal article 177 section 1(b) to eliminate the position of nominated member a county Assembly special seat for gender.
- (6) Create Mega-wards composed of three wards for purpose of election in which three 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.
- (7) Amend article 120(1) of the constitution to allow for the adoption of African Languages in County Assembly were practicable.

PETITION FOR CHANGE OF CONSTITUTION TO ALLOW FOR EQUITABLE REPRESENTATION OF ELECTORATE AND FULFILLMENT OF GENDER PARITY IN LEGISLATURE

- (8) Amend the constitution to increase the term of senator to seven years and
- (9) Amend the constitution to increase the term of National Assembly to six years.
- (10) THAT, the presidential term to be reduced to four years to coincide that of County Assembly.
- (11) THAT, the term of County Assembly be reduced to four years to coincide with the presidential term.
- (12) THAT, the elections act be amended to remove all academic qualifications for election as member of National Assembly, Senate and members of County Assembly.

And your PETITIONER will ever pray

Name of the Petitioner EZEKIEL NJERU NAMU

Full address P.O BOX 435-60100

EMBU

National ID 24477662

Signature  _____

