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4/12/18

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

PARLIAMENT
OF KENYA
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TWELFTH PARLIAMENT – SECOND SESSION, 2018

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE PETITION TO AMEND ARTICLE 171(2) (F) OF THE
CONSTITUTION OF KENYA TO VACATE THE FIFTEEN (15) YEARS'
EXPERIENCE AS A MANDATORY REQUIREMENT FOR ELIGIBILITY
FOR ELECTION AS MEMBER OF THE JUDICIAL SERVICE
COMMISSION REPRESENTING THE LAW SOCIETY OF KENYA.

DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2018	DAY: Wed, Monday
TABLED BY:	CHAIRPERSON, Justice and Legal Affairs Committee
CLERK-AT THE TABLE:	DECEMBER, 2018 Males Gwina

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ANNEXURES

A. Adoption List

B. Committee Minutes

ABBREVIATIONS AND ACRONYMS

Hon - Honourable
LSK - Law Society of Kenya
MP - Member of Parliament
NA - National Assembly
Ref - Reference

CHAIRMAN'S FOREWORD

This petition was conveyed to the House by the Speaker Hon. Justin Muturi, MP on 3rd July 2018. This is in accordance with the provisions of Standing Order No. 225 (2) (b).

The Petitioner, the Law Society of Kenya, contends that the provisions of Article 171(2) (f) of the Constitution requiring two advocates elected by the Members of the Law Society of Kenya to the Judicial Service Commission to have fifteen years' experience is in contravention of Article 27(4) of the Constitution as it negates the meaning of the term election. The petitioner therefore prays that the National Assembly addresses its plight and considers effecting the necessary amendments to Article 171(2)(f) of the Constitution.

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 its sittings met Ms. Mercy Wambua, the Chief Executive officer of the Law Society of Kenya, on behalf of the petitioner and deliberated on the written evidence as contained in the Petition. 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. 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. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms
Mr. Richard Sang	-	Serjeant-at-Arms

CHAPTER TWO

2.0 CONSIDERATION OF THE PETITION

3.0 The Committee commenced its consideration of the Petition by meeting the Petitioner on 23rd October 2018. During the meeting, written and oral evidence was adduced as noted hereunder:-

2.1 Submissions by Ms. Mercy K Wambua, Chief Executive Officer and Secretary of the Law Society of Kenya

Ms. Mercy K Wambua, on behalf of the Law Society of Kenya, sought to draw the attention of the House to the following-

Whereas, Article 171(2)(f) of the Constitution sets out the requirements for eligibility for the elected representatives of the Law Society to the Judicial Service Commission, to wit:

Article 171 (1) There is established the Judicial Service Commission.

(2) The Commission shall consist of-

(f) two advocates, one a woman and one a man, each of whom has at least fifteen years' experience, elected by the members of the statutory body responsible for the professional regulation of advocates

The statutory mandate above is currently exercised by the Law Society of Kenya as there is no other statutory body besides it responsible for professional regulation of advocates in Kenya.

While, Article 27(1) and (4) of the Constitution states as hereunder:

27(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Aggrieved by the aforesaid provision in Article 171(2), a member of the Society moved a motion couched as follows:

1. *“A special resolution be and is hereby passed by members of the Meeting, for the Law Society of Kenya to petition Parliament under Article 256 of the Constitution for the removal of the age requirement under Article 171 (2)(f) that contradicts itself by negating the meaning of the term election”*
2. *“A resolution is hereby passed to empower and authorize Council pursuant to section 4 of the Law Society of Kenya Act, 2014 to petition Parliament to effect the necessary amendments so that Article 171(2)(f) is not in contradiction with Article 27(4) of the Constitution.”*

The motion was based on the following grounds:

1. THAT Article 171(2)(f) that provides that two advocates who represent Law Society of Kenya at the Judicial Service Commission assume office by an election and not selection.
2. THAT age requirement is an overt discrimination and a drafting error by the drafters of the Constitution and it contradicts Article 27(4) of the Constitution of Kenya.
3. THAT the Law Society of Kenya enjoys both constitutional and statutory monopoly and therefore must treat all its members equally and where discrimination is allowed it satisfies the rigorous of Article 24 of the Constitution.
4. THAT matters of representation of the Law Society of Kenya of elected members should be decided by members on the principle of one man one vote and the one who can vote can run for office
5. THAT an amendment to alter the age or ages of members of the Judicial Service Commission, is not one that requires a referendum under Article 255 of the Constitution of Kenya
6. THAT Article 171(2)(h) also locks anyone who has studied law or a lawyer from representing the public on account of studying law and therefore an advocate is locked in all ways before clinching the age of 15 years of experience.

7. THAT the experience envisaged under Article 171 (2)(f) is not legal experience, and in any case, any stipulated experience would negate the very concept of an election.

When the member's motion aforesaid was tabled before the members at the Society's Annual General Meeting held on 24th March 2018, the same was passed by the members through the following resolution:

- a. *A special resolution be and is hereby passed by members of the Meeting, for the Law Society of Kenya to petition Parliament under Article 256 of the Constitution for the removal of the age requirement under Article 171 (2)(f) that contradicts itself by negating the meaning of the term election"*
- b. *A resolution is hereby passed to empower and authorize Council pursuant to section 4 of the Law Society of Kenya Act, 2014 to petition Parliament to effect the necessary amendments so that Article 171(2)(f) is not in contradiction with Article 27(4) of the Constitution.*

The petitioner submitted that this being a legislative matter solely within the purview and province of Parliament, the matter is hereby submitted for first consideration to Parliament. Further, the issues in respect of which this petition is made are not pending before any court of law, constitutional, or legal body to the Petitioner's best belief and knowledge

The petitioner therefore prays that Parliament:

1. Pursuant to Article 256 of the Constitution removes the age requirement under Article 171(2) (f) that contradicts itself by negating the meaning of the term election.
2. Effects the necessary amendments so that Article 171(2) (f) is not in contradiction with Article 27 (4) of the Constitution.

CHAPTER THREE

3.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

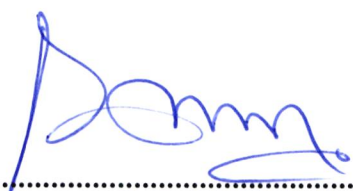
3.1 Committee observations

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

1. The request to petition Parliament was approved by the members of the Law Society of Kenya pursuant to section 4 of the Law Society of Kenya Act, 2014 vide a special resolution.
2. The petition was as a result of one Advocate who was barred from contesting for a Law Society of Kenya's Chairman position because of not meeting the fifteen (15) years' experience requirement;
3. Experience was a key factor in leadership. For instance, the Chairperson Law Society of Kenya enjoyed certain powers and privileges like the appointment of arbitrators and his/her years of experience would be critical in the execution of such task;
4. Vacating the years of experience requirement for election or appointment to certain positions would amount to lowering the bar for legal practitioners which was not in the best interest of the profession;
5. The Constitution of Kenya in itself permitted age discrimination in certain situations for eligibility to be elected to certain positions. For instance, for one to run for the Presidency he/she must be over thirty-five (35) years of age.

3.2 Committee Recommendations

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

Sign.......... Date.....24.12.18.....

Hon. William Cheptumo, MP

Chairman, Departmental Committee on Justice and Legal Affairs

ADOPTION LIST

KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ATTENDANCE REGISTER FOR MEMBERS

DATE 27/11/2018 TIME 11:30

VENUE CPA ROOM

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. Mwamkale William Kamoti, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Charles Gimose, MP.	
9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Zuleikha Hassan, 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.	<i>K. A. Kiai</i>
16.	Hon. Jennifer Shamalla, MP.	<i>Jennifer Shamalla</i>
17.	Hon. Beatrice Adagala, MP.	<i>Beatrice Adagala</i>
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	<i>Boss Shollei</i>

for 

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

**MINUTES OF THE
COMMITTEE SITTINGS**

MINUTES OF THE EIGHTY-SECONDSITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 23RD OCTOBER, 2018 AT 10.00 A.M. IN THE BOARDROOM ON 2ND FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS

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. William K. Mwamkale, M.P. | | |
| 5. Hon. Peter O. Kaluma, M.P. | | |
| 6. Hon. Jennifer Shamalla, M.P. | | |
| 7. Hon. Anthony G. Kiai, M.P. | | |
| 8. Hon. Adan Haji Yussuf, M.P. | | |
| 9. Hon. Gladys Boss Shollei, CBS, M.P. | | |
| 10. Hon. John M. Wambugu, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Ben Momanyi, MP.
2. Hon. Roselinda Soipan Tuya, M.P.
3. Hon. George G. Murugara, M.P.
4. Hon. Beatrice Adagala, M.P.

ABSENT-

1. Hon. Charles Gimose, M.P.
2. Hon. Zuleikha Hassan, M.P.
3. Hon. Johana Ng'eno, M.P.
4. Hon. Japheth Mutai, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Salem Lorot | - | Legal Counsel II |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |

LAW SOCIETY OF KENYA (LSK)

- | | | |
|-----------------|---|-------------------------|
| 1. Mercy Wambua | - | Chief Executive Officer |
| 2. Esther Njeri | - | Advocate |

MIN No.305/2018-

PRELIMINARIES

The chairperson called the meeting to order at 10.20 a.m. which was followed by a word of prayer from himself.

MIN No.306/2018-

PETITIONS BY THE LAW SOCIETY OF KENYA

Ms. Mercy Wambua, the Law Society of Kenya Chief Executive Officer prosecuted the Society's two Petitions on amendment of Articles 171(1) 2 of the constitution and amendment to section 18 of the Law Society of Kenya's Act. The Petitions principally sought Parliament's amendment of the law to vacate years of experience as mandatory requirement for Advocates to be elected as members of the Judicial Service Commission as well as President and Vice President of the Law Society of Kenya.

She submitted that the years of experience requirement for appointment to the said positions was discriminative contrary to Article 27 of the constitution which provides that every person is equal before the law and has right to equal protection and equal benefit of the law. Article 27 further states that the State shall not discriminate against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

She further submitted that the petitions were as a result of Law Society of Kenya members' resolutions at a Special General meeting and that a case had been filed on the same by Advocate Nelson Havi in which the High Court ruled that only the Society could determine the applicability of years of experience as a requirement in election of members to positions. She tabled before the Committee a copy of the ruling on the case.

MIN 307/2018:

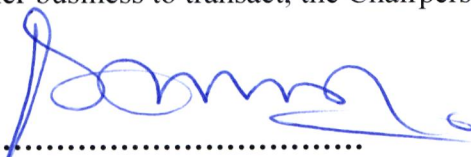
ANY OTHER BUSINESS

The Committee resolved to host the Chief Justice for a breakfast meeting on Thursday, 1st November, 2018 at a hotel to be identified. The agenda for the meeting would be the swearing in of members of the Judicial Service Commission to fill vacancies and budgetary allocation.

MIN No.308/2018:

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 12.15 p.m.

Signed.....
Chairperson

Date.....4/12/18.....

MINUTES OF THE NINETY - FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 27TH NOVEMBER, 2018 AT 11.30 A.M. IN CPA ROOM, MAIN PARLIAMENT BUILDINGS

PRESENT-

1. Hon. William Cheptumo, M.P. - Chairperson
2. Hon. Ben Momanyi, MP.
3. Hon. John Olago Aluoch, M.P.
4. Hon. William K. Mwamkale, M.P.
5. Hon. Charles Gimose, M.P.
6. Hon. Jennifer Shamalla, M.P.
7. Hon. Anthony G. Kiai, M.P.
8. Hon. George G. Murugara, M.P
9. Hon. Beatrice Adagala, M.P
10. Hon. Gladys Boss Shollei, CBS, M.P
11. Hon. John Kiarie Waweru, M.P.

ABSENT WITH APOLOGIES

1. Hon. Alice Muthoni Wahome, M.P. - Vice Chairperson
2. Hon. Peter O. Kaluma, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Japheth Mutai, M.P.
5. Hon. John M. Wambugu, M.P.
6. Hon. Adan Haji Yussuf, M.P.

ABSENT

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

IN ATTENDANCE

1. Ms. Halima Hussein
2. Ms. Fiona Musili

COMMITTEE SECRETARIAT

- Third Clerk Assistant
- Researcher Officer III

MIN No. 349/2018

PRELIMINARIES

The chairperson called the meeting to order at 11.30 A.m. which was followed by a word of prayer from Hon Beatrice Adagala, MP.

MIN No. 350/2018

CONFIRMATION OF PREVIOUS MINUTES

The following Minutes of the previous Sittings were confirmed as below;

1. Minutes of the 93rd Sitting held on Wednesday 14th November, 2018 at 11.00 am in Committee Room 9 were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. George G. Murugara, M.P and seconded by Hon. Beatrice Adagala, MP.
2. Minutes of the 92nd Sitting held on Tuesday 13th November, 2018 at 10.00 am in Commission Boardroom were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Anthony Kiai, M.P and seconded by Hon. Charles Gimose, MP.
3. Minutes of the 91st Sitting held on Monday 12th November, 2018 at 3.00 pm in Country Hall, Windsor Gold Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Ben Momany, M.P and seconded by Hon. George G. Murugara, MP.
4. Minutes of the 90th Sitting held on Monday 12th November, 2018 at 9:30 am in Country Hall, Windsor Gold Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Ben Momany, M.P and seconded by Hon. George G. Murugara, MP.
5. Minutes of the 89th Sitting held on Thursday 8th November, 2018 at 11:55 am in Committee Room 7 were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. George G. Murugara, MP.
6. Minutes of the 88th Sitting held on Thursday 1st November, 2018 at 7:30 am in Maria Room, Hotel Intercontinental were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Beatrice Adagala, MP.
7. Minutes of the 87th Sitting held on Saturday 27th October, 2018 at 2:30 pm in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP
8. Minutes of the 86th Sitting held on Saturday 27th October, 2018 at 10:00 am in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP
9. Minutes of the 85th Sitting held on Friday 26th October, 2018 at 2:30 pm in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Charles Gimose, MP

10. Minutes of the 84th Sitting held on Friday 26th October, 2018 at 9:50 am in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being Hon. George G. Murugara, M.P and seconded by Hon. Beatrice Adagala, MP.
11. Minutes of the 83rd Sitting held on Tuesday 23rd October, 2018 at 10:00 am in Boardroom, second Floor, Protection House were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP

MIN No. 351/2018

MATTERS ARISING

Under Min.No.314/2018 – Any Other Business

Hon Jennifer Shamalla's concerns over the difficulties she encountered while surrendering her imprest were not captured.

MIN No. 352/2018

**CONSIDERATION AND ADOPTION OF THE
DRAFT REPORTS ON LEGISLATIVE
PROPOSALS AND PETITIONS**

The Committee considered and unanimously adopted the following draft reports.

1. Report on the legislative proposal for the Institute of Directors of Kenya Bill, 2018 by Hon. (Dr). Chris Wamalwa, MP that seeks to establish the Institute of Directors to provide for the registration and regulation of the standard and practice of members of Boards
2. Report on the legislative proposal for the Law of Contract (Amendment) Bill, 2018 by Hon. Waititu Francis Munyua, MP that seeks to amend the Law of Contract Act, CAP 23 to require a creditor to first realise the security of a principal debtor in case of default payment of a loan.
3. Report Of the legislative proposal for the Anti-Corruption and Economic Crimes (Amendment) Bill, 2018 that seeks to amend Section 48 of the Anti-Corruption and Economic Crimes Act, 2003 to impose a life sentence on any person convicted of corruption or any other economic crimes.
4. Report on the petition to introduce a new National Peace Day on 9th March by Mr. Petr Mugo Mukua
5. Report on the petition on the compensation of the parents/guardians of victims and survivors of the Kyanguli Secondary School fire tragedy by Hon Robert Mbui, MP

6. Report of the petition to amend Article 171 (2) (f) of the Constitution of Kenya to vacate the fifteen (15) years' experience as a mandatory requirement for eligibility for election as member of the Judicial Service Commission representing the Law Society of Kenya by Law Society of Kenya
7. Report on the petition to amend Section 18 of the La Society of Kenya Act to vacate the fifteen (15) years' experience as a mandatory requirement for eligibility for election as President or Vice President of the Law Society of Kenya Council by Law Society of Kenya
8. Report on the petition for the enactment of the admiralty court act by Mr. Derrick Otieno Okadia.

MIN No. 353/2018


ANY OTHER BUSINESS

Members raised concerns over the consistent absence of some Committee Members. The Chairperson undertook to follow up on the matter and update the Committee in its subsequent meeting

MIN No.354/2018:

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 12.50 p.m.

Signed.....

Chairperson

Date.....4.12.18.....

**COPY OF THE
PETITION**

DLS
wadhwa
and
co



The Clerk
Kenya National Assembly
Parliament Buildings
P.O Box 41842 - 00100,
NAIROBI

Lavington, opp Valley Arcade, Gitanga Road
P.O Box 72219-00200 Nairobi, Kenya
Dropping Zone 149 – Revlon Plaza
Tel:+254-20-3874664,3865013/4,
020-2625391, 0208155295
Cell: +254 720 904983
Fax: +254 20 387 5534
Website: www.lsk.or.ke
Our Ref: S/20
Your Ref: TBA
Date: 18th May 2018

PETITION

*(Under Article 119(1) and Article 256 of the Constitution, 2010 and Section 3 of the
Petition to Parliament (Procedure) Act No. 22 of 2012, Laws of Kenya)*

I, **MERCY K. WAMBUA**, the undersigned, the Chief Executive Officer and Secretary of the Law Society of Kenya **DRAW** the attention of the House to the following:

Whereas, Article 171(2)(f) of the Constitution sets out the requirements for eligibility for the elected representatives of the Law Society to the Judicial Service Commission, to wit:

171. (1) there is established the Judicial Service Commission.

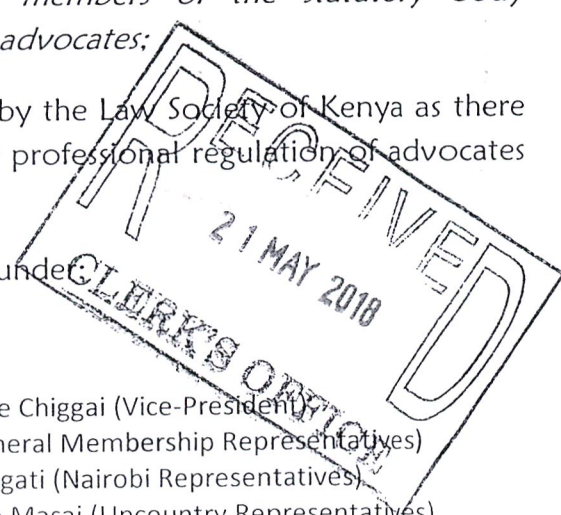
(2) The Commission shall consist of—

(f) two advocates, one a woman and one a man, each of whom has at least fifteen years' experience, elected by the members of the statutory body responsible for the professional regulation of advocates;

The statutory mandate above is currently exercised by the Law Society of Kenya as there is no other statutory body besides it responsible for professional regulation of advocates in Kenya.

While, Article 27(1) of the Constitution state as hereunder

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
Borniface Akusala, Carolyn Kamende, Aluso Ingati (Nairobi Representatives)
Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
Eric Nyongesa (Coast Representative)



27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law...

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Aggrieved by the aforesaid provision in Article 171(2), a member of the Society moved a motion couched as follow:

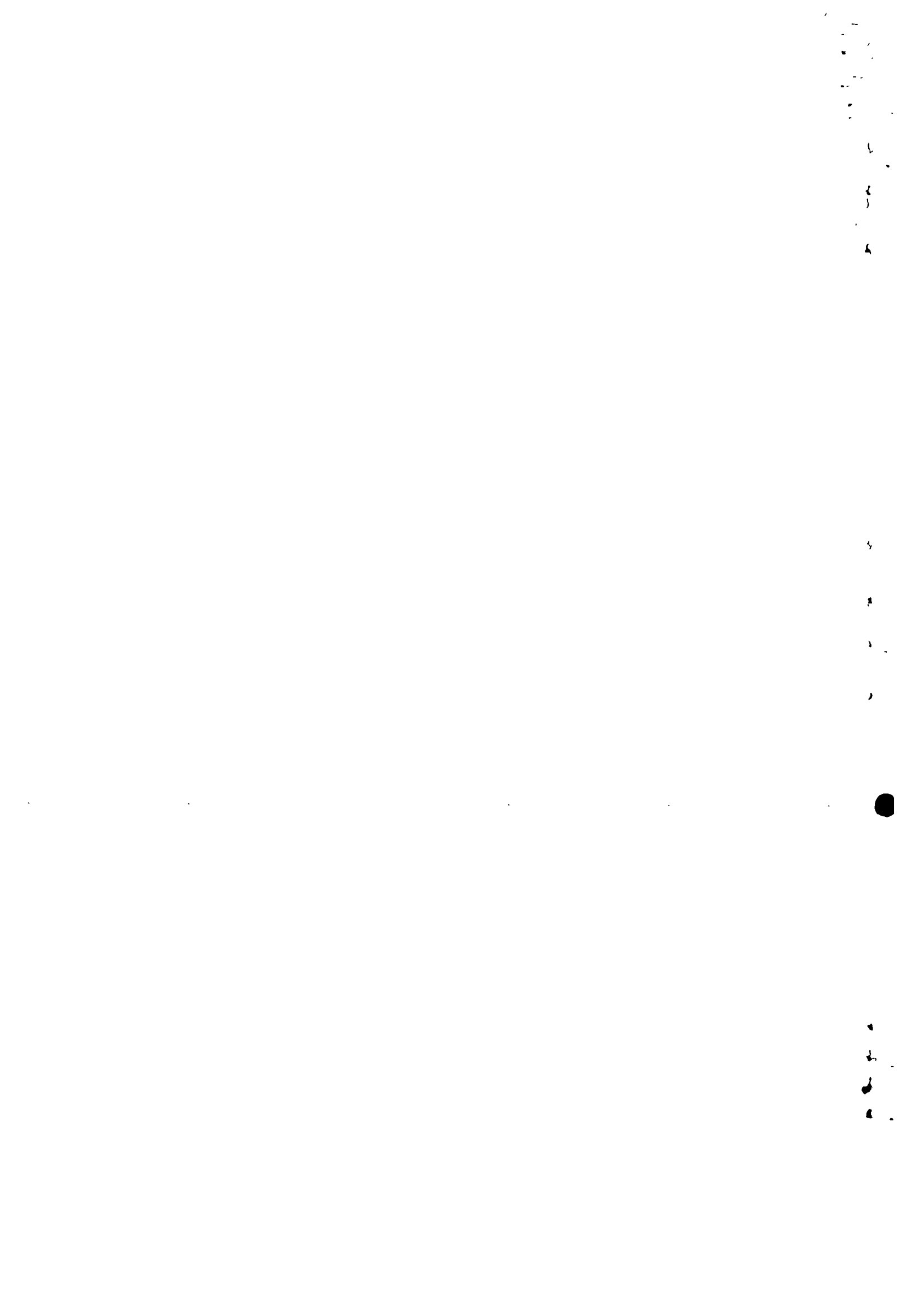
1. *"A special resolution be and is hereby passed by members of the Meeting ,for the Law Society of Kenya to petition Parliament under Article 256 of the Constitution for the removal of the age requirement under Article 171(2)(f) that contradicts itself by negating the meaning of the term election"*
2. *"A resolution is hereby passed to empower and authorize Council pursuant to Section 4 of the Law Society of Kenya Act, 2014 to petition Parliament to effect the necessary amendments so that article 171 (2) (f) is not in contradiction with Article 27 (4) of the Constitution."*

The motion was based on the following grounds:

1. THAT Article 171(2) (f) that provides that two advocates who represent Law Society of Kenya at the Judicial Service Commission assume office by an election and not selection.
2. THAT age requirement is an overt discrimination and a drafting error by the drafters of the Constitution and it contradicts Article 27(4) of the Constitution of Kenya.
3. THAT the Law Society of Kenya enjoys both constitutional and statutory monopoly and therefore must treat all its members equally and where discrimination is allowed it satisfies the rigorous of Article 24 of the Constitution.
4. THAT matters of representation of the Law Society of Kenya of elected members should be decided by members on the principle of one man one vote and that he who can vote can run for office
5. THAT an amendment to alter the age or ages of members of the Judicial Service commission, is not one that requires a referendum under Article 255 of the Constitution of Kenya

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Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
Eric Nyongesa (Coast Representative)

Petition to Parliament | Article 171(2)(f) of the Constitution | 18.05.18



6. THAT Article 171(2) (h) also locks anyone who has studied law or a lawyer from representing the public on account of studying law and therefore an advocate is locked in all ways before clinching the age 15 years of experience.
7. THAT the experience envisaged under Article 171(2)(f) is not legal experience, and in any case, any stipulated experience would negate the very concept of an election”

When the member’s motion aforesaid was tabled before the members at the Society’s Annual General Meeting held on 24th March 2018, the same was passed by the members through the following resolution:

- a. A special resolution be and is hereby passed by members of the Meeting, for the Law Society of Kenya to petition Parliament under Article 256 of the Constitution for the removal of the age requirement under Article 171(2)(f) that contradicts itself by negating the meaning of the term election*
- b. A resolution is hereby passed to empower and authorize Council pursuant to Section 4 of the Law Society of Kenya Act, 2014 to petition Parliament to effect the necessary amendments so that Article 171 (2) (f) is not in contradiction with Article 27 (4) of the Constitution.*

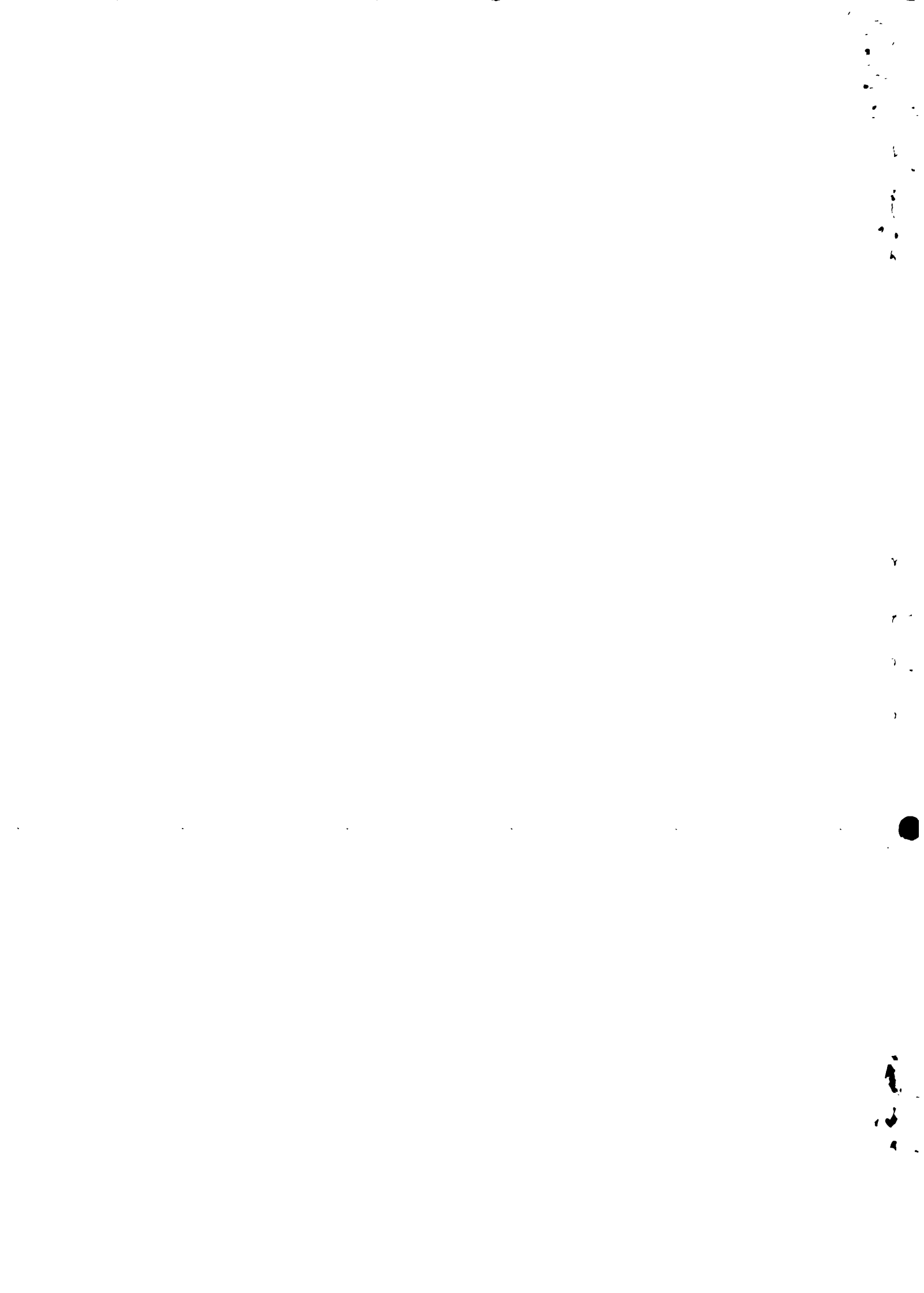
THAT this being a legislative matter solely within the purview and province of Parliament, the matter is hereby submitted for first consideration to Parliament and THAT the issues in respect of which this petition is made are not pending before any court of law, constitutional, or legal body to the Petitioner’s best belief and knowledge

HEREFORE your humble Petitioner prays that Parliament:

1. Pursuant to Article 256 of the Constitution removes the age requirement under Article 171(2) (f) that contradicts itself by negating the meaning of the term election.
2. Effects the necessary amendments so that Article 171(2)(f) is not in contradiction with Article 27 (4) of the Constitution.


Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
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And your Petitioner will ever pray.

Yours faithfully


MERCY WAMBUA
SECRETARY/ CEO

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