

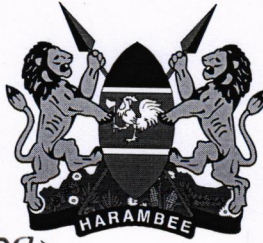
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**THE SENATE**

-----  
**TWELFTH PARLIAMENT  
SECOND SESSION**  
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| PAPERS LAID        |               |
|--------------------|---------------|
| DATE               | 20/02/19      |
| TABLED BY          | Chairperson   |
| COMMITTEE          | Legal Affairs |
| CLERK AT THE TABLE | Silvan        |

**THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS**

.....  
**A REPORT ON THE FACT FINDING VISIT TO THE  
GOVERNMENT OF KENYA (GK) ELDORET PRISON AND  
REMAND**  
.....

*Rt. Hon. Speaker  
You may approve for  
tabling.  
2009  
19/02/19*

*Approved  
[Signature]  
20/2/2019.*

*Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
NAIROBI.*

February, 2019



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## **ABBREVIATIONS AND ACRONYMS**

|      |   |
|------|---|
| NCAJ | National Council on Administration of Justice |
| RODI | Resource Oriented Development Initiatives     |
| MP   | Member of Parliament                          |
| Sen  | Senator                                       |



## PREFACE

**Mr. Speaker,**

### **Establishment of the Committee**

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 218 and mandated to *consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

### **Membership of the Committee**

The Committee is comprised of the following members:-

1. Sen. Samson Cherarkey, MP - **Chairperson**
2. Sen. Mithika Linturi, MP - **Vice-Chairperson**
3. Sen. James Orengo, MP
4. Sen. Fatuma Dullo, MP
5. Sen. Amos Sitswila Wako, MP
6. Sen. Kilonzo Mutula Jnr., MP
7. Sen. Susan Wakarura Kihika, MP
8. Sen. Irungu Kang'ata, MP
9. Sen. Faki Mohamed, MP

**Mr. Speaker,**

Article 126 of the Constitution of Kenya mandates either House of Parliament to sit anywhere in the country. Consequently the Senate of Kenya held a historic inaugural sitting in Uasin Gishu County Assembly from 24<sup>th</sup> to 28<sup>th</sup> September, 2018. During the same period, the Justice, Legal Affairs and Human Rights Committee visited the Government of Kenya (GK) Prison and



Remand to familiarizing and getting a better understanding of the pre-trial detention and conditions of detention for prisoners.

This is in fulfillment of the mandate of the Justice, Legal Affairs and Human Rights Committee under the Senate Standing Orders to, "*consider all matters relating to ...the organization and administration of law and justice....and the implementation of the provisions of the Constitution on human rights.*"

The Committee notes that there is need to align the Criminal Justice System and the Prison System with the promise contained in the Bill of Rights of the Constitution of Kenya by ensuring the right to human dignity under Article 28 and the right to access justice under Article 48 are upheld. The Committee note and made observations and recommendations on the matters that arose from the visit.

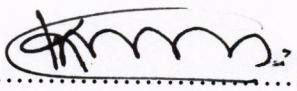
#### **Acknowledgement**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further it wishes to thank the administration of the Government of Kenya Eldoret Prison and the County Government of Uasin Gishu for the cooperation extended to the committee.

**Mr. Speaker,**

It is now my pleasant duty, pursuant to Standing Order 137, to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Fact Finding Visit to the Government of Kenya (GK) Eldoret Prison and Remand.

Signed.....

Date.....13/2/2019.....

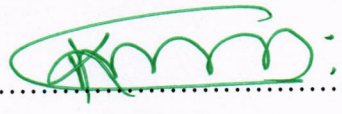

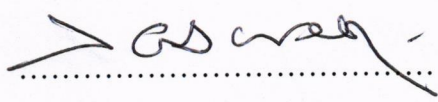
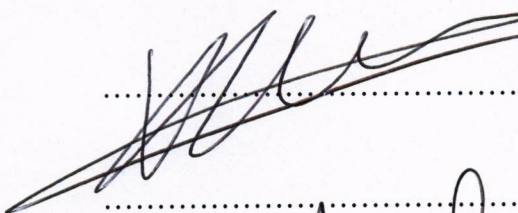
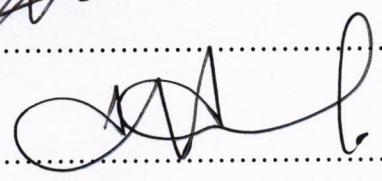
**SEN. SAMSON CHERARKEY, MP**

**CHAIRPERSON**

**JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE**

**ADOPTION OF THE REPORT OF THE JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE OF THE SENATE**

**We, the undersigned Members of the Justice, Legal Affairs and Human Rights Committee of the Senate, do hereby append our signatures to adopt the Report-**

|                                |                  |   |
|--------------------------------|------------------|---|
| Sen. Samson Cherarkey, MP      | Chairperson      | <br>.....   |
| Sen. Mithika Linturi, MP       | Vice-Chairperson | .....   |
| Sen. Fatuma Dullo, MP          | Member           | <br>.....  |
| Sen. James Orengo, MP          | Member           | <br>.....   |
| Sen. Amos Sitswila Wako, MP    | Member           | .....   |
| Sen. Kilonzo Mutula Jnr., MP   | Member           | .....   |
| Sen. Irungu Kang'ata, MP       | Member           | <br>..... |
| Sen. Susan Wakarura Kihika, MP | Member           | .....   |
| Sen. Faki Mohamed, MP          | Member           | <br>..... |



# CHAPTER ONE

## INTRODUCTION

### **1.0 Background**

Article 126 of the Constitution of Kenya mandates either House of Parliament to sit anywhere in the country. The Senate of Kenya held a historic inaugural sitting in Uasin Gishu County Assembly from September 24<sup>th</sup> to 28<sup>th</sup> 2018. On 27<sup>th</sup> September 2018, the Justice, Legal Affairs and Human Rights Committee visited the Government of Kenya (GK) Prisons and Remand facilities to understand the pre-trial detention and conditions of detention for prisoners as well as the conditions of service for Prison Administration, with Prison Administration and detainees.

The Committee heard submissions from the Prison Warden, Commissioner General of Prisons Rift Valley, Regional Commander Rift Valley among other officials on the successes and challenges facing the GK Eldoret Prison and especially the human right challenges in the detention facility.

### **1.1 Legal and Policy Framework on the Prison System**

A prison is an institution of the State where law offenders are kept in custody awaiting their trial and also the convicted persons serving their sentence for the offence committed. A prisoner is a person who is confined in prison after getting proper and legitimate punishment from a court or person that is lawfully remanded by the court having committed an offence.

The Committee noted that there was a comprehensive legal framework regarding access to justice, the rights of persons detained, held in custody or imprisoned under the Constitution of Kenya, 2010. Several laws also define the prison administration in Kenya.

#### ***1.1.1 The Constitution of Kenya, 2010***

Article 48 of the Constitution provides that, *“The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.”*

Article 51 of the Constitution provides that *“A person who is detained, held in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the Bill of Rights,*



*except to the extent that any particular right or a fundamental freedom is clearly incompatible with the fact that the person is detained, held in custody or imprisoned”*

### **1.1.2 Prisons Act Cap 90**

The Prisons Act, Cap 90 of the Laws of Kenya was enacted in 1963 but has been subject to various amendments through the years. The Act established the Kenya Prisons Service which is currently a department within the Ministry of Interior and Coordination of National Government established under the Prisons Act Cap 90 as a uniformed and disciplined entity. The Act further provides for youth corrective training centres, extra mural penal employment as well as the organisation, discipline, powers and duties of prison officers.

The Kenya Prisons Service is headed by the Commissioner General of Prisons. Kenya Prisons Service contributes to public safety and security by ensuring there is safe custody of all persons who are lawfully committed to prison facilities, as well as facilitating the rehabilitation of custodial sentenced offenders for community reintegration. It is a critical component of the Criminal Justice System which has the greatest impact on people’s liberties and freedom, particularly those who are in conflict with the law. The Service became autonomous in 1911 and has since then grown progressively to a Department comprising of 118 institutions of which 94 vs 115 are for adult offenders whilst three (3) (*comprises 2 Borstal Institutions and 1 Youth Corrective Training Centre*) are primarily for youthful offenders. The Service is empowered to exercise the mandate by Chapters 90 & 92, (Prisons and Borstal Acts), Laws of Kenya

### **1.1.3 Borstal Institutions Act Cap 92 Laws of Kenya**

The Borstal Institutions Act, Cap 92 Laws of Kenya enacted in 1963 makes provision for the establishment of borstal institutions for youthful offenders and for the detention of youthful offenders. The current prisoners’ population stands at 54,000 of whom 48% are pre-trial detainees whilst the remaining ones are sentenced prisoners. The prison system is congested. The staff establishment stands at approximately 22,000 comprising of uniformed officers and auxiliary staff.

This gave rise to the nation’s first such institution in Kakamega named Shikusa Borstal Institution. The model was heavily borrowed from England’s Kent District at a village called Borstal. The construction of Shikusa Borstal was started by the colonial government in 1952. In



September 1965, Shimo La Tewa Borstal Institution was opened to serve as an overflow for Shikusa. It has a capacity of about 320. The facility receives inmates from Coast, Lower Eastern, Garissa and North Eastern and parts of Central but the majority are from Western, Nyanza, Nairobi and Rift Valley. The Kamiti Youth Corrective Training Centre admits adults over 18 years but below 21 years who serve a maximum sentence of four months practicing vocational training.

#### ***1.1.4 International Treaties and Conventions***

Various international Treaties and Conventions set out the human rights standards governing the treatment of prisoners. The overarching principle is that prisoners retain fundamental human rights.

The International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment both prohibit torture and cruel, inhuman, or degrading treatment or punishment, without exception or derogation.

Additionally, Article 10 of the International Covenant on Civil and Political Rights (ICCPR), in addition, mandates that, "*all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*" It also requires that "*the reform and social re-adaptation of prisoners*" be an essential aim of imprisonment. This denotes that rehabilitation of prisoners back into the society after their sentence should take center stage rather than dehumanizing the offender.

Several additional international documents provide guidance on the human rights of persons deprived of liberty and set out how governments may comply with their international legal obligations. The most comprehensive such guidelines are the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Standard Minimum Rules), adopted by the U.N. Economic and Social Council in 1957. It should be noted that although the Standard Minimum Rules are not a treaty, they constitute an authoritative guide to binding treaty standards.



Other documents relevant to an evaluation of prison conditions include-

- the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment;
- the Basic Principles for the Treatment of Prisoners; and
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (known as the "Beijing Rules").

### ***1.1.5 Audit on the Criminal Justice System by the National Council on Administration of Justice (NCAJ)***

In order to better understand the challenges facing the Criminal Justice system and conditions of detention, the Committee considered the Audit Report by the National Council on Administration of Justice (NCAJ) in conjunction with Legal Resources Foundations and the Resource Oriented Development Initiatives (RODI).

The NCAJ is established under Section 34 of the Judicial Service Act (No. 1 of 2011). It is a high level policy making, implementation and oversight coordinating mechanism as reflected in its membership that is composed of State and Non-State Actors from the justice sector. The Report was published in 2016 titled "*Criminal Justice System in Kenya: An Audit-Understanding pre-trial detention in respect to case flow management and conditions of detention*" mainly focused on pre-trial detention and case-flow management in the project that targeted eighteen (18) counties from May 15, 2015.

The eighteen (18) counties that took part in the study which included Uasin Gishu County were -

- |                 |                 |
|-----------------|-----------------|
| 1. Mombasa      | 8. Kisii        |
| 2. Taita Taveta | 9. Kisumu       |
| 3. Makueni      | 10. Kakamega    |
| 4. Machakos     | 11. Uasin Gishu |
| 5. Nairobi      | 12. Turkana     |
| 6. Nakuru       | 13. Marsabit    |
| 7. Nyamira      | 14. Isiolo      |



15. Meru

18. Garissa

16. Nyeri

17. Murang'a

Some of the major findings of the audit report included-

- (1) 75 percent of pre-trial detainees are aged between 18 to 35 years and have protracted cases. This has resulted in a huge backlog with the main work falling upon prosecutors and the police;
- (2) Only 32 percent of the police entries were converted to charges of which 70 percent were petty offences;
- (3) 32 percent of cases filed in courts result in acquittals while 63 percent are withdrawn and only 5 percent attract guilty verdicts;
- (4) 4 percent of pre-trial detainees in police cells had no reasons for release recorded in the cell registers or the occurrence books raising questions of their manner of release;
- (5) Of the cases taken to court, there was a low rate of successful prosecution of serious offences. The high acquittal rates are an indication that evidence collection and presentation does not meet the required standards;
- (6) Economic driven and social disturbance offences which are rated as petty; such as offences relating to lack of business licenses, being drunk and disorderly and creating disturbance form 70% of cases processed through the justice system;
- (7) Serious offences such as organized crimes, capital and sexual offenses were found to have the highest rate of acquittals and withdrawals;
- (8) The criminal justice system is skewed against the poor and the youth. More poor people are arrested, charged and sent to prison as compared to the well to do;
- (9) Appeals to the High Court recorded high overturn rates with 45 percent of them resulting in liberty, reduced sentences, re-trials or change of conviction;
- (10) Children are admitted to prisons in remand than are admitted in Children's Remand Homes. Just over half of the cases where children are in conflict with the law are completed within the required ninety (90) days. Worryingly, the number of children remanded in prison stood at 452 which was unlawful;

- (11) Living conditions of detention were poor as facilities holding persons deprived of their liberty were generally old, limited in space and dilapidated and majority of them were constructed during colonial time; and
- (12) There was need to ensure that living conditions in prisons are conducive, especially for special interest groups such as Persons with Disabilities, mothers and children who are in conflict with the law.

The report paints a picture of the gaps in the criminal justice system that need to be addressed. The findings made by the audit gave a comprehensive analysis of the criminal justice system towards providing recommendations to strengthen service delivery and legislative policy as well as practice reforms in Kenya.



## CHAPTER TWO

### SUBMISSIONS DURING THE PRISON VISIT- ELDORET

#### **2.0 Observations from the Visit**

The Senate Committee of Justice, Legal Affairs and Human Rights while on the visit to the Government of Kenya (GK) Eldoret Prison on 27<sup>th</sup> September, 2018 inspected the prison facilities at the Government of Kenya (GK) Eldoret prison and later heard submissions from Mr. Alfred Musila, the Prison Warden and Mr. Isaiah Osugo, Commissioner General of Prisons Rift Valley. The Committee also heard from representative of the remandees and convicts at the Prison.

The Committee was accompanied by Mr. Duncan Ogore, Regional Commander Rift Valley among other officials. In attendance was Hon. Joseph Korir, Member of County Assembly, Uasin Gishu County and Mr. Stephen Lel – Uasin Gishu County Attorney

The Prison Administration made the following submissions to the Committee-

- (1) **Housing for Staff serving GK Prisons-** There was need to address the poor living conditions for staff serving the Eldoret GK prisons. The Prison Wardens and staff were living in mud-and-iron sheet houses that were limited in space and also dilapidated. It was further submitted that the modern housing project had stalled even though the contactors has been paid a significant amount of money;
- (2) **Detention Facilities-** The detention facilities housing detainees were dilapidated and of poor condition. The prison held more than its capacity and therefore the space was limited. There are currently 53, 000 prisoners detained in the facility which only has a capacity of 37,000. With regard to remandees, there were 1817 remandees yet the institution has a capacity of 600 inmates. Expansion and renovation of the facilities will prevent malpractices that arise from overcrowding and allow the detainees to live in dignity;
- (3) **Rehabilitation of prisoners-** There is need to expand access to education of prisoners as part of rehabilitation. Teacher Service Commission should deploy teachers to teach

prisoners. It was further submitted that there have been success stories of prisoners who have performed well academically;

- (4) **Delayed Appeals-** The inmates at the Eldoret GK Prison submitted that there is a delay in hearing of their appeal cases by the High Court and the Court of Appeal;
- (5) **Lost Files-** The inmates also submitted that some of their court files are reported lost;
- (6) **Non-friendly bond terms-** Inmates submitted that they were unable to meet stringent conditions and high court bails and bonds;



## CHAPTER THREE

### COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

#### **2.1 Observations**

The Committee made the following observations that:

- (1) There is need for further investigation into human rights conditions in borstal institutions.
- (2) Even though the staff now receives house allowance, the poor living conditions of both the staff serving the Eldoret GK prisons. The prison staff were living in mud-and-iron sheet houses and that the modern housing project has stalled. There is need to build blocks of flats to accommodate more staff and their families;
- (3) The detention facilities housing detainees were dilapidated and of poor condition, the prison held more than its capacity and therefore the space was limited;
- (4) That there the modern housing project that had stalled even though the contactors has been paid a significant amount of money;
- (5) Prisoners who completed their jail terms were integrated back into society;
- (6) Prisoners still faced many challenges during the hearing and dispensation of their cases; and
- (7) Some of the concerns of remandees and convicts such as delayed appeals and un-friendly bail /bond terms had been addressed in the Audit Report by the National Council on Administration of Justice (NCAJ). The Committee observed that these concerns should be addressed by the Judiciary and other stakeholders within the Criminal Justice System. There is need for a further consultative process between Parliament and the National Council on Administration of Justice (NCAJ) to assess the implementation of the recommendations of the Audit Report and chart a way forward especially with regard to legislative gaps.

## **2.2 Recommendations**

Based on the observations made during the visit to the Government of Kenya (GK) Eldoret Prison and Remand, the Committee's are as follows:

- (1) That the National Treasury prioritizes and allocates funds towards the completion of the stalled modern housing project for Eldoret GK Prisons in the next Financial Year 2019/20;
- (2) That the Cabinet Secretary for Ministry of Interior and Coordination of National Government provides a status report to the Senate within sixty (60) days from adoption of this report, on the steps taken to improve the poor living conditions for officers under the Kenya Prisons Service and prisons in the country;
- (3) The Senate Committee will engage NCAJ to discuss the status of implementation of the audit report as part of stakeholder engagement in the Third Session; and
- (4) That the Senate adopts this report.



**MINUTES OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 13<sup>TH</sup> FEBRUARY 2019 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AT 10.18 AM.**

**PRESENT**

- |                          |              |
|--------------------------|--------------|
| 1. Sen. Samson Cherarkey | -Chairperson |
| 2. Sen. James Orengo     | -Member      |
| 3. Sen. Fatuma Dullo     | -Member      |
| 4. Sen. Mohamed Faki     | -Member      |
| 5. Sen. Irungu Kang'ata  | -Member      |

**ABSENT WITH APOLOGY**

- |                            |                   |
|----------------------------|-------------------|
| 1. Sen. Mithika Linturi    | -Vice Chairperson |
| 2. Sen. Amos Wako          | -Member           |
| 3. Sen. Mutula Kilonzo Jr. | -Member           |
| 4. Sen. Susan Kihika       | -Member           |

**IN-ATTENDANCE**

1. Ms. Kavata Musyoka
2. Mr. Malcolm Ngugi
3. Ms. Clare Jerotich

**SENATE SECRETARIAT**

- Clerk Assistant
- Legal Counsel
- Research Officer

**MIN/JLAHR/2019:**

The Chairperson called the meeting to order at 10.18 a.m. and commenced the meeting with a word of prayer.

**PRELIMINARIES**

**MIN/JLAHR /2019:**

The agenda of the meeting was adopted as presented having been proposed by Sen. Orengo and seconded by Sen. Faki.

**ADOPTION OF THE AGENDA.**

**MIN/JLAHR /2019:**

**CONSIDERATION OF REPORTS PENDING BEFORE THE COMMITTEE**

The Committee adopted the following reports for tabling by consensus.

- i) Report on Public Participation on the Statutory Instruments (Amendment) Bill (Sen. Bills No. 24 of 2018)
- ii) Report on the Petition on the Conferment of Municipal Status of Mararal Town by the County Government of Samburu
- iii) Report on Public Participation on the County Statutory Instruments Bill (Sen. Bill No. 21 of 2018)
- iv) Report on Public Participation on the Petition to County Assemblies Bill (Sen. Bill No. 22 of 2018)
- v) Report on the Visit to Eldoret G.K. Prisons and Remand
- vi) Report on the Fifth Global Summit on Open Governance Partnership in Tbilisi, Georgia, 17<sup>th</sup> to 19<sup>th</sup> July, 2018