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03 MAY 2016

NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION – 2016

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT ON THE CONSIDERATION OF A PETITION BY THREE INMATES FROM NAIVASHA MAXIMUM PRISON ON RADICALIZATION OF INMATES, REVIEW OF THE PENAL CODE AND AMNESTY FOR INMATES WHO HAVE SERVED FOR MORE THAN SEVEN (7) YEARS

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2016

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Chair's foreword

The petition by three inmates from Naivasha Maximum Prison on the radicalization of inmates, review of the Penal Code and amnesty for inmates who have served for more than seven (7) years was tabled before the House pursuant to Standing Order No. 225 (2) (b) by the Hon. Justin B. N. Muturi EGH, MP, Speaker of the National Assembly on behalf of the petitioners on 7th July, 2015.

In considering the petition, the Committee nominated a Sub - Committee that undertook a field visit to the Naivasha Maximum Prison on Thursday 11th to Friday 14th February 2016. The Sub - Committee comprised the following:-

Chairperson	The Hon. Asman Kamama, MGH, OGW, MP
Members	The Hon. Zakayo K. Cheruiyot, MP
	The Hon. Samuel Moroto, MP
	The Hon. David Gikaria, MP
	The Hon. Mohamed Shidiye, MP
	The Hon. (Maj. Rtd.) John K. Waluke, MP
	The Hon. Ahmed Abdikadir Ore, MP
	The Hon. Grace Kiptui, MP
	The Hon. Benard Shinali, MP

During the visit the Sub - Committee held meetings with the petitioners, other inmates and Naivasha Maximum prison officers. The Committee also received written submissions regarding the issues raised in the petition from the Principal Secretary State, Department for Correctional Services.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table in the House the Report of the Departmental Committee on Administration and National Security on its consideration of a petition by three inmates from Naivasha Maximum Prison on radicalization of inmates, review of the Penal Code and amnesty for inmates who have served for more than seven (7) years.

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

EXECUTIVE SUMMARY

The purpose of this report was to consider and respond to the prayers sought by three inmates from Naivasha Maximum Prison through a petition regarding radicalization of inmates, review of the Penal Code and amnesty for inmates who have served for more than seven (7) years.

The Committee found out that the prayer seeking blanket amnesty for inmates who have served more than seven years does not fall under the ambit of matters which the National Assembly has authority to consider as contemplated in Articles 94 and 95 of the Constitution. The discretion to impose a shorter term of imprisonment lies with judicial officers and not the National Assembly. Amnesty for inmates who have served for more than seven year is also a Presidential prerogative through the Power of Mercy Committee as provided under Article 133 of the Constitution. The petitioners and other inmates may therefore petition the President through the Advisory Committee Power of Mercy for determination of individual cases based on merit.

The Committee did not establish sufficient justification to recommend for the transfer of production of motor vehicle number plates from Kamiti Maximum prison to National Youth Service given that the two are government agencies.

The Committee did not establish sufficient grounds to recommend for the review of the Penal Code. The petitioners had claimed a violation of Articles 29 (d) and (f) and 30 of the Constitution. However the Penal Code (Cap 63) provides for the limitation of Article 30 of the Constitution. Section 26(1) of the Penal Code provides that a sentence of imprisonment for any offence shall be to imprisonment with hard labour as may be required or permitted by the law under which the offence is punishable.

The Committee also recommends that the Government through the Commissioner of Prisons should ensure that terrorism convicts are confined in separate cells from other inmates to reduce the radicalization of other inmates. This should be done in terms of section 36A of the Prisons Act of 1962.

The report further recommends that production of motor vehicle number plates should not be transferred from Kamiti Maximum prison to the National Youth Service. Finally the report proposes that the Government through the Prison Service should initiate an earning scheme for prison inmates to ensure that they benefited from part of the revenue generated using inmates labour.

1.0 PREFACE

- 1.1 On Tuesday 7th July, 2015, a Petition was tabled before the House pursuant to Article 119 (1) of the Constitution and Standing Order No. 225 (2) (b) by the Hon. Justin B. N. Muturi EGH, MP, Speaker of the National Assembly on behalf of three inmates from Naivasha Maximum Prison regarding radicalization of inmates, review of the Penal Code and amnesty for inmates who have served for more than seven (7) years.
- 1.2 The House pursuant to Standing Order 227 referred the Petition to the Departmental Committee on Administration and National Security for preparation of the Report;
- 1.3 The Committee received the Petition on Wednesday 8th July, 2015 and set out a procedure for the consideration of the petition and to report to the House within 60 days as set out in Standing order no 227(2);
- 1.4 However due to the nature of the inquiry and the work involved in responding to the prayers sought by the three inmates from Naivasha Maximum Prison the Committee sought for more time.

2.0 MANDATE OF THE COMMITTEE

2.1 The Departmental Committee on Administration and National Security is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference:-

- (i) study and review all legislation referred to it;
- (ii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (iii) 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;
- (iv) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (v) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (vi) to 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.

2.2 The Committee is mandated to consider the following subjects:-

- i. National security
- ii. Police services, home affairs
- iii. Public Administration
- iv. Public Service
- v. Prisons
- vi. Immigration
- vii. management of natural disasters

2.3 Oversight

In executing its mandate, the Committee oversees the following Government Departments and agencies, namely:-

- i. Presidency
- ii. State Department of Interior
- iii. State Department for Coordination of National Government
- iv. Public Service Commission,
- v. National Police Service Commission
- vi. Independent Police Oversight Authority

2.4 Members of the Committee

Chairperson	The Hon. Asman Kamama, MGH, OGW, MP
Vice Chairperson	The Hon. Alois M. Lentoimaga, MP
Members	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. (Dr.) 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. Grace Kiptui, MP
	The Hon. George Theuri, MP
	The Hon. James Bett, MP
	The Hon. Benard Shinali, MP

Committee Secretariat

Clerk Assistant	Mr. Leonard Machira
Clerk Assistant	Ms. Rose Wanjohi
Clerk Assistant	Ms. Hellen Lokwang
Legal Counsel	Ms. Christine Odhiambo
Research & Policy Analyst	Ms. Fiona Musili
Fiscal Analyst	Mr. Edison Odhiambo

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2.5 List of recommendations

1. The prayer seeking blanket amnesty for inmates who have served more than seven year does not fall under the ambit of matters which the National Assembly has authority to consider as contemplated in Articles 94 and 95 of the Constitution. The discretion to impose a shorter term of imprisonment lies with judicial officers and not the National Assembly. Amnesty for inmates who have served for more than seven year is also a Presidential prerogative through the Power of Mercy Committee as provided under Article 133 of the Constitution. The petitioners and other inmates may therefore petition the President through the Advisory Committee on the Power of Mercy for determination of individual cases based on merit.
2. The Committee did not establish sufficient grounds to recommend for the review of the Penal Code. The petitioners had claimed a violation of Articles 29 (d) and (f) and 30 of the Constitution. However the Penal Code (Cap 63) provides for the limitation of Article 30 of the Constitution. Section 26(1) of the Penal Code provides that a sentence of imprisonment for any offence shall be to imprisonment with hard labour as may be required or permitted by the law under which the offence is punishable.
3. The Government through the Commissioner of Prisons should ensure that terrorism convicts are confined in separate cells from other inmates to reduce the radicalization of other inmates. This should be done in terms of section 36A of the Prisons Act, 49 of 1962.
4. The production of motor vehicle number plates should not be transferred from Kamiti Maximum prison to National Youth Service due to security concerns. Furthermore there is no justification for the transfer given that the two are government agencies.
5. The Government through the Prison Service should initiate an earning scheme for prison inmates to ensure that they benefited from part of the revenue generated through the prison vocational using inmates' labour.

3.0 INTRODUCTION

- 3.1 The petition by three inmates from Naivasha Maximum Prison on radicalization of inmates, review of the Penal Code and amnesty for inmates who have served for more than seven (7) years was tabled in the House by Hon. Justin B. N. Muturi EGH, MP, Speaker of the National Assembly on 7th July, 2015 pursuant to Standing Order 225 (2) (b).
- 3.2 Pursuant to the House rules, the petition was referred to the Committee on 7th July, 2015 for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227.
- 3.3 The Petitioners wished to draw to the attention of the House on the following, that:
- (i) Radicalization was rampant in prisons and the Committee on Administration and National Security should urgently investigate the matter;
 - (ii) A special prison be set aside for terrorists and pirates;
 - (iii) The number plate industry in the prison was aiding criminals and needed to be removed from prisons facilities;
 - (iv) The Penal Code has many disparities , for example while convicted terrorists serve for thirty (30) years common robbery convicts are sentenced to death and needed to be repealed to conform with the new Constitution ;
 - (v) Inmates who have served more have seven (7) years be given blanket amnesty the same way as Kenyan Al –Shabaab were pardoned;
 - (vi) Corruption, discrimination and tribalism are a major problem in the prisons;
 - (vii) The suitability and integrity of many officers in charge of prisons was questionable and investigations on the same were necessary; and
 - (viii) Article 29 (d) and (f) and Article 30 Of the Constitution be enforced in all prisons.
- 3.4 The petitioners had prayed that the National Assembly through the Departmental Committee on Administration and National Security:-
- (i) Considers providing for the establishment of a special unit for terrorists and pirates to curb alarming rate of radicalization in the prisons;
 - (ii) Reviews the Penal Code to align it with the Constitution;
 - (iii) Recommends for blanket amnesty for inmates who have served more than seven (7) years;
 - (iv) Advocates for immediate relocation of the motor vehicle number plates production industry from Kamiti Maximum Prison to the National Youth Service Headquarters;

- (v) Recommends the establishment of a Commission of inquiry into the integrity of officers in charge of prison facilities;
- (vi) Facilitates the enforcement of Articles 29 (d), (f) and 30 of the Constitution which provide for freedom from torture , cruelty, treatment and punishment in inhuman or degrading manner and freedom from servitude or forced labour; and
- (vii) Proposes the establishment of a commission of inquiry into the torture cases and killings that occur in prisons with emphasis in kamiti and Naivasha Maximum Prisons.

4.0 EVIDENCE

4.1 Evidence from Naivasha Maximum Prison Officers

During a field visit to the Naivasha Maximum Prison the Committee held a meeting with Prison Officers serving in the facility on Friday 12th February, 2016. The Committee established that the facility had 2915 inmates and 500 prison officers. 651 inmates were on death row. The Committee was further informed that 1500 of the inmates had been enrolled in an education programme while the approximately 1400 inmates were enrolled in vocational training courses. The Committee was further informed that the facility was facing the following challenges:

- (i) **Shortage of qualified teachers:** The facility had acute shortage of teachers, adversely affecting the efficiency of the prison education programme. It had only 6 teachers posted to the institution by the prisons service. Many of the classes were taught by volunteer inmates therefore affecting the quality of learning.
- (ii) **Security threats:** The institution faced security threats posed by frequent power outage. It also had neither screening gadgets nor CCTV equipment. Further the perimeter fence had not been equipped with sensory capacity. Prison officers guarding the facility had no bulletproof vests despite the fact that they had been entrusted with the duty of guarding dangerous inmates, including terrorists. The facility also lacked suitable vehicles to transport inmates.
- (iii) **Pending Bills:** The institution had a pending bill amounting to Kshs.120 million incurred through supply of food for the rising number of inmates.
- (iv) **Surrender of Appropriation in Aid (AIA):** Although the Institution raising revenue through the vocational programme. All the revenue was remitted to the National Treasury. No earning scheme was place for the inmates involved in generating the revenue.
- (v) **Murder of inmates by fellow inmates:** Three inmates had had been charged with the murder of a fellow inmate in the facility. The suspects are on death row.

On the petition by three inmates regarding radicalization of inmates, review of the penal code and amnesty of inmates who have served for more than seven (7) years the officers informed the Subcommittee that :-

- (i) Terrorists were confined in separate cells from other inmates and although radicalization of inmates by fellow inmate would not be completely ruled out the scale was not significant;
- (ii) The Prison Act was undergoing review;

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- (iii) The issue of amnesty for inmates who have served for more than seven year was a matter under the purview of the Power of Mercy Committee and inmates would not be allowed, on their own to determine suitability for parole but had been advised to petition the Power of Mercy Committee for determination on individual cases based on merit; and
- (iv) The production of motor vehicle number plates should not be transferred from Kamiti Maximum prison to National Youth Service due to security concerns. Furthermore there was no justification for the transfer given that the two were government agencies.

4.2 Evidence from Naivasha Maximum Prison inmates

During the field visit to the Naivasha Maximum Prison the Committee held a meeting with inmates serving in the facility on Friday 12th February, 2016. The inmates, through four representatives, informed the Committee as follows:-

Formation of an independent agency to investigate atrocities in the prison facilities: They inmates requested that an independent agency is formed to investigate unnatural deaths in the prisons, access to medical attention and the qualifications of medical officers entrusted with the duty of providing medical services to prison inmates and provision of basic sanitary items.

Prison inmates earning scheme: The inmate stated that the Government should initiate an inmates' earning scheme to ensure that they benefited from part of the revenue generated through the prison vocational using of prison inmate labour.

Amendment of section 33 of the evidence Act: The inmates proposed that section 33 of the evidence Act is amended to ensure the evidence by witnesses who don't testify was not used to convict suspects as it denied the latter the opportunity to cross examine the witnesses.

Access to a fair hearing: The inmates lamented that they would not access fair hearings in appeals the lodged in court as they were not accorded adequate time to consult with their lawyers or those assigned to them by the state. They stated that this contravened Article 50 of the Constitution. The Committee was also informed that inmates waited for a long before their appeals were heard by the courts; in some cases they reportedly waited up to nineteen (19) years for their appeal to be heard. The case of a Mr. Benedict Mawei, an inmate serving a jail term at Kamiti Maximum prison was cited an example. The inmates indicated that the delays were caused by corrupt prison officers who declined to submit relevant documents to concerned government agencies and ignorance among inmates. To mitigate the challenge the inmates recommended that professional officers recruited into the Prison Serve, particularly lawyers, should be deployed in appropriate departments within the service to assist inmates on legal matters.

Power of Mercy Committee: The inmates stated that inmates serving in Naivasha Maximum Prison had not been considered of amnesty by the Power of Mercy Committee.

Corrupt criminal justice system: The inmates argued that some of them were imprisoned as a result of a corrupt criminal justice system and should be released in cases where Judges and Magistrates who determined their cases were found no fit to service by the Judges and Magistrates Vetting Board. The inmates also proposed that the vetting of Judges and Magistrates should be done continuously as some officers were involved in corruption after being declared fit to serve by the Board.

Release of inmates on death row through gazette notice of 25th February 2003: The inmates claimed that a gazette notice of 25th February released all prisoners on death row and did not reduce their sentence to life. They added that a few of the death row prisoners were released on the basis of the gazette notice, a move they stated was discriminatory.

Amendment of section 51 of the prisons Act: The inmates requested the Committee to propose amendments to section 51 of the prisons Act to ensure that Prison officers do not violate the rights of the inmates particularly through the confinement of the prisoners in separate cells as a form of punishment.

Time limit of inmates serving life sentence: The inmates requested the Committee to propose amendments to the law to provide for a term limit of 30 years for inmates serving life sentence.

Repeal of the death sentence: The inmates appealed to the Government to repeal the death sentence arguing that it was painful for the affected inmates to continue living under the sentence for many years without knowing when it would be executed. They further argued that the sentence was discriminatory alleging that terrorists who planned mass murder were sentenced to 30 years in jail. In spite of the fact that the crimes they committed were covered by section 203 -204 of the Criminal Procedure Code.

4.3 Evidence from Naivasha Maximum Prison inmates

During the field visit to Naivasha Maximum Prison on Friday 12th February, 2016 the Committee held a meeting with the petitioners, namely Nicholas Okoth, Nicholas Ouma and Richard Chememezo. The petitioners informed the Committee as follows:-

Radicalization in the prisons

The petitioners alleged that radicalization was rampant in the prison facilities due to fact that terrorists were held in the same prison cells with inmates convicted of other offences. The most affected prison facilities, according to the petitioners, included

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Eldoret, Kamiti and Naivasha prisons. They cited the case of a Mr. Hussein Said, terrorism convict serving a jail term in Eldoret Prison. He was reportedly involved in radicalizing and training inmates on terrorism. The third petitioner, Richard Chememezo informed the Committee that he had served in Eldoret Prison for five years and had witnessed the radicalization of inmates in the facility.

The second petitioner, Mr. Nicholas Oboyo informed the Committee that he was being held in section block within Naivasha Maximum Prison with terrorism convicts and had been approached severally by the terrorism convicts to join their cause.

Blanket amnesty for inmates who have served more than seven years

The petitioners stated that it was not fair for the Government to grant amnesty to terrorists while inmates who had been under rehabilitation were not accorded similar treatment.

Corruption in prison facilities

The petitioners informed the Committee that corruption and tribalism were rampant in prison facilities. The petitioners also questioned the integrity of prison officers and alleged that they were corrupt and were involved in aiding inmates to escape from prison. The petitioners cited the case of an inmate known as Kimeu, who escaped from prison custody as he was being escorted to Strathmore University. They also stated that prison officers did not manage public resources prudently as demonstrated by frequent power blackouts and grounding of transport services in Naivasha Maximum Prison. They recommended that a vetting board be established to determine the suitability of the entire prison staff.

Enforcement of Article 29(d) and (f) and Article 30 of the Constitution in the prisons

The petitioners stated that gross violation of human rights had been witnessed in the prisons with Naivasha and Kamiti maximum prison being the worst affected. They further informed the Committee that many inmates had been brutally murdered by prison officers and gave the case of David Kinyua Kaburu, who was reportedly beaten to death by prison officers in Naivasha maximum prison in 2009.

Transfer of the motor vehicle number plate production industry from prison facilities

The petitioners stated that the number plate industry in the prison was aiding criminals and needed to be removed from prison facilities. They advised that the production of motor vehicle number plates be transferred to the National Youth Service

Review of the Penal Code

The petitioners indicated that the Penal Code had a lot of disparities. For example terrorist are reportedly jailed for thirty years, while common criminals are sentenced to death

4.4 Evidence from the Principal Secretary State Department for Correctional Services

The Principal Secretary State Department for Correctional Services through written submissions informed the Committee as follows:-

Review of the Penal Code to align it with the Constitution

The Committee established that the State Department for Correctional Services had forwarded two drafts Bills on the review of the Prison Act Cap 90 and The Borstal Institutions Act Cap 92 to the Kenya Law Reform Commission for review. The Department also concurred with the suggestion of amending the Penal code to have it aligned with the Constitution.

Blanket amnesty for inmates who have served more than seven (7) years

The State Department for Correctional Services stated that the issue of amnesty for inmates was a Presidential prerogative through the Power of Mercy Committee as provided under Article 133 of the Constitution. The Committee further established that in the year 2014, the President on the advice of the Power of Mercy Committee released forty six (46) prisoners that met the required criteria from various penal institutions but prisoners convicted of terrorist activities were not among the beneficiaries.

Enforcement of Article 29(d) and (f) and Article 30 of the Constitution in the prisons

The State Department for Correctional Services stated that through an open door policy the Prisons Service has partnered with international and national organizations to sensitize staff and inmates on their rights and reporting mechanisms in case of violation of such rights. Further conditions in the penal institutions had improved despite the challenges of congestion and inadequate funding. The Department had also embraced international standards on treatment of inmates. However there is need to increase budgetary allocation to enable the service to expand and modernize infrastructure.

The Committee was also informed that The Persons Deprived of Liberty Act, 2014 read together with the Prisons Act Chapter 90 provides that convicted persons should be engaged in various rehabilitation programmes and life skills. This would assist them to be self-reliant upon release.

On the issue of torture the prisons service had established a directorate of inspection and complaints to investigate such cases. How the Service proposed the establishment of an external inspection board to investigate cases of torture in the penal institutions.

5.0 COMMITTEE OBSERVATIONS

The Committee made the following observations from evidence adduced in meetings and the field visit:-

1. Review of the Penal Code to align it with the Constitution

The Petitioners stated that there is need to review the Penal Code so as to align it with the Constitution. The petitioners specifically stated that Articles 29 (d) and (f) and Article 30 of the Constitution need to be enforced in all prisons.

Article 29 of the Constitution provides among others, that a person has the right not to be subjected to torture in any manner, whether physical or psychological, as well as the right not to be treated or punished in a cruel, inhuman or degrading manner. Article 30 of the Constitution provides that a person shall not be held in slavery or servitude, and shall not be required to perform forced labour.

Article 24 of the Constitution however provides for the limitation of rights and fundamental freedoms. It provides that a right or a fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including, among others, the importance of the purpose of the limitation, and the nature and extent of the limitation.

The Penal Code (Cap 63) provides for the limitation of Article 30 of the Constitution. Section 26(1) of the Penal Code provides that a sentence of imprisonment for any offence shall be to imprisonment with hard labour as may be required or permitted by the law under which the offence is punishable.

Although the petitioners may allege a violation of the Constitution by the imposition of hard labour in prisons, the Penal Code prescribes the hard labour as a form of punishment in prison, and this therefore means that the limitation is reasonable and justifiable.

2. Blanket amnesty for inmates who have served more than seven years

The petitioners had also sought a prayer that the National Assembly recommends a blanket amnesty for all inmates who have served for more than seven years.

Section 26 (2) of the Penal Code provides that a person liable to imprisonment for life or any other period may be sentenced to any shorter term. The discretion to impose a shorter term of imprisonment therefore lies with judicial officers and not the National Assembly.

Contrary to the provisions of Article 119 of the Constitution and Standing Order 219, this prayer does not fall under the ambit of matters which the National Assembly has authority to consider as contemplated in Articles 94 and 95 of the Constitution. In this regard, the National Assembly may, if it considers appropriate,

only propose to amend the Penal Code and all other laws providing for imprisonment for terms exceeding seven years to provide for shorter terms.

3. Transfer of the production of motor vehicle number plates from Kamiti Maximum prison to National Youth Service.

The Committee did not establish sufficient justification to recommend for the transfer production of motor vehicle number plates from Kamiti Maximum prison to National Youth Service given that the two are government agencies.

4. Confinement of terrorists in separate cells

The Committee concurred with the prayer that inmates convicted of Terrorism be confined in separate cells from other inmates. This should be done in terms of section 36 A of the Prisons Act, No. 49 of 1962 which provides that the Commissioner of Prisons shall confine persons who are imprisoned for committing an offence under the Terrorism Act, 2012 or for committing such a serious offence in a separate prison or in separate parts of the same prison in such a manner as to prevent, as far as practicable, their seeing or conversing or holding any communication other than with a prisoner of a similar offence.

6.0 COMMITTEE RECOMMENDATIONS

The Committee recommends that:

1. The prayer seeking blanket amnesty for inmates who have served more than seven year does not fall under the ambit of matters which the National Assembly has authority to consider as contemplated in Articles 94 and 95 of the Constitution. The discretion to impose a shorter term of imprisonment lies with judicial officers and not the National Assembly. Amnesty for inmates who have served for more than seven year is also a Presidential prerogative through the Power of Mercy Committee as provided under Article 133 of the Constitution. The petitioners and other inmates may therefore petition the President through the Advisory Committee on the Power of Mercy for determination of individual cases based on merit.
2. The Committee did not establish sufficient grounds to recommend for the review of the Penal Code. The petitioners had claimed a violation of Articles 29 (d) and (f) and 30 of the Constitution. However the Penal Code (Cap 63) provides for the limitation of Article 30 of the Constitution. Section 26(1) of the Penal Code provides that a sentence of imprisonment for any offence shall be to imprisonment with hard labour as may be required or permitted by the law under which the offence is punishable.
3. The Government through the Commissioner of Prisons should ensure that terrorism convicts are confined in separate cells from other inmates to reduce the radicalization of other inmates. This should be done in terms of section 36A of the Prisons Act, 49 of 1962.
4. The production of motor vehicle number plates should not be transferred from Kamiti Maximum prison to National Youth Service due to security concerns. Furthermore there is no justification for the transfer given that the two are government agencies.
5. The Government through the Prison Service should initiate an earning scheme for prison inmates to ensure that they benefited from part of the revenue generated through the prison vocational using inmates' labour.

Signed.......... Date..... 28/04/2016

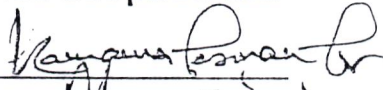

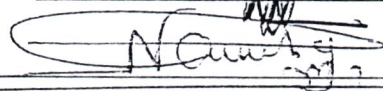
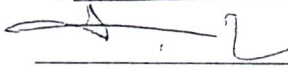

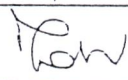
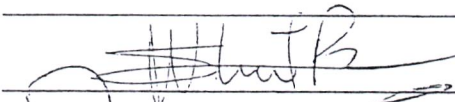
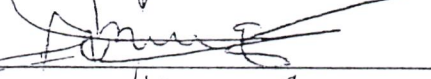
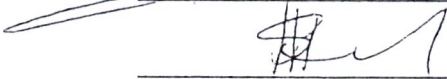
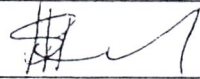
Hon. Asman Kamama, MGH, OGW, MP

Chairman, Departmental Committee on Administration and National Security

ANNEX I

ADOPTION LIST

We, Members of the Departmental Committee on Administration and National Security have pursuant to Standing Order 227 (2) adopted this report on the consideration of a petition by three inmates from Naivasha Maximum Prison on radicalization of inmates, review of the Penal Code and amnesty for inmates who have served for more than seven (7) years and affix our signatures to confirm our approval and confirm its accuracy, validity and authenticity on 21st APRIL 2016 as per the attached adoption list.

1. The Hon. Asman Kamama, MGH, OGW, MP – Chairperson 
2. The Hon. Alois M. Lentoimaga, MP- Vice Chairperson 
3. The Hon. Ababu Namwamba, EGH, MP 
4. The Hon. Joseph Lekuton, MP 
5. The Hon. Alice Wahome, MP 
6. The Hon. Zakayo K. Cheruiyot, MP 
7. The Hon. Timothy W. Wetangula, MP 
8. The Hon. Patrick Ole Ntutu, MP 
9. The Hon. Ali Isaack Shaaban, MP 
10. The Hon. Samuel Moroto, MP 
11. The Hon.(Dr.) Humphrey Njuguna, MP _____
12. The Hon. Francis K. Mwangangi, MP _____
13. The Hon. Rashid J. Bedzimba, MP _____
14. The Hon. David Gikaria, MP _____
15. The Hon. Mohamed Shidiye, MP _____
16. The Hon. Jane Machira, MP _____
17. The Hon. Ibrahim Abdi Saney, MP _____

18. The Hon. Joseph O. Ndiege, MP

19. The Hon. (Maj. Rtd.) John K. Waluke, MP

20. The Hon. Wanjiku Muhia, MP



21. The Hon. Akuja Protus Ewesit, MP

22. The Hon. Joseph M. Kahangara, MP




23. The Hon. Ahmed Abdikadir Ore, MP



24. The Hon. Grace Kiptui, MP


25. The Hon. George Theuri, MP



26. The Hon. James Bett, MP



27. The Hon. Benard Shinali, MP



ANNEX II

MINUTES

MINUTES OF THE 25TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY, 21ST APRIL 2016 IN THE BOARDROOM, 11TH FLOOR, PROTECTION HOUSE AT 10.00 A.M.

PRESENT

- | | | |
|---|---|------------------|
| 1. The Hon. Asman Kamama, MGH, OGW, MP | - | Chairperson |
| 2. The Hon. Alois Lentoimaga, MP | - | Vice Chairperson |
| 3. The Hon. Joseph Ndiege, MP | | |
| 4. The Hon. Alice Wahome, MP | | |
| 5. The Hon. Joseph Lekuton, MP | | |
| 6. The Hon. George Theuri, MP | | |
| 7. The Hon. Ahmed Abdikadir Ore, MP | | |
| 8. The Hon. Benard Shinali, MP | | |
| 9. The Hon. Ababu Namwamba, MP | | |
| 10. The Hon. Samuel Moroto, MP | | |
| 11. The Hon. Patrick Ole Ntutu, MP | | |
| 12. The Hon. (Maj. Rtd.) John K. Waluke, MP | | |
| 13. The Hon. James Bett, MP | | |
| 14. The Hon. Rashid Bedzimba, MP | | |
| 15. The Hon. Zakayo Cheruiyot, MP | | |
| 16. The Hon. Wanjiku Muhia, MP | | |
| 17. The Hon. Shaaban Ali Isaack, MP | | |
| 18. The Hon. Francis Mwangangi, MP | | |

APOLOGIES

1. The Hon. Jane Machira, MP
2. The Hon. Grace Kiptui, MP
3. The Hon. Ibrahim Abdi Saney, MP
4. The Hon. Protus Akuja Ewesit, MP
5. The Hon. David Gikaria, MP
6. The Hon. Mohamed Shidiye, MP
7. The Hon. Dr. Humphrey Njuguna, MP
8. The Hon. Timothy Wetangula, MP
9. The Hon. Joseph Kahangara, MP

IN ATTENDANCE

COMMITTEE SECRETARIAT

- | | | |
|---------------------------|---|------------------------|
| 1. Mr. Leonard Machira | - | First Clerk Assistant |
| 2. Ms. Rose Wanjohi | - | Second Clerk Assistant |
| 3. Ms. Hellen Lokwang | - | Third Clerk Assistant |
| 4. Ms. Christine Odhiambo | - | Legal Counsel II |

5. Ms. Fiona Musili - Research & Policy Analyst III

MIN.NO.116/ANS/2016 - **PRELIMINARIES**

The Chair called the meeting to order at 10.30 am. A prayer was said.

MIN.NO.117/ANS/2016 - **CONFIRMATION OF MINUTES**

The agenda item was deferred to the next sitting.

MIN.NO.118 /ANS/2016 - **ADOPTION OF THE REPORT ON THE PETITION BY THREE (3) INMATES FROM NAIVASHA MAXIMUM PRISON ON THE RADICALIZATION OF INMATES, REVIEW OF THE PENAL CODE AND AMNESTY OF INMATES WHO HAVE SERVED MORE THAN SEVEN (7) YEARS**

The Committee unanimously adopted the report and recommended that:-

- The prayer seeking blanket amnesty for inmates who have served more than seven years does not fall under the ambit of matters which the National Assembly has authority to consider as contemplated in Articles 94 of the Constitution. The discretion to impose a shorter term of imprisonment lies with the judicial officers and not the National Assembly. Amnesty for inmates who have served for more than seven years is also a Presidential prerogative through the Power of Mercy Committee as provided under Article 133 of the Constitution. The petitioners and other inmates are advised to petition the Power of Mercy Committee for determination of individual cases based on merit.
- The Committee did not establish sufficient grounds to recommend for the review of the Penal Code. Further the Penal Code (Cap 63) provides for the limitation of Article 30 of the Constitution. Section 26(1) of the Penal Code provides that a sentence of imprisonment for any offence shall be imprisonment with hard labour as may be required or permitted by the law which the offence is punishable.
- The Government through the Prison Service should ensure that inmates convicted of terrorism are confined in separate cells from other inmates to reduce the radicalization.
- The production of motor vehicle number plates should not be transferred from Kamiti Maximum prison to National Youth Service due to security concerns. Furthermore there is no justification for the transfer given that the two are government agencies.
- The government through the Prison Service should initiate an earning scheme for prison inmates to ensure that they benefit from part of the revenue generated through the prison vocational programmes using inmates labour.

However, the Committee expressed its reservation in the context of hard labour as form of torture in prisons but emphasized that use of hard labour is a justifiable form of punishment and extreme cases of hard labour resulting to torture may be reviewed and regulated.

MIN.NO.119 /ANS/2016 - **CONSIDERATION OF THE REPORT ON THE PROPOSED REFUGEE BILL, 2016.**

The Committee recommended the publication of the proposed Refugee Bill 2016. Committee also made the following comments on the proposed Bill:-

- That, the Ministry of Interior and Coordination of National Government had indicated to the Committee that it would be presenting a Refugees Bill to Parliament. However, the Committee is not seized of the Ministry's proposed Bill.
- That, the resettlement of refugees provided for in the Bill is open ended. The bill does not limit the number of refugees that may be allowed into the country. It only subjects the determination to the refugee status to the Eligibility Committee. There should therefore be more stringent measures on the acceptance of refugees into the country.
- That, the Bill seeks to provide integration, repatriation and resettlement of refugees with the host community for peaceful co-existence. It further provides the establishment of Refugee Trust Fund which shall be administered by an accounting officer but the Bill does not spell out the specific purpose of the trust fund.
- That, the Bill provides that a refugee shall have free access to use land for the purposes of cultivation or pasturing, and this may lead to conflict or hostilities with the host communities.
- That, at present there is lack of proper legal mechanisms to govern refugee matters, for example the vetting of refugees is done by the United Nations High Commissioner for Refugees and not the Kenyan Government. The Government should through the legislation have more powers in regards to matters relating to refugees.
- The Committee noted the Attorney General's advice that the Ministry of Interior engages with the private member with a view to withdrawing the Member's Bill. The Ministry and the private Member should then work with a view to harmonize the two Bills while taking into consideration the policies of the National Government in relation to the management of refugee affairs in Kenya. However since it was not seized of the said Ministry of Interior and Coordination of National Government Bill. The Committee recommended that the Bill by the Hon. Agostinho Neto MP be published.

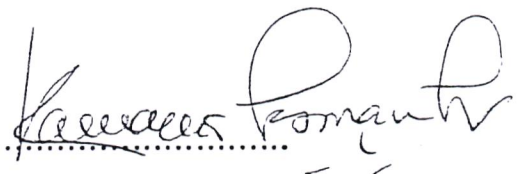
MIN.NO.120/ANS/2016

- ADJOURNMENT OF THE MEETING

There being no other business the meeting was adjourned at 12.30 pm and the next meeting will be held on Tuesday, 26th April 2016.

Signed.....

Hon Kariuki AA



(Chairperson)

Date.....

28 / 04 / 2016

ANNEX III

COPY OF PETITION



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT - (THIRD SESSION)
THE NATIONAL ASSEMBLY
PETITIONS

(No. 12 of 2015)

CONVEYANCE OF A PETITION REGARDING ALLEGED
RADICALIZATION OF INMATES, REPEAL OF THE PENAL CODE,
AMNESTY FOR INMATES AND RELOCATION OF MOTOR VEHICLE
NUMBER PLATE INDUSTRY

Honourable Members,

Standing Order 225 (2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member.

I therefore wish to convey to the House that my Office has received a Petition from three inmates from the Naivasha Maximum Prison namely Nicolas Okoth, Nicholas Ouma and Richard Chememzo regarding radicalization of inmates, review of the Penal Code and amnesty of inmates who have served for more than seven (7) years.

Honourable Members,

The Petitioners are praying that the National Assembly:

- (i) considers providing for establishment a special prison unit for terrorists and pirates to curb the alarming rate of radicalization in prisons;
- (ii) reviews the Penal Code to align it with the Constitution.

- (iii) recommends for blanket amnesty for inmates who have served more than seven (7) years; and
- (iv) advocates for immediate relocation of the motor vehicle number plates production industry from Kamiti Maximum Prison to National Youth Service Headquarters amongst other prayers.

Honourable Members,

This Petition therefore shall stand committed to the Departmental Committee on Administration and National Security. The Committee is requested to consider the petition and report its findings in accordance with Standing Order 227 (2) and to also give this petition due attention since this is the second time that the National Assembly is receiving a petition from persons under incarceration. The first petition of this kind was received on 23rd February, 2015 and conveyed to the House on 10th March, 2015.

Thank you!



THE HON. JUSTIN B. N. MUTURI, EGH, M.P.
SPEAKER OF THE NATIONAL ASSEMBLY
TUESDAY, JULY 7, 2015

PETITION TO THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA UNDER
ARTICLE 119(1) OF THE CONSTITUTION OF KENYA

We Nicolas Owino Okoth, Nicholas Ouma Obonyo and Richard Chememzo Ngeiywo, inmates from Naivasha Maximum Prison are hereby petitioning the national assembly on the below issues;

1. That radicalisation in our prisons is true and that the committee on national administration and security should investigate this matter urgently.
2. That a special prison be set aside for terrorists and pirates.
3. That the number plate industry be removed from prison facilities.
4. That the Penal Code be repealed to fit with the new Constitution and the century.
5. That inmates who have served more than seven (7) years be given a blanket amnesty just the same way as Kenyan Al-Shabaab's were pardoned.
6. That corruption, discrimination and tribalism are major problems in our prison today.
7. That suitability and integrity of many officers in charge of our prisons are questionable and be investigated.
8. That Article 29 (d) and (f) and Article 30 of the Constitution be enforced in all our prisons.

THAT we had earlier petitioned the house on several issues. Despite the resolutions of the Committee on Security and National Administration, nothing has been implemented.

THAT the issues in respect of which this petition is made are not pending before any Court of Law, or constitutional or legal body.

REASONS FOR PETITION

Ground 1 and 2

To stabilise our national security by stopping more criminal activity within our borders. It is clear that Kenya has been facing serious security challenges because of institutions such as prisons. It is clear that radicalisation is becoming a norm in our prisons today.

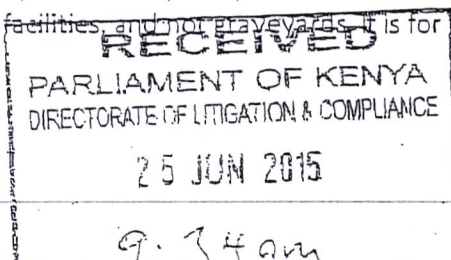
Kidnappings have been a major problem in our prisons, and in Kenya at large. This problem became a norm when Somali Pirates were freely mixed with ordinary Kenyan citizens with no thought to the dangers this might cause. The only way to prevent Kenyans from becoming involved in international crimes is to set aside a special prison to remove such elements.

Ground 3 and 4

It is widely known and acknowledged that Kamiti is the only place where we have a number plate industry. It is shocking to see how this facility has been aiding criminals in carrying out crimes within this country. It is for this reason that we the petitioners are advising the Government to relocate this facility to the NYS Headquarters. Honourable members, we are Kenyan's who love their land and we only pray that our advice will be of great help to this country.

If it is relocated, we believe that crimes such as kidnappings, terrorism and car theft and robbery will reduce greatly.

It is also clear that our Penal Laws have a lot of disparities. For example, terrorists are being jailed, and are serving thirty (30) years, while common robbery leads to a death penalty. Honourable members, we feel that prisons should be correctional facilities, and not graveyards. It is for this



reason that we feel that our Penal Laws be renewed to achieve the missions of Kenya Prisons, which is mainly to rehabilitate and reintegrate offenders back into society.

Ground 5 and 6

Many Kenyans have served behind bars for decades. We fail to understand how trained Kenyan Al-Shabaab are being given trust and mercy from the Government, while inmates who have been in the Government's hands for years have not been granted such favour. It is for this reason that we are praying for a blanket amnesty for those who have served more than seven (7) years.

As the Government is fighting corruption, tribalism and discrimination, prisons are an institution that needs investigation, and sanity brought to it as well.

Many prison officers today are champions of tribalism and discrimination. We as petitioners are hereby praying for a vetting board to vet the entire prison staff for corruption, tribalism and discrimination in order to achieve the long awaited reforms in our prison facilities.

Ground 7

As Kenyans in prison, we cannot sit and watch our prisons becoming criminal training centres. It is for this reason that we feel the integrity of Mr. Kiting, officer in-charge of Kamiti, Stephen Kabiru of Eldoret Prison, for jointly interfering with appeals and prisoners cases before Justice Lenaola, case number 110/2010 in Nairobi Milimani Law Courts, and Kabiru in Eldoret High Court. Case number 01/2013 with the Constitution Court before justice Kimonde, and many others.

It is also a shame to note that Naivasha, Kodiaga and Kamiti Prisons have formed torture chambers and squads whose mandate is to kill and bury evidence to avoid the prosecution of their masters.

The integrity of Kisingu is still in question for the below grounds:

- a) Facilitating with prisoners cases
- b) Interfering with prisoners cases
- c) Facilitating criminal activity by allowing manufacture of extra number plates to criminals
- d) Lying to A.G that he do pay inmates for the work that they do within the prison industries.

Another area is killing and injuring prisoners while in prison. Many have been killed and others injured due to poor management of these facilities. For example: Ndege John and Taifa lost their hands while working, and many more on unclear circumstances.

Many have been killed by officers and inmates as well. We pray that the house would legislate to compensate those killed in prisons.

Ground 8 and 9

Most of our Prisons today do not honour the Constitution. It is from this that Article 29 and 30 of the Constitution is being offended. The worst is Naivasha Maximum and Kamiti prisons. It is these two facilities that have caused the loss of many inmate lives by the hands of brutal officers. An example is David Kinyua Kaburu, who was killed in Naivasha in the year 2009, and many more.


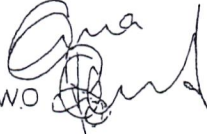

It is from this fear for our lives that we are asking that the Parliament request the President to form a commission of inquiry to investigate killings and torture cases in these two prison facilities.

We therefore pray that the house implement your resolutions.

HEREFORE your humble Petitioners pray that Parliament;

1. Acknowledge the need and provide for special prisons for terrorists and pirates.
2. Facilitates the shift of the Number Plate industry from the Kamiti Maximum prison to the National Youth Service headquarters.
3. Repeals and revises the Penal Code CAP 63 so as to ensure its conformity with the Constitution of Kenya 2010
4. Proposes and supports the establishment of blanket amnesty for inmates who has served a sentence of more than seven (7) years.
5. Seeks the establishment of a Commission of Inquiry into the integrity of the Officers-in-Charge
6. Facilitate the enforcement of Articles 29(d), (f) and 30 of the Constitution which provide for the freedom from torture, cruelty, treatment and punishment in inhuman or degrading manner and freedom from servitude, slavery or forced labor.
7. Proposes and supports the establishment of a Commission of Inquiry into the torture cases and killings that occur in prisons with emphasis on Kamiti and Naivasha Maximum prisons.

We are kindly seeking your audience to elaborate the above issues, should there be need, and more, that we feel if implemented, that Kenya will be more secured.

NAME OF PETITIONER	IDENTIFICATION NUMBER	SIGNATURE
Nicolas Owino Okoth	NAV/535/NICOLAS OWINO OKOTH	
Nicholas Ouma Obonyo	NAV/389/NICHOLAS OUMA OBONYO	
Richard Chememzo Ngeiywo	NAV/421/RICHARD CHEMEMZO NGEIYWO	

ANNEX IV

SUBMISSIONS BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT
FOR CORRECTIONAL SERVICES

OFFICE OF THE PRESIDENT AND MINISTRY OF INTERIOR AND
CO-ORDINATION OF NATIONAL GOVERNMENT



KENYA PRISONS SERVICE

RESPONSE TO A PETITION REGARDING REPEAL OF THE PENAL CODE AND
AMNESTY FOR INMATES

12TH FEBRUARY, 2016

201

1

That Penal Code be repealed to fit the new Constitution and the century.

Kenya Prisons Service has no mandate of repealing laws which it applies in its daily operations such as Prisons Act Chapter 90 and Borstal Institutions Act Chapter 92 Laws of Kenya. Reviewing of Penal Code among other laws is within the mandate of Attorney General who is the chief legal adviser to the Government.

However, two draft bills on the review of Prisons Act Cap 90 & Borstal Institutions Act Cap 92 were developed and forwarded to Kenya Law Reform Commission on 14th August, 2015 for final processing and approval by the National Assembly.

This is to conform to the constitution of Kenya 2010 and in the same vein, Kenya Prisons Service concurs with the suggestion of amending the Penal Code to have it aligned with the Constitution of Kenya 2010.

That inmates who have served more than seven (7) years be given blanket amnesty just the same way as Kenyan Al-shabaab's were pardoned

Amnesty is the prerogative of mercy of the President. Article 133 of the Constitution of Kenya 2010, created a Committee known as Power of Mercy Advisory Committee (POMAC) whose mandate includes advising the President on the categories of prisoners to be pardoned. Therefore, releasing prisoners on pardon is within the mandate of POMAC and not Kenya Prisons Service.

However, it is important to note that no prisoners convicted of terrorist activities have been pardoned.

In the year 2014, the President on advice of POMAC released forty six (46) prisoners that met the required criteria from various penal institutions but prisoners convicted of terrorist activities were not among the beneficiaries.

That Article 29 (d) and (f) and Article 30 of the Constitution be enforced in all our prisons

Regarding **Article 29 (d) and (f)**, Kenya Prisons Service has complied with this provisions as during the review of its Statutes (Prisons Act Chapter 90 and Bortstal Institutions Act Chapter 92 Laws of Kenya, it deleted corporal punishment and other provisions which contravened the Constitution as well as the international standards on treatment of Prisoners.

Kenya prisons through the open door policy has partnered with international and national organizations to sensitize/train staff and inmates on their rights and reporting mechanisms in case of violation of such rights hence and to this end there is no torture in prisons. Currently living

conditions in penal institutions have improved despite the challenges of congestion and inadequate funding. Moreover, the department has embraced international standards for treatment of prisoners. However, there is need for Government to increase budgetary allocation to enable the department to continue expanding and modernizing infrastructure.

Article 30 of the Constitution Slavery Servitude and forced labour

There is neither slavery nor forced labour in prisons.

The Persons Deprived of Liberty Act, 2014 read together with Prisons Act Chapter 90 Laws of Kenya provides that convicted prisoners should be engaged in various rehabilitation programmes and life skill courses. This will assist them be self reliant upon release. Kenya Prisons has introduced various programmes such as farming, carpentry, livestock rearing farming, tailoring, shoe making, soap making among others and prisoners are trained in the same.

Establishment of a commission of inquiry into the torture cases and killings that occur in prisons with emphasis on Kamiti and Naivasha Maximum Prisons

On the issue of torture, this department has an internal legal mechanism in place which is used to address cases of all malpractices and inhumane treatment. It has established a directorate of Inspection and Complaints which investigates such cases and takes necessary action.

Further, during review of its statutes, Kenya Prisons Service proposed the establishment of an external inspection board that will empower external inspectors to investigate such cases and take necessary action against the officers found guilty of the offence.