



PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE PERSONS DEPRIVED OF LIBERTY BILL, 2014

**CLERK'S CHAMBERS
NOVEMBER, 2014**

*paper laid
by the Vice-Chairman
of the Committee*



*Justice and
Legal Affairs
27/11/2014*

Table of Contents	2
1. 0 PREFACE	3
1.1 Committee Membership.....	3
1.2 Mandate of the Committee.....	4
1.3 Departments under the Committee.....	4
1.4 Committal of the Bill to the Committee.....	5
2.0 COMMITTEE DELIBERATIONS	5
3.0 COMMITTEE AMENDMENTS	7
4.0 GENERAL OBSERVATIONS	12
5.0 RECOMMENDATIONS OF THE COMMITTEE	13

1.0 PREFACE

On behalf of the Committee on Justice and Legal Affairs, it is my pleasure and duty to present to the House, the Report on the Persons Deprived of Liberty Bill, 2014.

1.1 Committee Membership

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. Hon. Samuel Chepkong'a, M.P. – Chairperson
2. Hon. Priscilla Nyokabi, M.P. – Vice Chairperson
3. Hon. Njoroge Baiya, M.P.
4. Hon. Muriithi Waiganjo, M.P.
5. Hon. Ndirangu Waihenya, M.P.
6. Hon. Florence Kajuju, M.P.
7. Hon. Kang'ata Irungu, M.P.
8. Hon. Benson Mutura, M.P.
9. Hon. John Njoroge Chege, M.P.
1. Hon. William Cheptumo, M.P.
2. Hon. Mohamed Abdi Haji, M.P.
3. Hon. Kangongo Bowen, M.P.
4. Hon. Sammy Koech, M.P.
5. Hon. Moses Cheboi, M.P.
6. Hon. Paul Bii, M.P.
7. Hon. Charles Gimose, M.P.
8. Hon. Johanna Ng'eno, MP.
9. Hon. Boniface Otsiula, M.P.
10. Hon. David Ouma, M.P.
11. Hon. Neto Agostinho, M.P.
12. Hon. Kaluma Peter, M.P.
13. Hon. Fatuma Ibrahim Ali, M.P.
14. Hon. Ben Momanyi Orari, M.P.
15. Hon. T. J. Kajwang', M.P.
16. Hon. (Bishop) Mutua Mutemi, M.P.
17. Hon. Olago Aluoch, M.P.
18. Hon. Christine Oduor Ombaka, M.P.
19. Hon. Munuve G. Mati, M.P.
20. Hon. Mwamkale William Kamoti, M.P.

1.2 Mandate of the Committee

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing Order No. 216(5) which defines functions of the Committee as being:

- a) To 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) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-

- Constitutional Affairs
- The administration of law and Justice
- The Judiciary
- Public Prosecutions
- Elections
- Ethics, Integrity and anti-corruption and
- Human Rights.

1.3 Departments under the committee

- a) Office of the Attorney General and Department of Justice
- b) Ethics and Anti-Corruption Commission (EACC)
- c) Independent Electoral and Boundaries Commission (IEBC)
- d) Commission for the Implementation of the Constitution (CIC)
- e) Kenya National Commission on Human Rights (KNCHR)
- f) Office of the Director of Public Prosecutions (ODPP)
- g) Registrar of Political Parties
- h) Witness Protection Agency (WPA)
- i) Commission On Administrative Justice (COAJ)
- j) The Judiciary

1.4 Committal of the Bill to the Committee

Standing Order 127 (1) states that "a Bill having been read the First Time shall stand committed to the relevant Departmental Committee without question put".

Standing Order 127 (3) further states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and the recommendations of the public when the committee makes its report to the House". The Committee advertised for the submission of memoranda from the public and a Memoranda from the Kenya National Commission on Human Rights which it considered in its deliberations.

1.0 COMMITTEE DELIBERATIONS ON THE BILL

The Committee considered the Bill, clause by clause and below is a summary of the Committee deliberations:-

PART I – PRELIMINARY

Clause 1: Agreed to.

Clause 2: Amendment proposed.

PART II –RIGHTS OF PERSONS DEPRIVED OF LIBERTY AND DUTIES OF PERSONS IN CHARGE

Clause 3: Amendment proposed.

Clause 4: Amendment proposed.

Clause 5: Amendment proposed.

Clause 6: Amendment proposed.

Clause 7: Agreed to

Clause 8: Amendment proposed.

Clause 9: Amendment proposed.

Clause 10: Amendment proposed.

Clause 11: Agreed to

Clause 12: Amendment proposed.

Clause 13: Amendment proposed.

Clause 14: Agreed to.

Clause 15: Agreed to.

Clause 16: Agreed to.

Clause 17: Agreed to.

Clause 18: Amendment proposed.

Clause 19: Agreed to.

Clause 20: Amendment proposed

Clause 21: Amendment proposed.

Clause 22: Amendment proposed.

Clause 23: Amendment proposed.

Clause 24: Amendment proposed.

Clause 25: Agreed to.

Clause 26: Amendment proposed.

Clause 27: Agreed to.

PART III – PROVISIONS ON IMPRISONED OR DETAINED PERSONS

Clause 28: Agreed to.

PART IV – COMPLAINTS AND DISCIPLINARY PROCEDURES

Clause 29: Amendment proposed.

Clause 30: Amendment proposed.

Clause 31: Amendment proposed.

PART VI: PROVISIONS ON DELEGATED POWERS

Clause 32: Amendment proposed.

PART VII: GENERAL PROVISIONS

Clause 33: Amendment proposed.

Clause 34: Agreed to.

MEMORANDUM OF OBJECTS AND REASONS: Agreed to.

2.0 COMMITTEE AMENDMENTS

The Committee proposed the following amendments to the Bill: -

Part I- PRELIMINARY

Clause 2 of the bill was amended in the definition of "family member" by inserting the words "or legal guardian" immediately after the word "parent"

Part II-RIGHTS OF PERSONS DEPRIVED OF LIBERTY AND DUTIES OF PERSONS IN CHARGE

Clause 3 of the Bill was amended as follows—

- subclause (1) the word "maybe" appearing immediately after the words "limitation as" was deleted and substituted with the words "may be";

- subclause (2) was deleted and replaced with a new subclause (2) as follows—
 - “(2) Nothing in this Act may be construed as limiting the rights and freedoms of persons deprived of liberty otherwise than in accordance with Articles 29(f) and 51 of the Constitution.”
- deleting subclause (3) and replacing with a new subclause (3) as follows—
 - “(3) An institution holding persons detained, in custody or imprisoned shall maintain a register which shall be used by the law enforcement official to record—
 - (a) personal details of the person detained, held in custody or imprisoned, including name, age and address;
 - (b) the physical condition of the person detained, held in custody or imprisoned;
 - (c) reason for the detention, custody or imprisonment;
 - (d) steps being taken to ensure that the person arrested or detained is subject to the due process of the law;
 - (e) any transfers of the person detained, held in custody or imprisoned to other institutions or facilities;
 - (f) the medical history of the person detained, held in custody or imprisoned.”;

Clause 4 was deleted and replaced with a new clause 4 as follows—

Limitation of **4.** The right to privacy as set out in Article 31 of the Constitution may be limited in respect of a person deprived of liberty—

- (a) if the limitation is for the purposes of maintenance and preservation of national security to the extent provided for in the Constitution;
- (b) if the limitation is for the purposes of security and safety of law enforcement officials and the persons deprived of liberty under their care;
- (c) where the enjoyment of that right prejudices or is freedoms of others;
- (d) where there is need for humanitarian assistance of migrants, refugees, asylum or refugees status seekers, stateless and undocumented persons;
- (e) where there is need for psychiatric treatment of persons with mental or sensory disabilities; or
- (f) if the limitation of the right is for the purposes of the security and safety of children, elderly persons and persons with disability.

Clause 5

the words "two hundred" appearing immediately after the word "exceeding" were deleted and substituted with the words "five hundred";

Clause 6

Subclause (2) was deleted

Clause 7

- (a) the expression "(1)" appearing immediately after the expression "7" was deleted
- (b) the word "and" appearing at the beginning of paragraph (e) was deleted

Clause 8

- (a) in subclause (1)—
 - (i) the words "being detained, held in custody or imprisoned" appearing immediately after the word "upon" in paragraph (a) were deleted and substituted with the words "the first instance of detention, being held in custody or imprisonment";
 - (ii) the words "or movement" were inserted immediately after the word "transfer" appearing in paragraph (b);
- (b) in subclause (2) the word "liberties" appearing immediately after the words "deprived of" was deleted and substituted with the word "liberty";

Clause 9

in subclause (5) the word "related" appearing immediately after the words "which this section" was deleted and substituted with the word "relates";

Clause 10

Subclause (4) the words "with due regard to personal safety and health" was inserted after the words "of the same sex"

Clause 12

Was deleted and replaced with a new clause 12 as follows—

- Right to reasonable accommodation.
- 12.** (1) A person deprived of liberty shall not be confined in crowded conditions.
- (2) The Cabinet Secretary shall by regulations determine the maximum number of persons deprived of liberty that may be accommodated in any given facility or prison and the minimum space or area of such accommodation.
- (3) The following separation categories shall be observed with respect to the accommodation of persons deprived of liberty—
- (a) men and women who are deprived of liberty, detained, held in custody or imprisoned shall be accommodated in separate detention facilities;

- (b) children deprived of liberty, detained, held in custody or imprisoned shall be held separate from adults in facilities conducive to their special needs and age;
- (c) male and female children shall be accommodated in separate facilities;
- (d) mothers with infant children shall be accommodated in facilities separate from those in which other persons deprived of liberty are held;
- (e) intersex persons deprived of liberty shall be held separate from other persons;
- (f) older members of society deprived of liberty shall be held in accommodation appropriate to their special needs and age;
- (g) refugees, asylum seekers or refugee status seekers shall be held separately from persons charged with or convicted of criminal offences; and
- (h) Persons deprived of liberty on account of a civil debt shall be held separately from persons charged with or convicted of criminal offences.

Clause 13 was entirely deleted; merged with clause 12

Clause 15 the expression "thatthe" appearing immediately after the word "ensure" was deleted and substituted with the words "that the"; drafting error

Clause 18

clause 18 of the Bill was amended by—

- deleting subclause (4); allowed for suicide
- deleting subclause (5);referred to regulations

Clause 20

clause 20 of the Bill was amended by deleting subclause (3);was rendered as misuse of the persons deprived of liberty

Clause 21

the Bill was amended by deleting clause 21;referred to regulations

Clause 23

clause 23 of the Bill was amended by deleting subclause (1) and replacing with a new subclause (1) as follows—

“(1) Where a child is arrested, detained or deprived of liberty in execution of a lawful sentence, the competent authority shall within seven days notify a parent or guardian of the child of such arrest.”; was given a timeline

Clause 24

Clause 24 of the Bill was amended in subclause (1) by deleting the words “, subject to Regulations,” appearing immediately after the word “is”; inappropriately placed

Clause 25

Clause 25 of the Bill be amended in subclause (3) by deleting the words “Cabinet Secretary” appearing immediately after the word “The” and substituting therefore the words “Competent Authorities”

Clause 26

Clauses 26 of the Bill was amended in subclause (4) by deleting the words “an advocate” appearing immediately after the word “between” and substituting with the word “a legal representative”; to give room for other legal actors

Part IV-Complaints and Disciplinary Procedures

Clause 29

Clause 29 of the Bill was amended—

- in subclause (7) by deleting the words “, whose decision shall be final” appearing immediately after the word “Secretary”;
- by deleting subclause (9) and replacing with a new subclause (9) as follows—

“(9) Any law enforcement officer who wilfully obstructs, conceals or fails to act on a complaint lodged by or on behalf of a person deprived of liberty commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or a term of imprisonment not exceeding two years, or to both.” two hundred thousand shillings was found to be too little.

CLAUSE 30

clause 30 of the Bill was amended by deleting subclause (4);taken to regulations

Part V-Establishment of consultative Committee on Persons Deprived of Liberty

Clause 31

clause 31 of the Bill was amended—

- in subclause (2) by deleting the words “make recommendations on” appearing immediately after the words “on and” and substituting with the word “resolve”;
- in subclause (3)—

- (i) by inserting the words "who shall be the secretary" immediately after the word "representative" appearing in paragraph (c);
- (ii) by deleting paragraph (d) and replacing with a new paragraph (d) as follows—
"(d) the Director of Medical Services or his or her representative;" to be specific
- (iii) by deleting paragraph (i) and replacing with a new paragraph (i) as follows—
"(i) a representative from the Council of the Law Society of Kenya";
- (iv) by deleting paragraph (g) and replacing with a new paragraph (g) as follows—
"(g) one person nominated and representing Public Benefit Organizations responsible for matters relating to persons deprived of liberty, appointed by the Cabinet Secretary; and";
- (v) by inserting a new paragraph (h) immediately after paragraph (g) as follows—
"(h) one representative from the National Council of Persons with Disabilities."

Part VI-Provisions on Delegated Powers

Clause 32

Clause 32 of the Bill was amended in subclause (2) by—

- (a) inserting the word "be" immediately after the word "may" appearing in paragraph (c);
- (b) deleting the word "and" appearing immediately after the word "held;" in paragraph (h);
- (c) inserting the following new paragraphs immediately after paragraph (h)—
 - "(ha) practical and reasonable measures for the enjoyment of the rights to freedom of conscience, religion, belief and opinion by persons deprived of liberty;
 - (hb) the form and manner of vocational training and active employment opportunities available to persons serving a lawful sentence;
 - (hc) the form of prison discipline and manner of disciplinary proceedings to be undertaken with regard to prison offences; and";

Part VII-General Provisions

Clause 33

Clause 33 of the Bill was amended—

- (a) in subclause (1) by deleting the words "two hundred" appearing immediately after the word "exceeding" and substituting with the words "five hundred";two hundred thousand was seen as too little
- (b) in subclause (2) by deleting the word "that" appearing immediately after the words "justified on"; wrong wording

GENERAL OBSERVATIONS

The Committee observed that the Persons Deprived of Liberty Bill, 2014 is a good Bill and the Committee fully supports the proposed legislation. The legislation was well drafted and covered the areas envisaged by the Constitution.

RECOMMENDATION

The Departmental Committee on Justice and Legal Affairs recommends to the House the adoption of this report and the amendments to the Persons Deprived of Liberty Bill, 2014 as herein proposed.

Thank You.



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HON. SAMUEL CHEPKONGA, M.P.,
Chairperson, Committee on Justice and Legal Affairs