

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – SECOND SESSION - 2014

---

REPORT OF THE DEPARTMENTAL COMMITTEE ON  
ADMINISTRATION AND NATIONAL SECURITY ON ITS  
CONSIDERATION OF A PETITION REGARDING RIGHTS OF  
PERSONS DETAINED, HELD IN CUSTODY OR IMPRISONED

---

CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI

OCTOBER 2014

## PREFACE

### Mandate

**Mr. Speaker, Sir,**

The Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No. 216(1) of the National Assembly and has executed its mandate, in accordance with the provisions of the said Standing Order 216(5), which mandates the Committees 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; and,*
- (b) investigate and inquire into all matters relating to the assigned Ministries and departments as it may deem necessary, and as may be referred to it by the House...*

### Committee Membership

**Mr. Speaker,**

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. Dalmas Otieno, EGH, MP
- The Hon. Ababu Namwamba, EGH, 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. Benard Shinali, 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. Grace Kiptui, MP  
The Hon. George Theuri, MP  
The Hon. Regina Nthambi Muia, MP  
The Hon. James Bett, MP

## Petition

**Mr. Speaker, Sir,**

The petition regarding the rights of persons detained, held in custody or imprisoned was presented to National Assembly in November 2013; pursuant to Article 119 of the Constitution, which provides that every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.

The petitioners prayed thus:-

THAT:-

- i) Parliament reviews the Prisons Act , Cap it to align it with the Constitution of Kenya, 2010;
- ii) Parliament pursues the reforms hitherto commenced in the Prisons sector to ensure that rights of persons detained, in custody or imprisoned are observed;
- iii) Parliament considers legislating on the fate of decisions made by the judges and magistrates who have since been removed from the Judiciary on grounds of integrity.
- iv) Parliament explores ways of causing the Power of Mercy Committee to expeditiously examine the requests sent to them.

Standing Order 210(3) provides that, *“whenever a petition is committed to the National Assembly, the relevant Committee shall, in not more than twenty one calendar days from the time of reading of the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the House...”*



The petition by prisoners from Kamiti Maximum Prison was referred to the Committee on Administration and National Security on 19<sup>th</sup> November, 2013.

In its quest to establish the underlying factors surrounding the petition, the Committee held a meeting with the Commissioner of Prisons on 28<sup>th</sup> January, 2014. The Commissioner highlighted challenges facing the Prisons Service. The challenges ranged from inadequate housing and poor remuneration for prison warders, congestion in the prisons, an outdated Cap. 90 of the Prisons Act, huge pending bills and poor culinary needs.

The Committee visited Kamiti Maximum Prison on 20<sup>th</sup> February, 2014 and held a meeting with two of the petitioners. The purpose for this meeting was to give audience to the prisoners and establish ways on how best their prayers could be answered and articulated.

The Committee heard that there were death row convicts who were still serving death sentences while a Presidential decree in August 2009 had commuted their sentences into life imprisonment. The petitioners prayed that the Presidential decree be enforced to allow the convicts to serve life sentences.

The Committee was in concurrence with the prisoners' plea that Cap. 90 of the Prisons Act needed to be amended to address certain concerns envisaged in the Prisons Services reform agenda. Further, the Committee was agreeable that there was need to review Cap. 90 of the Prisons Act in order to conform to the reforms as contemplated in the Constitution.

During the visit, the Committee noted that the prison facilities were overstretched. The prison was heavily congested. The prisoners raised concerns over the prisons earning scheme which had not been reviewed since the colonial times. The prisoners spoke of poor dietary needs that required to be improved so as to meet the basic nutritional values.

## **Acknowledgement**

**Mr. Speaker, Sir,**

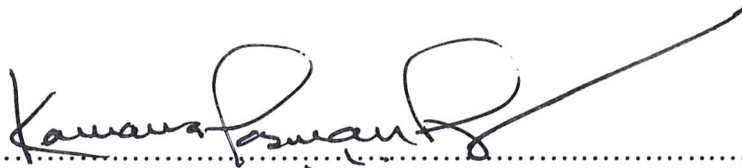
The Committee would like to thank the Offices of the Speaker and the Clerk of the National Assembly for facilitating the Committee to achieve its mandate. The Committee also appreciates the cooperation of the Ministry of Interior and Coordination of National Government during the processing of the petition.

After consideration of the petition, the Committee recommended that the Cabinet Secretary, Ministry of Interior and Coordination of National Government, spear-heads the process of fully implementing the prayers contained in the recommendations of the Committee, and reports progress to National Assembly within sixty (60) days.

**Mr. Speaker,**

On behalf of the Committee and pursuant to Standing Order 227(2), it is my pleasant duty to table the Report of the Departmental Committee on Administration and National Security on its consideration of a petition regarding rights of persons detained, held in custody or imprisoned for adoption by the House.

Signed:.....



Hon. Asman Kamama, MGH, OGW, MP

Chairman, Committee on Administration and National Security

Date...15/10/2014.....



## 1.0 EXECUTIVE SUMMARY

Cap. 90 of the Prisons Act has several grey areas that need to be reviewed in order to improve the operations of the Prisons Service. The Act has not been reviewed and some sections are either obsolete or archaic as they are not aligned with the contemporary world. There has never been a comprehensive review of the Act since its commencement in February 1963.

Certain regulations should be developed in order to allow for changes that are consistent with gains made by the reform process within the Prison Service. For instance, the earning scheme for prisoners has never been reviewed since the law came into operation.

The prisoners end up with meager amounts once they are released from prison; which is not commensurate with the amount of work they do while in prison and the period of service. The Act should be reviewed so as to adjust the payment scheme to prisoners to reflect current financial realities.

Proposed amendments to Cap. 90 of the Prisons Act in order to align it with the Constitution [Article 51] are yet to be considered. Drafting of these proposals was completed in 2011 but the process is yet to be completed. The Committee urges the Ministry of Interior to fast track the proposed amendments and present them to the National Assembly for passage.

There is concern that death row convicts are held in prison without knowing their fate. The Presidential decree of 2009 to have the condemned prisoners commuted to serve life sentences has not been implemented. This scenario has created anxiety amongst the convicts who do not know their fate. The Act should be amended to remove the lacuna.

On parole, there are no set guidelines on its implementation, although Cap. 90 of the Prisons Act provides for the manner in which a prisoner shall conduct themselves after having been pardoned. There is need to involve probation officers to help in follow up of cases of prisoners who have been set free.

There is need to allocate resources to the Power of Mercy Committee, established under Article 133 of the Constitution, to enable it to make scheduled visits to prisons to determine which cases need review. Lack of funds has grounded the Committee and many cases are pending review therefore causing unnecessary congestions in the courts.

Indeed 20,580 cases presented to the Power of Mercy Committee have not been acted upon. The inability of the Power of Mercy Committee to review these cases has prompted a section of the prisoners to file this petition with the National Assembly.

## 2.0 OBSERVATIONS, FINDINGS AND CONCLUSIONS OF THE COMMITTEE

1. The review of Cap. 90 of the Prisons Act is long overdue. Some of the Sections of the Act are obsolete or not practicable in the contemporary times.
2. The prisons across the country are generally overcrowded. The congestion has been occasioned by lapses in the system whereby petty offenders are held there without the option of probation.
3. Further, the Power of Mercy Advisory Committee has not been effective in recommending cases to the President that require parole. For a long time death row convicts have not been executed. All these cases have led to serious overcrowding of the prisons leading to overstretching of the limited prison facilities.
4. Inadequate housing for prison warders is still a major concern for the Prisons Service. The housing for staff is grossly inadequate. Funds received for construction of staff quarters across the country have been inadequate. Poor housing conditions have de-motivated prison warders.
5. The Power of Mercy Advisory Committee has not been funded adequately thus the Committee has been unable to visit prisoners across the country to establish cases which may be recommended for parole. This has led to delay for cases that may be considered for pardon. The inability by the Committee to review cases has led to unnecessary congestion in the prisons.
6. The prayer that some prisoners were sent to jail by magistrates and judges who were later found unfit to serve in the judiciary due to integrity issues is not tenable. The Committee feels that opening up these cases may compromise the judicial process through which they were determined. The risk of creating an avalanche of appeals by many prisoners is real.



### 3.0 RECOMMENDATIONS

Having met the petitioners, and after considering the petition regarding rights of persons detained, held in custody or imprisoned, the Committee made the following recommendations:-

1. THAT; the Ministry of Interior and Coordination of National Government reviews Cap. 90 of the Prisons Act, in tandem with the Constitution of Kenya, and presents the proposals to the National Assembly, for consideration and passage.
2. THAT; the Government ensures that the 2009 Presidential decree commuting death row sentences into life imprisonment be enforced in order to clear the uncertainty and fate of convicts who are still serving as death row prisoners.
3. THAT; the Government implements fully the Report by the Task Force on Prisons Service Reform Agenda, headed by Maj. (Rtd.) Marsden Madoka. Implementation of reforms on housing and remuneration for serving prison officers, and prisoners general welfare as recommended in the Marsden Madoka Task Force Report should be expedited.
4. THAT; the Government allocates more funds to the 'Power of Mercy' Committee so that pending cases that the Committee has been unable to deal with due to underfunding are determined and concluded.