

REPUBLIC OF KENYA

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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT - SECOND SESSION (2008)

**THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION,
NATIONAL SECURITY AND LOCAL AUTHORITIES**

.....

**REPORT ON ALLEGED CORRUPTION IN THE MINISTRY OF STATE
FOR IMMIGRATION SERVICES AND REGISTRATION OF PERSONS**

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**PARLIAMENT BUILDINGS
JULY, 2008
NAIROBI**

JULY 18, 2008

Mandate

The Departmental Committee on Administration, National Security and Local Authorities was constituted by the House Business Committee on Wednesday 30th April, 2008 pursuant to Standing Order 151(1). Under the provisions of Standing Order 151(4) the Committee is mandated to:-

- (i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;***
- (ii) study the programme and policy objectives of the Ministries and departments and the effectiveness for the implementation;***
- (iii) study and review all legislation after First Reading, subject to the exemptions under Standing Order 101A(4);***
- (iv) study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;***
- (v) investigate and inquire 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 or a Minister; and***
- (vi) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.***

The Committee oversees the performance of the following eight Ministries as provided for by Standing Order 151(2):-

- Ministry State for Provincial Administration and Internal Security ;
- Ministry of State for Public Service
- Ministry of Local Government;
- Ministry of Home Affairs;

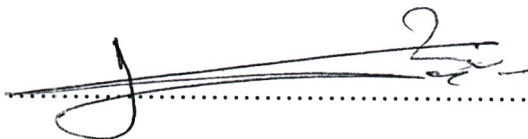
- Ministry of Culture and National Heritage;
- Ministry of State for Special Programmes;
- Ministry of State for Youth Affairs and Sports;
- Ministry of Immigration and Registration of Persons

Membership

The Committee membership comprises:-

- (i) The Hon. Fred Kapondi Chesebe, MP – Chairman
- (ii) The Hon. John Ngata Kariuki, MP
- (iii) The Hon. Lewis Ng'ang'a Nguyai, MP
- (iv) The Hon. Peter Kiilu, MP
- (v) The Hon. Mohammed Hussein Ali, MP
- (vi) The Hon. Clement Kung'u Waibara, MP
- (vii) The Hon. Cyprian Ojwang Omollo, MP
- (viii) The Hon. Mwalimu Mwahima, MP
- (ix) The Hon. Raphael Letimalo, MP
- (x) The Hon. Pollyns Ochieng', MP
- (xi) The Hon. Joseph Kiuna, MP

Mr. Speaker, Sir, it is my duty and privilege to lay this progress report on the Table of the House on behalf of the Departmental Committee on Administration, National Security and Local Authorities in accordance with Standing Order 162 (2).

Signed: 

Hon. Fred Chesebe Kapondi, MP

Date: 07/08/08

Sittings

The Committee held two sittings, the first one on Friday 18th July, 2008 and the second one on Friday 1st August, 2008. During the first meeting, the following witnesses appeared before the Committee:

1. The Minister for Immigration Services and Registration of Persons
2. The Permanent Secretary for Immigration Services
3. The Director of Immigration Services
4. The Assistant Director of Immigration Services
5. The Principal Immigration Officer

The Chairman welcomed the Minister and the Ministry officials accompanying the Minister. The Committee Chairman informed them that the matter before the Committee was an issue of national interest and therefore there was need to establish the facts behind the speculation. The officials were thanked for finding time to attend the meeting.

Evidence received

The Committee received evidence from the Minister and Ministry officials as follows;-

Administration - Ministry of State for Immigration Services and Registration of Persons

The Committee was informed that the Ministry of Immigration Services and Registration of Persons has four departments each headed by a director viz;

- (i) Immigration,
- (ii) Registration of persons,
- (iii) Civil registry, and
- (iv) Department of refugee affairs.

The Department of Immigration deals with the issuance of passports and work permits. The department of registration of person issues National Identification Cards (IDs). The civil registry deals with registration of births and deaths while the department of refugee affairs handles the registration of refugees.

The Committee was further informed that the Ministry is in the process of implementing an ambitious reform programme that will automate/computerize all departments in the Ministry. Through the system, an Integrated Population Registration System (IPRS) will be established. A consultancy is being undertaken on the third generation identity cards and the report will be available in the month of August 2008.

Immigration Department

The department comprises of a passport, visa, alien registration, citizenship and work permit sections. The department has established an inter ministerial Committee to handle matters relating to issuance of work permits. The committee comprises of representatives from the Ministries of Foreign Affairs, Labour, Education, Trade, the Kenya Association of Manufacturers and the Investment Promotions Centre.

The Committee was informed that there are various classes of permits as is set out in the Immigration Act cap 172 Laws of Kenya.

Process of issuing a work permit

The Committee was taken through the process that leads to the issuance of a work permit at the department and was informed that application for work permits are received by immigration officers at the counter and an acknowledgement note is issued to the applicant upon payment of the prescribed fee. It is then processed, vetted by the National Security Intelligence Service (NSIS) and the inter ministerial committee considers them based on merit and fulfillment of conditions stipulated in the Immigration Act.

The Director of Immigration gets minutes of the proceedings of the committee and can alter the decisions upon which the committee will have to reconsider the cases afresh. The Permanent Secretary and the Minister are also given copies of the proceedings. The committee can defer, approve or reject applications based on merit. Applicants are notified of the status of their applications ideally in seven days.

The committee was also informed that the inter ministerial committee meets once in a week and considers an average of 250 applications and during the one day deliberations 200 applications are approved. The Committee learnt that the inter ministerial committee is a creation of the Ministry for administrative purposes and to act as a check and balance system. As per the Immigration Act the process is to be handled by an Immigration Officer. Appeals for work permits are handled by the Minister.

Appeals and the role of the Minister

The Committee was informed that the role of the Minister for immigration is provided for under the Constitution of Kenya (section 93 and 94) and the Immigration Act cap 172 as that of considering appeals for work permits, issuing naturalization certificates and deportation orders. Pursuant to the Immigration Act, applicants who are aggrieved by the decision of the inter ministerial committee can appeal to the Minister. The appeal should be made within 42 days after the application is rejected and a fee of Kshs. 2,000 paid. The Director of Immigration forwards the appeals to the Minister with his recommendations through the Permanent Secretary. The Minister can uphold the decision of the Immigration Officer to refuse issuance of a permit or direct the issuance of the same. The Immigration Act, Cap 172 5 (3) gives the Minister the discretion to grant or reject appeals and the powers given are final and cannot be challenged in a Court of Law.

The Committee learnt that during the period 2001 - 2005 the Ministry granted 150 Kenyan citizenships. This is compared to the period 2006 to 2007 where

200 citizenships were granted. In the year 2008, the Minister has only granted 4 Kenyan citizenships to foreigners. Further the Committee was informed that 90% of foreigners are seeking Kenyan citizenship and 70 % of those seeking work permits are citizens of India.

According to the provisions of the Constitution, section 93 provides the minimum requirements for a foreigner to be naturalized.

The Committee raised concern over the high rate of naturalization granted by the former Ministers and resolved that there was need to develop a National Immigration Policy and review the Constitution with regard to the conditions set for a foreigner to be considered for naturalization.

Alleged corruption at the department of immigration

The Committee was informed that there is a backlog of close to 4, 000 applications and that applicants are not informed of the status of their applications. The Committee learnt that corruption is rampant at the Ministry and in particular the immigration department where some immigration Officers deliberately delay applications so as to extort money from the applicants. In some cases, inspection officers harass applicants whose renewal has been deliberately delayed and threaten them with deportation. Inefficiency among officers and the presence of extortionist cartels at the Ministry hamper service delivery.

The Committee was informed that immigration officials demand bribes of up to Kshs. 50, 000 from foreigners applying for citizenship and work permits. The committee was informed of a case in which an Israeli female applicant applied for a naturalization having stayed in Kenya for more than twenty years but her application was rejected because she could not pay the bribe requested.

Following the appointment of Hon. Kajwang as the Minister for Immigration, many aggrieved people have written requesting to be considered and so far he has approved three applications for work permits. Other cases that the

Minister has so far handled include work permits for the director of Gulf Bank (Islamic bank), and the Director of Gapco Oil Company.

Working relationships at the Ministry

The Committee was informed that the working relationships between the Minister and the Director of Immigration had been strained and thus detrimental to service delivery. Letters marked by the Minister to the Director to address issues of delay raised by the public take inordinately long to be acted upon.

It was alleged that the Director of Immigration has been having poor working relationships with the immediate former and the current Minister. As a result of serious problems with immediate former Minister, the Director was to be transferred by the Public Service Commission but his transfer was not effected as a result of influence and connection in high places. The Committee was further informed that the Minister in some cases acted against the advice of the technical officers particularly the Director thus leading to friction between the Minister and the Director of Immigration.

The Committee further learnt that officers at the Ministry have signed performance contracts but after the Rapid Results Initiative (RRI) officers have reverted to the old ways of inefficiency.

The Committee raised concern over the leakage of documents to the press. The Committee heard that officers were constantly reminded to uphold the official secrets Act and the NSIS was tasked to investigate the source of information leakage to the press. The Committee learnt that the leaked files were deliberately released to the press by the cartels in the Ministry who are fighting back for control.

Further the Committee was informed that the Principal Immigration Officer was relieved of his duties of chairing the inter ministerial committee ostensibly

to allow him pursue further studies and the assistant director was appointed to chair the committee.

Renewal of work permits

The Committee heard that investors wishing to renew their work permits are forced to apply six months in advance due to the inefficiency at the ministry and in most cases the applications are not processed in time thus leading to harassment of the applicants.

The Committee heard that there is rampant extortion at major airports of Somali immigrants with foreign travel documents in the pretext that they are terrorists. The aliens thus prefer to fly to Uganda and come to Kenya by bus. This denies the country the much needed revenue.

Challenges at the Ministry

The committee was informed that the Ministry faces a lot of challenges. Such problems include;

1. Shortage of staff and the manual operations at the Ministry. The current workforce (immigration officers) at the Ministry is 546 officers. The Ministry requires a total of 1, 758 officers to function optimally.
2. Coupled with the shortage of staff, the Ministry is not automated and most of the work is done manually. This has hampered efficiency in the ministry and has encouraged corruption at various levels.
3. Controlling and regulating residency of aliens through issuance and renewal of Entry/Work Permits and passes as provided for by the Immigration Act.
4. Insufficient office space and infrastructure hampers operations at the Ministry which encounters massive human traffic seeking immigration and travel documents.

Second meeting with the Ministry of State for Immigration Services and Registration of Persons officials on Friday 1st August, 2008

The acting Chairman welcomed the Officers from the Ministry to the meeting and thanked them for once again coming to meet with the Committee. The officers were informed that the Committee found it prudent to scrutinize some of the controversial files in order to establish the facts behind the stories. There was need therefore to get into the bottom of the underlying factors leading to approval of permits to foreigners of questionable characters.

Entry Permit/Work Permits Applications: Files inspected

The Committee scrutinized the following files whose entry/work permits applications were controversially approved;

1. File no. R.976213 (TF): Patel Dipak Naginbhai

The Committee was informed that the applicant was first granted an entry permit Class A in 17th October, 2002 for a two year period to work with M/S Export Trading Company Ltd. as a Branch Manager. The permit was renewed for a further two years to expire on 16 October, 2006.

The Committee also learnt that the applicant was informed on 8th January 2008 that his appeal for renewal of his work permit was not successful on the grounds that there were qualified Kenyans who could fill Dipak's post. However, Dipak lodged another appeal which was rejected by the inter ministerial committee on the basis that the appeal was made outside the requisite 42 days, contrary to the Immigration Act Cap. 172 Laws of Kenya. The Minister however allowed the appeal on the same day and consequently approved the application for renewal of the work permit.

2. File no. R.816262: Vipulbhai Babubhai Patel

The applicant was a graduate of Sardar University of India as per his academic certificate. He was thus granted a Class A Entry Permit no.

814989 on 9th November 2000 for a two year period to work as a manager with M/S Anmol Trading Company. The permit was renewed in 2002, 2004 and May 2006 to expire in November 2006.

It was reported that Mr. Vipulbhai had applied for registration as a Kenyan citizen in 2004 but in the course of processing his documents, it was discovered that Entry permit had expired in November 2005. This anomaly rendered him ineligible for registration as he had no valid immigration status. The Immigration department wrote to him vide letter ref. 816261/1/61 of November 18, 2005.

The Committee was also told that the name appearing on the degree certificate did not match the one on his passport hence the conclusion that his degree was not authentic. The Work permit Committee thus rejected his application for work permit renewal on 28th February, 2008. The applicant launched an appeal against this decision. The Director of Immigration Services advised against the renewal of the work permit because the applicant's immigration status was unknown, and that his citizenship had been previously rejected for giving a dubious degree certificate. The Permanent Secretary advised that punitive action be meted out on the culprit if indeed he had violated the Immigration Act. The Minister however allowed the appeal on 26th June 2008 and directed the issuance of the permit thereof, contrary to section 7 Cap. 172 Laws of Kenya.

3. File no. 1317496: Naraj Samji Punjani

It was reported that the applicant was again an Engineering graduate of Sadar Patel University of India. He applied for a Class A work permit to join M/S Parbat Construction Ltd in 20th November 2007. The inter ministerial committee rejected the application on the grounds that the degree was suspect. He was thus notified to produce his passport and original degree certificate for verification which he never did. A decision to reject his

application was reached and a Refusal of Entry permit notification no. 339548 of November 20, 2007, sent to him.

The Committee heard that the applicant lodged an appeal on 13th June 2008. The Director of Immigration Services remarked that the applicant submitted a counterfeit certificate and that the names of the signatory to contracts by the employer were missing; and that the application was made after the expiry of the mandatory 42 days. The Permanent Secretary recommended that appropriate action be taken against the appellant for violating the Immigration Act. However, the Minister allowed the appeal on 26th June, 2008.

4. File no. R.1323046: Anaceto Mark D’Cruz

The Committee was informed that the subject was a holder of a proficiency certificate in hydraulics Engineering acquired in September 2006. He also underwent a welding inspection course at the Bhide’s institute of Technology. He submitted his application for a Class A permit to work as an Assistant Manager with a welding company based at the coast of Kenya. His application was rejected due to the fact that his skills were available locally. This refusal was communicated to him vide notification no. 339550 of 30/11/2007.

The Committee was told that the applicant appealed against the rejection on 25/4/08. The Director of Immigration made the assertion that there were local people with the same skills hence the rejection should be upheld. The Minister noted the concerns of the Director but allowed the appeal and authorized the issuance of an Entry Permit on 20th June, 2008.

5. File no. 148848: Pragnesh Dharamshi Popat Patel

It was reported that the applicant is a British Overseas citizen born in Nyeri on 23/8/1959. He was issued with a Class H Entry Permit on 28/8/1982 as a shareholder of Dharamshi Popat Shah, a retail and wholesale business

based in Mombasa. The Entry Permit was renewed on 20/9/1984 and subsequently for two years until 2004. The Committee heard that his application was rejected in 2006 because the applicant had low capital investment. A Refusal notification was issued to the applicant on 19/10/2006.

The Committee heard that the applicant appealed against the rejection and paid the mandatory fee of Kshs. 2,000. The Director of Immigration forwarded his recommendations to the Minister to the effect that that the subject lacked the minimum Kshs. 6.5m for investment. However, the Minister allowed the appeal and directed that the applicant be issued with a work permit which was done on 13.6.2008, in disregard of the Investments Promotion Act.

6. File no. R.1072974: Nair Prasad Kumar Prakkah Thakkapann

The Committee was informed that the applicant is an holder of a Diploma certificate in Civil Engineering from S.N. Polytechnic, India. He applied for a Class A Entry Permit on 28.10.04 to work as a Dock Maintenance Engineer with M/S Southern Engineering company. An Entry permit steering committee approved his application on 14.07.05. An application for renewal was granted on 25.7.07 for a final extension of one year. He was to hand over to a Kenyan and prepare to leave the country.

The Committee heard that the subject submitted an application for renewal dated 11.02.07 which was rejected on 03/04/08. The employer lodged an appeal against the decision. The Director advised that the appellant had been granted a one year final permit to prepare to hand over to a Kenyan with similar skills. The Minister however authorized issuance of the permit for a further two year period.

7. Church of Jesus Christ of the Latter Day Saints

The Committee heard that the Church, also known as the Mormons missionaries, has its roots in the United States where its current leader Warren Jeffs is regarded as a dangerous criminal by the Federal Bureau of Investigations (FBI). The Immigration Department has been processing permits for the Mormons but the recent upsurge of young Mormons in the country who are applying for the Entry permits has raised concerns. Such concerns are illegal activities such as human trafficking and pedophilia. The Committee was told that out of these fears, the officials of the Latter Day Saints were summoned for a meeting on 15/4/2008 to shed light on their activities. The National Security Intelligence Service was requested by the Department to investigate the activities of the Church and advise the Department accordingly. The investigation section was also asked to carry out an inquiry and research on the activities of the Church. In the meantime, all the applications were rejected.

Findings

The Committee was informed that;

- Investigations revealed that most of the missionaries are aged between 19-25 years.
- The Church claims to have funded several projects in Kenya but cannot produce details of the said projects.
- The missionaries live in the Church and walk around the estates in pairs as they preach.
- The activities of the Church are frowned upon in the US Evangelical circles, and the Church is widely regarded as a cult.

The inter ministerial committee rejected the applications on the basis of the above mentioned findings. The Minister however approved their appeals on 26th June, 2008.

Other cases cited

The Committee heard that several other applications and appeals were approved in a similar manner as the seven cases mentioned earlier. These cases approved contravened Regulation 12 (as read with section 5(3) of the Immigration Act).

The following are the other files cited:

- **R. 1393649: Robert Michael Paoworth (Canadian)**
- **R. 1303677: Andrew Barney (American)**
- **R. 1393678: Canton Alan Hutchinson (USA)**
- **R. 1393648: Jordan Alexander Casey (USA)**
- **R. 1330038: Khuzwayo Sifizo Dasil (South African)**
- **R. 1393679: Jordan Reid Skidmore (USA)**
- **R.1318187: Tsietsi Solly Sibiya (South African)**
- **R. 1318006: Juan Clayton Whitting (USA)**

The Committee wound its meetings and resolved to table the report of its findings in Parliament for debate and implementation as soon as possible as the matter was of national interest and urgent.

Recommendations

After receiving evidence from the Immigration officers, the Committee recommends that;

1. The Minister, in approving the Work/Entry Permits acted within the powers vested on him by the Immigration Act Cap. 172 Sec. 5 (3) which gives the Minister discretion to grant or reject appeals and the powers given are final and cannot be challenged in a court of law.
2. The Immigration Act does not set the limit for the number of foreigners to be naturalized. The Act should be amended to control future Ministers who could use those powers arbitrarily to grant unlimited number of foreigners naturalization status.
3. A complete overhaul of the staff of the Immigration Services Department is mandatory if corruption is to be controlled at the Ministry. Thorough investigations of the staff by the Kenya Anti Corruption Authority (KACA) for alleged corruption by the officers at the Immigration Department should be carried out urgently to get the culprits who have been involved in corrupt deals.
4. The Director of Immigration Services should be redeployed speedily to allow for independent investigations. Any future director should focus on the overall administration of the department. The current director has ostensibly focused on issuance of permits at the expense of other sections of the department which are equally important.
5. The National Security Intelligence Service (NSIS) should itself be investigated for having cleared persons with fraudulent documents only to discover long after that the same persons have no valid immigration status due to fake papers. Such omissions and commissions have seriously undermined the security of this country.

6. Investigations should also be launched to vet out foreigners who have been granted Entry/Work Permits, citizenship or immigration status over the years. It is possible that many cases are operating with questionable documents, a matter that raises national concern as it seriously erodes and compromises our security.
7. Immigration officers in all the stations should be reshuffled or transferred regularly in a bid to prevent cartels entrenching their illicit activities after staying in one station for far too long. The Public Service Commission should strictly reinforce performance contracting to the Ministry's officials in order to eliminate backlog and unnecessary delays and weed out officers who under perform.
8. The Ministry needs to urgently computerize its systems so as to reduce paper work which is susceptible to manipulation and also restructure the departments. Applications will therefore be electronically managed and reduce incidents of corruption. Closed Circuit Television (CCTV's) cameras should be introduced along the corridors of Nyayo House where most corrupt deals actually take place.
9. The Public Service Commission (PSC) should employ more staff and deploy them so as to enhance staff capacity at the Immigration department. The question of funding of the department by Treasury in a non issue as the department churns substantial funds most of which are generally lost through corrupt deals. A portion of the funds generated by the Ministry should be used to pay new employees, computerize as well as restructure systems at the Ministry to improve service delivery.
10. Applications for Entry Permits should be done before the applicants come into the county to prevent occurrences where aliens have found their way illegally into the country and have managed to acquire permits, immigration and refugee status fraudulently.