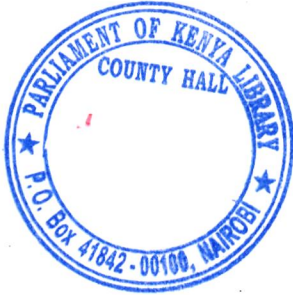


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REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

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By Hon. A. Karanja,
Chair, DC - Adminis.
National Security
on Thu. 30.4.15
(Afternoon)*

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT OF THE INSPECTION TOUR OF SHIMO LA TEWA, KILIFI, KODIAGA AND KAKAMEGA PRISONS

5TH TO 8TH MARCH, 2015

30 APR 2015

CLERK'S CHAMBERS,
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I.0 PREFACE

I.1 Mandate

The Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No. 216(1) and has executed its role in accordance with the provisions of the said Standing Order 216(5), which mandates the Committee to, inter alia;

- 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) Investigate and inquire into all matters relating to the assigned Ministries and departments as it may deem necessary...**

Subjects

According to Schedule II of the Standing Orders, the Committee examines the following subjects:

- i) National security
- ii) Police Services
- iii) Home Affairs
- iv) Public Administration
- v) Public Service
- vi) Prisons
- vii) Immigration and the Management of natural disasters
- viii) Community service orders

The Committee oversees the following Ministries and Departments:

- i) The Presidency (Cabinet Services & State Affairs)
- ii) Ministry of Interior and Coordination of National Government
- iii) Public Service Commission
- iv) National Police Service Commission
- v) Independent Policing Oversight Authority

I.2 Membership

The following are the Members of the Committee: -

The Hon. Asman Kamama, MGH, OGW, MP -**Chairperson**
The Hon. Alois M. Lentoimaga, MP - **Vice Chairperson**
The Hon. Ababu Namwamba, MP
The Hon. Joseph Lekuton, MP
The Hon. Alice Wahome, MP

The Hon. Zakayo K. Cheruiyot, MP
The Hon. Timothy W. Wetangula, MP
The Hon. Patrick Ole Ntutu, MP
The Hon. Ali Isaack Shaaban, MP
The Hon. Samuel Moroto, MP
The Hon. Humphrey Njuguna, MP
The Hon. Francis K. Mwangangi, MP
The Hon. Rashid J. Bedzimba, MP
The Hon. David Gikaria, MP
The Hon. Mohamed Shidiye, MP
The Hon. Jane Machira, MP
The Hon. Ibrahim Abdi Saney, MP
The Hon. Joseph O. Ndiege, MP
The Hon. (Maj. Rtd.) John K. Waluke, MP
The Hon. Wanjiku Muhia, MP
The Hon. Akuja Protus Ewesit, MP
The Hon. Joseph M. Kahangara, MP
The Hon. Ahmed Abdikadir Ore, MP
The Hon. Regina Nthambi Muia, MP
The Hon. Grace Kiptui, MP
The Hon. George Theuri, MP
The Hon. James Bett, MP
The Hon. Benard Shinali, MP

Mr. Speaker, Sir,

On a meeting held on 17th February, 2015, the Committee proposed to undertake inspection tours of Shimo la Tewa and Kilifi Prisons in Mombasa; and Kodiaga and Kakamega Prisons in Kisumu and Kakamega, respectively. The purpose of the tour was to enable the Committee to inspect the various prison reform processes and assess the general welfare of prisons and prison staff.

1.3 Sub-Committee

Mr. Speaker, Sir,

The Committee formed two sub-committees for each of the Prison visits. The sub-committee to visit Shimo la Tewa and Kilifi Prisons comprised of:

1. The Hon. Asman Kamama, MP - Chairperson and Leader of the Delegation
2. The Hon. Joseph Lekuton, MP
3. The Hon. Rashid Bedzimba, MP
4. The Hon. Akuja Protus Ewesit, MP
5. The Hon. Ahmed Abdikadir Ore, MP
6. The Hon. Ibrahim Abdi Saney, MP
7. The Hon. Joseph Kahangara, MP

The delegation to Kodiaga and Kakamega Prisons comprised the following Members:

1. The Hon. Grace Kiptui, MP - Leader of the Delegation
2. The Hon. Zakayo Cheruiyot, MP
3. The Hon. Samuel Moroto, MP
4. The Hon. (Maj. Rtd.) John Waluke, MP
5. The Hon. Benard Shinali, MP
6. The Hon. James Bett, MP
7. The Hon. Ababu Namwamba, MP
8. The Hon. Jane Machira, MP
9. The Hon. Patrick Ole Ntutu, MP

1.4 Objectives of the inspection tour

The Committee undertook the inspection visits to:

1. Identify the grievances that have been raised by the prison staff and make recommendations for the improvement of their terms of service and working conditions;
2. Review operations of prisons farms and industries and make recommendations that can enhance productivity, self-reliance in food and effective rehabilitation of inmates;
3. Examine the resource base of the prisons service and make recommendations for improvement of resource utilization;
4. Review the current criminal Justice system in relation to congestion and other living conditions of both inmates and staff in the Penal institutions; and
5. Assess the funding levels of Kenya's prisons services and recommend alternative sources of revenue to enable the department implement its core mandate.


1.5 Acknowledgement

Mr. Speaker,

The Committee wishes to thank the Office of the Speaker and the Clerk of the National Assembly for the logistical support accorded to it during the inspection tour. The Committee is also grateful to the Permanent Secretary, Ministry of Interior and National Coordination and the Commissioner General of Kenya Prisons Service for accompanying the Committee during the tour. The Committee also wishes to thank the County Commissioners of Mombasa, Kilifi, Kisumu and Kakamega Counties, the Prison Officers in Kwale, Mombasa, Kilifi, Lamu, Tana River and Taita Taveta Counties as well as Kodiaga and Kakamega Prisons for smooth coordination of the exercise.

Mr. Speaker,

Pursuant to the provisions of ~~Standing~~ Order No. 199 of the National Assembly, it is my pleasant duty to ~~make the Report of the~~ Committee on Administration and National Security on the ~~inspection tour of~~ Kodiaga and Kakamega Prisons for debate and adoption by the House.

Signed.......... Date:..22/04/2015..

Hon. Asman Kamama, OGW, MP
Chairperson, Departmental Committee on Administration and National Security

2.0 BACKGROUND INFORMATION

2.1 History of the Kenya Prisons Service

In Kenya, the prisons system was introduced by the British East Africa Company following the enactment of the East Africa Prisons Regulations in April 1902. Initially, the Prisons Department was set up as part of the Police under the Inspector General of Police.

The Provincial and District Commissioners were appointed Superintendent and Deputy Superintendents in their respective provinces and districts. The Prisons Board was responsible for management of Prisons. The post of Commissioner of Prisons was created in 1917.

The Kenya Prisons Service plays an important role in the country by keeping offenders in safe custody. It provides opportunities for rehabilitation, deterrence of would-be offenders, as well as protection of society.

Since inception, the orientation of the prisons in Kenya was largely skewed towards punishment of criminals. Reformation was not a priority. From the 1980s, however, there was a shift in focus towards the integration of punishment and rehabilitation through training. The aim was to change offender's behavior through education and training so that on re-integration into the free society, they would make meaningful contributions.

The Human Rights wave that emerged globally after Michel Foucault's book, *Discipline and Punish* (1975), added a new dimension to punishment and rehabilitation. The new momentum laid emphasis on punishment, counseling and rehabilitation of prisoners in a humane and discipline way. Indeed, the United Nations (UN) Standard of Minimum rules have put into practice the humanistic treatment of offenders.

3.0 TOUR OF SHIMO LA TEWA AND KILIFI PRISONS

3.1 Site Visits

On Friday 6th March, 2015, the Committee and the Commissioner General of Prisons paid a courtesy call to the County Commissioner's Office for a briefing on the state of security in Mombasa County. Thereafter, the Committee, the Commissioner General of Prisons accompanied by the County Security Committee proceeded to visit Shimo La Tewa Prison.

The Committee met with Prison Officers representing every Prison facility serving the Coast region. Each officer was accorded an opportunity to give a thorough brief to the Committee on the challenges faced by them. Thereafter, the Committee was given a brief tour of the Prison facilities including the block holding terror suspects and inmates,

- e) **Composition the National Security Council:** As per the directive by the President, Prison Officers were now involved in street patrols and maintaining law and order in society. Despite this, the Commissioner General was not a member of the National Security Council where decisions that affect his officers are made. The Prison staff saw this as an oversight that might need legislative recourse.
- f) **Lack of Title Deeds:** Prison land in most cases lacked title deeds and this has led to many problems ranging from grabbing of prison lands by individuals, settling on prison land by squatters and threats of eviction by other government entities that host prisons.
- g) **Delayed judgment:** Cases that took too long to be concluded are causing logistical and planning problems for the Prison Service where remandees are held for extended periods increasing overhead costs and causing congestion in prisons.
- h) **Representation in the Power of Mercy Committee:** Security agencies including the prisons service, the police, the National Intelligence Service are not represented in the Power of Mercy Committee where their input might be important in the work of the Committee.

3.3 Prisoner's Challenges

- a) **Power of Mercy Act:** Prisoners rarely get any feedback on their applications to the Power of Mercy Committee and despite the rehabilitation of inmates; very few are released from prison which leads to congestion and other resultant problems.
- b) **Application for remission:** There appears to be no clear enforcement policy on the power of remission. Prisoners complained of having to serve their terms in full despite having been fully rehabilitated.
- c) **Life Sentence:** A life sentence is not defined under Kenyan law and so a prisoner sent for life is literally detained for the remainder of his natural life. This is unlike the situation in other jurisdiction where life sentences have a minimum limit of the period an inmate has to serve before being considered for parole or release from prison.
- d) **Overcrowding:** The prison facilities have barely been upgraded since independence despite the general increase in population and resultant increase in crime and prison population. Overcrowding was rife in the facilities exposing inmates to disease outbreak and poor hygiene due to limited sanitary facilities

Other challenges facing the farm include lack of modern equipment such as tractors, lack of enough trained officers, transport and insufficient or delayed funding.

- d) **State of Security:** Prisons contain very dangerous criminals. Prison officers are required to pay attention to the security aspects of the entire facility. Security lapses include weak and depilated perimeter fences, rickety watch towers and insecure gates.
- e) **Staff inmate ratio:** The Committee was informed that the current staff inmate ration in both Kodiaga and Kakamega is 1:3 which is against international requirement of 1:1.
- f) **Water system:** Both Kakamega and Kodiaga prisons have insufficient and unreliable water supply. There is need for additional boreholes to be drilled in prisons to improve inmate and staff access to water.
- g) **Compassionate leave:** The Committee was informed that officers who request for permission to attend to emergency issues such as bereavement are forced to apply for leave days and the same is deducted from their annual leave balances. This complicates the matters for the officers without leave balances. This treatment of prison officers as objects, demoralizes them thereby affecting service delivery.
- h) **Inmate congestion:** The Committee noted that there was high level of congestion in all the prison facilities visited. The congestion is attributed to shortage of judicial and prosecution officers, inability of the offenders to pay the fines and lack of alternative dispute resolution mechanisms.
- i) **Transfers and promotions:** Some officers informed the Committee that they have been in the service for more than twenty years in one station. They were requesting to be given transfers so that they could be able to work in other parts of the country. There were cases of officers who have been in the service for more than twenty years and have never been promoted. Others retire from the service without being promoted at all.
- j) **Diet:** The Committee was informed that the inmates get three meals a day. In the morning, they take porridge, in the afternoon they eat ugali and sukuma wiki and in the evening they eat ugali and beans. The staff and prisoners urged the Committee to include fruits in the diet because it would improve the immune system of the inmates affected by HIV/AIDS.
- k) **Transport:** Kodiaga and Kakamega prisons are faced with a serious challenge of transportation. For instance, Kakamega prison has no staff car. The Regional Commandant at times goes to meetings using a lorry. The transport in Shikusa is

- c) **Robbery cases:** Robbery cases have many mentions before hearing. The inmates appeal to the Judiciary to speed up the cases and shorten the terms of mention.
- d) **Death row:** Prisoners on death row as well as life sentences implored the Power of Mercy Committee to review sentences to enable them get an opportunity as they believed they had reformed.
- e) **Appeal Period:** Some appeals took too long. Some had taken as long as eight years. An example was given of a lady who had stayed in prison for 10 years.
- f) **Earning Schemes:** They requested for earning schemes for all employed prisoners to help them access basic necessities while in prison.
- g) **Custody of Children:** They urged the State to come up with the mechanisms to provide custody of the children of the suspects and security for their properties. Currently cases of children neglect and vandalism of property is on the rise.
- h) **Rehabilitation Programs:** Community rehabilitation programs for the just released are needed. There was need for the community to be on reform programs for freed persons sensitized through the County administration. Prisoners who have been freed should be sustained.
- i) **Defilement and rape cases:** Defilement and rape cases were reportedly rampant in the prisons. The Committee was urged to come up with ways with which to address the menace.

5.0 Committee Findings and Observations

The Committee established the following during its proceedings:-

5.1 Shimo La Tewa and Kilifi Prisons

1. The prisons used obsolete equipment most of which are non-functional. This was a great challenge to training prisoners on new skills. There was need for repair or replacement.
2. There are no existing earning schemes for the inmates.
3. The law does not provide for the maximum number of years a person should serve under life imprisonment.
4. The law does not provide for remission or alternatives to jail such as parole and a prisoner has to serve the full terms whether they have been rehabilitated or not.

6.0 Recommendations of the Committee

Based on the afore-going observations and findings, the Committee recommends the following:

- 1. The Government should increase the vote allocated to the Kenya Prisons Service in the National Budget for the 2015/2016 financial year with a view to addressing the acute shortage of housing facilities and the perennial problem of pending bills in prison facilities.**
- 2. Parliament should make amendments to the following legislation with a view to addressing the highlighted challenges:**
 - i) Amendments to the Appropriations Act or appropriate legislation to provide that the Kenyan Prisons Service retains sixty per cent (60%) of the monies realised from the Prisons Industries;**
 - ii) Amendments to procurement or relevant laws and/or government policy that will permit the Kenya Prisons Service to undertake procurement or construction of its own housing units;**
 - iii) Amendments to procurement or relevant laws and/or government policy to provide for the Kenya Prisons Service to undertake autonomous procurement or acquisition of its own vehicles, ammunition and equipment;**
 - iv) Amendment to the Prisons Act (Cap.90) to empower the Commissioner General of Prisons to promote officers up to the rank of superintendent;**
 - v) Amendments to legislation regulating the welfare of prison officers to provide for terms of service equal and favourable to their counterparts in the National Police Service.**
- 3. The Government should enforce the provisions of the Power of Mercy Act that regulate the duty to present reports on the Board's activities and include in the Board membership:**
 - a. a former member of the Kenya Prisons Service;**
 - b. a former member of the National Police Service; and**
 - c. a former member of the Criminal Investigations Department;**
- 4. Engagement should be undertaken by the relevant stakeholders and the Judiciary on the proper and effective manner for the application of the principle of remission under the Prison's Act;**