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RESTRICTED

REPUBLIC OF KENYA

REPORT

OF THE

PRESIDENTIAL SPECIAL ACTION COMMITTEE TO ADDRESS SPECIFIC CONCERNS OF THE MUSLIM COMMUNITY IN REGARD TO ALLEGED HARASSMENT AND/OR DISCRIMINATION IN THE APPLICATION/ENFORCEMENT OF THE LAW

PRESENTED TO:

**HIS EXCELLENCY HON. MWAI KIBAKI, CGH, MP,
PRESIDENT AND THE COMMANDER IN CHIEF
OF THE ARMED FORCES OF THE REPUBLIC OF
KENYA**

31ST MARCH, 2008

Report

of the

Presidential Special Action Committee to
Address Specific Concerns of the Muslim
Community in Regard to Alleged
Harassment and/or Discrimination in the
Application/Enforcement of the Law

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LETTER OF TRANSMITTAL

31st March, 2008

His Excellency The Honourable Mwai Kibaki, CGH, MP,
President and Commander-in-Chief of the Armed
Forces of the Republic of Kenya
State House
NAIROBI

Your Excellency,

**THE FINAL REPORT OF THE PRESIDENTIAL SPECIAL ACTION COMMITTEE
TO ADDRESS SPECIFIC CONCERNS OF THE MUSLIM COMMUNITY IN
REGARD TO ALLEGED HARASSMENT AND/OR DISCRIMINATION IN THE
APPLICATION/ENFORCEMENT OF THE LAW**

We have the honour to submit to you the final report of the above committee, which you appointed on 15th October, 2007 to look into and address specific concerns raised by the Muslim community. The mandate of the Committee was to address specific concerns of Muslims with regard to alleged harassment and/or discrimination in the process of the application of the Law, particularly, as regards to security issues. We are pleased to inform you that the Committee has successfully completed its mandate.

We now forward to you the final report.

We take this opportunity to thank Your Excellency for the honour and trust which you bestowed upon us.

Accept, Sir, the assurances of our highest regard.

Yours Faithfully,



**ENG. ABDULLAHI M. H. SHARAWA, CBS, EBS, FIEK
CHAIRMAN**



HON. S. AMOS WAKO, EGH, FCI Arb, SC, MP
ATTORNEY GENERAL
MEMBER



PETER OKWANYO
REPRESENTATIVE OF THE PERMANENT SECRETARY
MINISTRY OF STATE FOR PROVINCIAL ADMINISTRATION AND INTERNAL
SECURITY
MEMBER



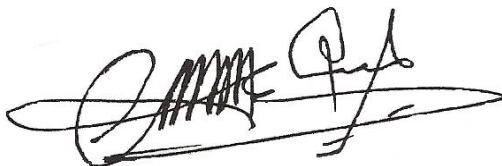
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REPRESENTATIVE OF THE PERMANENT SECRETARY
MINISTRY OF FOREIGN AFFAIRS
MEMBER



SHEIKH ABUBAKAR A. ABUBAKAR (ABU HAMZA)
MEMBER



AMBASSADOR YUNIS MAALIM MAHAT
MEMBER



HASSAN LAKICHA
MEMBER



SHIRAZ MAGAN
MEMBER



AMBASSADOR AMINA CHAWAHIR MOHAMED
SECRETARY

ACKNOWLEDGEMENT

The Presidential Special Action Committee to address specific concerns of the Muslim Community in regard to alleged harassment and/or discrimination in the application/enforcement of the Law wishes to thank His Excellency the President for having appointed the Committee.

The Committee also wishes to thank the Permanent Secretary, Secretary to the Cabinet and the Head of Public Service, Amb. Francis K. Muthaura, and his entire staff for the assistance accorded to the Committee.

Our special gratitude also goes to Hon. S. Amos Wako, the Attorney General, and the Permanent Secretaries of various Ministries who assisted the Committee with valuable professional support: Mr. Cyrus Gituai, Permanent Secretary, Ministry of State for Provincial Administration and Internal Security; Mr. Emmanuel M. Kisombe, Permanent Secretary, Ministry of State for Immigration and Registration of Persons, together with his officers; Ms Dorothy N. Angote, Permanent Secretary, Permanent Secretary, Ministry of Justice and Constitutional Affairs; and Mr. Thuita Mwangi, Permanent Secretary, Ministry of Foreign Affairs.

The Committee wishes to thank the following Permanent Secretaries who appeared before the Committee for consultations: Prof. Karega Mutahi, Permanent Secretary, Ministry of Education and his Officers; Mrs. Alice Kemunto Mayaka, Permanent Secretary, Ministry of State for National Heritage, Office of the Vice President; the Permanent Secretary, Ministry of Lands and Settlement, Mr. Kombo Mwero, and his staff; and, the Permanent Secretary, Ministry of Local Government, Mr. Solomon Boit and his staff.

We also wish to acknowledge and thank many individuals, professional groups and Muslim organizations who gave useful

contributions to the Committee. We wish to single out the following for their views and written memoranda:-

1. The Chief Kadhi – Sheikh Hamad Mohamed Kassim
2. Supreme Council of Kenya Muslims (SUPKEM)
3. Kituo Cha Sheria
4. Muslim lawyers
5. Muslim Human Rights Forum (MHRF)
6. Muslims for Human Rights (MUHURI)
7. Young Muslims Association
8. Muslim Education and Development Network
9. National Education Muslim Trust
10. Islamic Foundation
11. Ummah Foundation
12. Kenya National Commission on Human Rights (KNHCR)

We would like to recognize the great work and assistance that the Committee received from various Provincial and District Administrators throughout the country, during the public hearings.

The Committee expresses its gratitude to Ms Jeannette Mwangi, Mr. Patrick Okoth and Mr. Ahmed M. Mahmoud (Assisting Counsel) for their technical support. Without their support the Committee's mandate would have been difficult to achieve.

The Committee also wishes to acknowledge the work of the Legal Researchers, Ms Elizabeth Thuo and Mr. Maurice Muema, for their invaluable support in the Secretariat.

The Committee is grateful to Susan Kimiti and Eunice Ajwang (Hansard Recorders) and Mr. Juma N. Amina (Hansard Editor) for their technical and logistical support in compiling and editing the Hansard reports throughout the tenure of the Committee.

The Committee also wishes to acknowledge Mr. T. P. O. Odhiambo, (Co-ordinator) and Mr. Joseph Ochieng Owuor, both of Cabinet Office, for providing administrative support.

We are grateful to the following for their co-operation and logistical support in the Secretariat:-

Ms Marie Kinigonda Odero, Ms Rose Boit, Ms Jacqueline Okoth, Mr. Idriss Abdi Hassan, Ms Joyce Nduku, Mr. James Katoni, Ms Philomena Wambui, Ms Beatrice Chepkurui, Sergeant Charles Mwangi, Corporal Boniface Mueke, Corporal Francis Gatundu, Mr. Richard Muthama, Mr. Haron Njenga, Mr. Henry Muhia and Mr. Felix Mumo.

Finally, we wish to pay tribute to all who, in one way or another, contributed to the successful completion of the Committee's work.

CONTEXT OF THE FORMATION OF THE COMMITTEE, CHALLENGES AND LIMITATIONS

1. Method of Work

The Committee has used several methods to collect data on which this report is based. These include public hearings and review of written memoranda, Laws of Kenya, official reports, literature reviews, consultative meetings with public officers and professional bodies and Muslim organizations and other relevant reports.

The Committee held Public hearings from the 5th of November to 6th of December, 2007, in all the Provinces of the Republic. A detailed schedule of the hearings is annexed to this report. During the hearings, the Committee provided the public with the opportunity to express themselves both in public and in private.

2. Challenges and Limitations

The Committee experienced a number of challenges in the course of carrying out its mandate.

The Committee was generally viewed with suspicion due to the political environment and impending Elections. The Committee's work was deemed to be a stop-gap measure to appease the Muslim community and woo their votes for the then incumbent administration. This perception had the effect of dissuading some of the people from presenting their views to the Committee hence the low turn out of the public in certain areas.

A second challenge arose from outright condemnation of the Committee by some Muslim Organizations who questioned the appointment of the Committee and doubted its capacity to deliver a credible report.

3. Organization of the Report

This report is organized in two parts and five Chapters as Volume 1. Part One consists of the Executive Summary and context of the Formation of the Committee; and the other consists of the Chapters as here below detailed. In addition, there will be a volume 11 which will contain selected memoranda submitted to the Committee.

Chapter One deals with the Background and Historical perspective; Chapter Two deals with the Public Hearings and Analysis thereof; The Third Chapter deals with Security Issues; Chapter Four deals with Thematic Issues, Findings and Analyses; and, Chapter Five is on the Recommendations and the Conclusion.

EXECUTIVE SUMMARY

INTRODUCTION

His Excellency the President of the Republic of Kenya, Hon. Mwai Kibaki, CGH, MP, under Section 23 (1) of the Constitution of Kenya, pursuant to the Kenya Gazette Notice Number 10008 dated 16th October, 2007, appointed the Committee to look into and address the specific concerns raised by the Muslim community with regard to alleged harassment and/or discrimination in the process of the application of the law, particularly as regards security issues.

Terms of Reference

The Committee was mandated to:

- a) receive individual complaints of alleged harassment and/or discrimination in the treatment of persons who profess the Muslim faith with regard to security issues,
- b) ascertain whether on the face of it, there is merit in a complaint, and whether to act on the complaint appropriately, which may include channelling it to the responsible Department of Government for action,
- c) inquire into allegations of wrongful or illegal denial of entry into or exit out of Kenya by Kenyan citizens who profess the Muslim faith,
- d) take immediate action as far as is possible to solve the problem disclosed in (a), (b), and (c) above,
- e) oversee, coordinate, monitor and follow up specific action on identified problem cases.

- f) review regulations, codes of conduct, processes and procedures in the Public Service and recommend changes necessary to avoid or reduce similar complaints.
- g) prepare advisory opinions or proposals on appropriate remedial action to be taken by the Permanent Secretaries or Chief Executives of responsible Ministries or public bodies,
- h) Recommend appropriate policy and legislative reforms.

The Composition of the Committee

Chairman: Eng. A. M. H. Sharawe,

Members: Attorney General,

Permanent Secretary, Ministry of State for
Provincial Administration and Internal Security,

Permanent Secretary, Ministry of State for
Immigration and Registration of Persons,

Permanent Secretary, Ministry of Justice and
Constitutional Affairs,

Permanent Secretary, Ministry of Foreign
Affairs,

Sheikh Abu Hamza,

Amb. Yunis Maalim Mahat,

Hassan Lakicha,

Shiraz Magan,

Amb. Amina Mohamed (Secretary).

The Terms of Reference were set out and the Committee members were required to carry out the functions stated in the citation with all due diligence and speed and submit two reports: an Initial Progress Report and a Final Report.

In accordance with the powers granted to the Committee under Gazette Notice Number 10008 Sections 3(b) and (e), the Committee developed Rules of Procedure for the Conduct and Management of Committee meetings as well as public hearings.

The Procedure

The Committee acknowledges that it is neither a judicial nor a quasi-judicial tribunal. However, it set out the Rules of Procedure for the Conduct and Management of its proceedings to enable it to have a standard method for the receiving of complaints from the public.

The Committee relied on both oral and documentary evidence of alleged acts of discrimination against Kenyan citizens who profess the Muslim faith. The Committee heard all the complaints in public save for two which were heard in private.

Main Findings of the Committee

The Committee established that there are discriminatory practices against Kenyan Muslims in the issuance of national Identity Cards and Passports. In fact there exists a special Vetting Committee for Muslim Passport applicants at the Ministry of State for Immigration and Registration of Persons Headquarters.

The operations of security agents and especially the Anti-Terror Police Unit came under serious criticism from the Muslim community for operating without due regard to the existing law of the land.

There was evidence that Kenyan Muslims have been unlawfully removed from Kenya to foreign countries without due process of the law.

Past historical injustices and human rights violations in Northern Kenya, including the Wagalla massacre, have not been addressed to date.

The Committee found that Muslims in urban settlements who have occupied land allocated to them for generations have not managed to acquire Title Deeds for their land. The classic cases are those of Nubians in Kibera and Mjini Village in Muranga.

The Committee established that there is a serious shortage of IRE Teachers particularly in areas where Muslims are a minority. In various learning institutions the freedom of worship as guaranteed in the Constitution is not observed.

Another finding of the Committee was that the institution of Kadhi's Court lacks both human and financial resources to effectively undertake its constitutional mandate.

With respect to access to justice, the Committee established that the entire Northern Kenya has no High Court and adequate Subordinate Courts.

The Committee found that the majority of Muslim inhabited areas lag behind in development due to lack of public and private investments from years of marginalization. The banning of international Islamic NGOs has further aggravated the situation.

In Public Service appointments, at the level of policy and decision-making, there is a visible absence of Muslim representation.

Conclusion

The Committee found substance in most of the complaints raised by the Muslim community and, therefore, recommends that the Government urgently address the issues in order to restore public confidence, fully integrate the Muslim community in the mainstream development so as to build national cohesion.

ACRONYMS

AG	Attorney General
ATPU	Anti-Terror Police Unit
CDF	Constituency Development Fund
CRE	Christian Religious Education
CIPK	Council of Imams and Preachers of Kenya
DDC	District Development Committee
DEB	District Education Board
DLCB	District Land Control Board
EA	East Africa
EALA	East African Legislative Assembly
ECK	Electoral Commission of Kenya
FBOs	Faith-Based Organizations
HELB	Higher Education Loans Board
ICCPR	International Covenant on Civil and Political Rights
ICU	Islamic Courts Union
ID(s)	Identification Cards
IRE	Islamic Religious Education
KACC	Kenya Anti – Corruption Commission

KAR	Kings Africans Rifles
KLRC	Kenya Law Reform Commission
KRA	Kenya Revenue Authority
KNCHR	Kenya National Council on Human Rights
LATF	Local Authority Transfer Fund
HRF	Muslim Human Rights Forum
MUHURI	Muslims for Human Rights
NACADA	National Campaign Against Drug Abuse
NEP	North Eastern Province
NFD	Northern Frontier Districts
NGOs	Non-Governmental Organizations
SUPKEM	Supreme Council of Kenya Muslims
TFG	Transitional Federal Government
TOLs	Temporary Occupation Licences
VAT	Value Added Tax

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background and Historical Perspective on the Situation of the Muslim Community in Kenya

The arrival of Islam on the East African coast is documented as early as the days of the second Caliph Umar, and archaeological evidence confirms the existence of a thriving Muslim town in Kenya on the Island of Manda before the 10th Century A.D. It is certain that the pre-Islamic contacts of the coast with Arabia were reinforced during the Islamic era. This contact led to the rise of many Muslim city states on the Kenyan coast, whose inhabitants were ethnically mixed from the outset – Arabs, Africans and Asians.

Before the establishment of colonial rule, Islam had remained confined to the coastal strip and a few areas of the interior; in the northeast amongst the Somalis and at Mumias in Western Kenya, but after the establishment of the colonial rule, expansion of Islam spread systematically to the rest of the country.

The Muslim Community in Kenya has faced harassment and discrimination both prior to and post independence. Reflection of this was and is found in the application of the law particularly as regards security and land issues. Land expropriations and misappropriations were and remain rampant. This Committee notes with great concern that the above scenario reflects the historical policies and legislation of systematic discrimination and marginalization pursued both by the colonial and post colonial authorities. This in turn contributed to the community being alienated politically, socially and economically.

Notwithstanding the above factors, Muslims have contributed significantly to the economic development of Kenya. However, as a result of these discriminatory legislations, policies and practices, large sections of the Muslim society remain impoverished.

The Committee established from the public hearings that Muslims who have settled in urban centers throughout the country for over 100 years to date do not hold title documents to the land they occupy. The most glaring example is that of Mjini village in Muranga town, where the Muslim community has lived since 1906.

From the foregoing, it is clear that Muslims in Kenya are a minority vulnerable group despite being the second largest religious community in the country, with an estimated population of 10 million.

The following issues have been identified as being of great and urgent concern to Muslims;

1. Security
2. Land Rights
3. Citizenship (issuance of Identity Cards and Passports etc)
4. Marginalization (unemployment, under-representation, under development, discrimination)
5. Access to justice
6. Education

This Committee's report is based on an analysis of the various views collected during the public hearings and the research carried out in accordance with its mandate. The Committee also makes recommendations on the above issues with the view to finding appropriate mechanisms to redress the grievances of the Muslim Community in Kenya.

CHAPTER TWO

2.0 PUBLIC HEARINGS

2.1 Introduction

This Chapter is a presentation of public views from all the public hearings the Committee held in the following towns: Nairobi, Mombasa, Garissa, Kisumu, Kakamega, Eldoret, Nakuru, Nyeri and Isiolo. The schedule of visits as shown in Table 1 below.

The main terms of reference for the Committee were:-

1. To receive individual complaints of alleged harassment and/or discrimination in the treatment of persons who profess the Muslim faith with regard to security operations,
2. To ascertain whether, on the face of it, there is merit in a complaint, and thereafter to act on the complaint appropriately, which may include channeling it to the responsible Department of Government for action.

At the time the Committee was appointed, the country was preparing for the general elections of 2007. This context proved to be quite a challenge to the Committee as it affected the overall attendance during the public hearings. Many organizations that were represented at the hearings spoke through selected spokespersons and submitted written memoranda to the Committee.

Apart from the low audience turnout at the hearings, it is worth noting that due to the political climate at the time, most people who spoke were of the view that the Government was using the Committee as a campaign platform to lure the Muslim vote. The Muslim vote appeared to have been a crucial determinant in the political equation.

Most people who turned up sought clarification on whether the Committee was independent or it was being used by the political

class to woo voters from the Muslim community. It was generally felt that the Committee was to provide a temporary pacification to Muslims and that after elections, Muslims would be relegated to the back burner and their issues forgotten. This view held sway in all the Provinces.

The Committee was told that in all sectors of development and governance structures, Muslims are under-represented. The general belief is that the Muslim community has been neglected in the allocation and distribution of resources.

The views expressed by Muslims in the North Eastern Province were very categorical that the Government has perpetuated the colonial Government's policies of marginalization and discrimination. In this regard, there was a proposal from some of the presenters that the Government should develop and implement an affirmative action plan.

Having observed in general what the Committee found, this chapter will now proceed to present a synopsis of the views of the public from each Province.

TABLE 1: PUBLIC HEARINGS

NO.	PROVINCE	VENUE	DATE
1	Nairobi	KICC	5 th to 6 th November, 2007
2	Coast	Aga Khan Hall, Mombasa	7 th to 8 th November, 2007
3	North Eastern	Normad Palace Hotel Garissa	13 th to 14 th November, 2007
4	Nyanza	Municipal Hall Kisumu	27 th November, 2007
5	Western	Municipal Social Hall Kakamega	28 th November, 2007
6	Rift Valley (North)	Municipal Hall Eldoret	29 th November, 2007
7	Rift Valley (South)	Municipal Hall Nakuru	4 th December, 2007
8	Central	PC's Information Hall Nyeri	5 th December, 2007
9	Eastern	Rural Agriculture Training Centre Isiolo	6 th December, 2007

2.2 NAIROBI

The following issues were presented before the Committee:-

1. Discrimination against Muslims when applying for national Identity Cards, where one is subjected to a vetting process and harassment. The majority expressed great concern that this was likely to disenfranchise many people in the forthcoming elections.
2. Many presenters decried the general harassment of Muslims being labeled terrorists, arbitrary arrests and the ruthless operations of the Anti-Terrorism Police Unit (ATPU). The unit appears to operate outside the law and without due regard to human rights. Many expressed fear of victimization of the community due to recent cases of disappearances of Muslims taken out of Kenya by security forces on allegations of terrorism.
3. Non-recognition of the Nubians (a Muslim Community) in Kibera by the Government as a Kenyan community. They live with the fear of being repatriated to Sudan, despite having lived in Kenya for decades.
4. Lack of title documents for Mosques and land in Kibera.
5. Many Nubians were concerned that there was no compensation for people who lost their homes through Government demolitions to pave way for the construction of Government facilities (e.g. Kibera Law Courts).
6. For the purpose of public appointments and to achieve equity, there was a feeling that the Government should distinguish between North Eastern Province Muslims and the Coast Province Muslims as they are separate groups.
7. The public were concerned that there are no adequate Kadhis to deal with Islamic personal law. This has caused unnecessary expenses and other constraints on affected

parties seeking the services of Kadhi's Court. At the time of writing this report, it was reported officially that the Attorney General had already gazetted 32 Assistant Registrars of Marriage and Divorce to serve the Muslim community. This however, does not in any way solve the shortage of Kadhis in the country.

8. Muslims are not considered for scholarships and besides scholarships targeted/marked for Muslims are diverted to other communities by politicians for their own personal gain and political ambitions. A case in point was reported by a Muslim NGO regarding the diversion of the Morocco Government scholarships.

On education, Muslims were concerned that students are forced to study Christian Religion Education (CRE) in Schools because the Government does not provide for IRE trained Teachers, yet IRE is an examinable subject. Further, students are denied the right to dress according to their faith in Schools thus denying them their constitutional right of freedom of worship.

The Committee was informed that where Muslims are a minority, they are not usually represented in governance programmes and/or structures e.g., Constituency Development Fund (CDF), District Development Committee (DDC), District Education Board (DEB), District Land Control Board (DLCB) etc.

The presenters told the Committee that in the Kenya Law Reform Commission, there is no Muslim representation both at the Commissioners level and the Secretariat. The stakeholder consultative process on the Marriage Bill was cited as a glaring anomaly, which would have taken a different development had there been adequate Muslim representation in the Commission.

International Islamic charitable institutions (NGOs) have been banned. Even those seeking fresh registration are denied registration by NGO Coordination Board.

Most people complained that Muslims applying to go for Hajj are issued with restricted Passports stamped **to Saudi Arabia only** and with one year validity.

Another issue that was of great concern was that Muslim youth who leave Kenya for greener pastures abroad are unable to re-enter Kenya as they are labeled terrorists.

There was concern that land allocated to Muslims in the past has to date not been registered despite efforts to address this issue with past and present regimes.

Muslims also told the Committee that most Islamic educational institutions have been taken over by the Government without duly considering that they can be managed by Muslims. This, the Committee was told, appears to be a systematic way to exclude Muslims on the development agenda.

The Committee was informed that Muslim residents of Lamu who settled there during the 10th Century have no Title Deeds for the land they occupy whereas the recently settled non-Muslims have acquired Title Deeds (Mpeketoni).

The above issues resonate with all the other hearings. The question of land is sensitive and outstanding in all the Provinces. It is the feeling of most people who spoke to the Committee that the allocation of land countrywide was done in a discriminatory manner.

2.3 MOMBASA

There were many cases of people who had made several attempts to apply for Passports without success. The Committee received a complaint from one Said Omar Abdallah (ID No. 20378763), who alleged that he submitted his application for a Passport in 2001 at the Mombasa Passport Control office and despite his numerous appeals he has not been issued with a Passport. There were many other similar cases presented to the

Committee on rejection of applications for Passports and national Identity Cards. Most people complained of unnecessary regulations/procedures (vetting) applied by the Immigration/registration Officers and which seem to target Muslims. In the opinion of many, the procedures should be clarified to the public so as to ease unwarranted anguish.

There was a general discontentment with the public recruitment system. Many people said it is unfair particularly to Muslims at the Coast who claim that they have not been accorded equal employment opportunities with other regions as they are perceived to be “illiterate”, “under-developed” or “unexposed” by the system.

The procedure for the appointment of the Chief Kadhi was raised and people sought to know the criteria used in the recruitment process. The complaint was that the appointments are usually from the Mazrui family yet there are many qualified Muslims. The hearing had the benefit of an instant response from the Honourable Attorney General who was in attendance and informed the public that the appointment of Chief Kadhi is on merit rather than family background consideration. There was also concern regarding the appointments and the numbers of other Kadhis in the country. The Honourable Attorney General assured the public that the scheme of Service is currently under review.

The public raised the issue of the Wakf Commission which they pointed out has custody of properties worth over KSh. 4 Billion. The amount is meant to benefit the community but the Commission does not operate efficiently thereby hindering access to the funds by Muslims. Again, the Attorney General was able to clarify to the public that the role of the Attorney General is to appoint Commissioners for the Wakf on recommendation of the Coast Provincial Commissioner and advice from the local community. This happens after every five years. It was noted by the Attorney General that the Commission needs to be reformed and all relevant stakeholders will be consulted on this process.

The public told the Committee that the vetting process for national Identity Cards and Passport application is not clear and leaves a lot of grey areas and wide discretionary powers which are often abused by public officers to the detriment of the public. The public wondered why the vetting took place at the local levels yet applications are rejected or delayed at national levels. The public sought to know the relevance of the vetting process and the Vetting Committees, including the composition of the Committees.

A complaint was raised with respect to the harassment of local people in public offices. It was felt that this is because the local people have no representation in Government offices. In addition, the lack of job opportunities has forced many young people to seek menial jobs abroad.

There was the view that there is an urgent need for law reform in many areas with respect to Muslim laws. It was pointed out that Muslim laws are to-date still referred to as Mohammedan laws, a misnomer.

The lack of civic education on rights pertaining to service delivery was identified and it was felt that the Government should intervene in this regard.

Some presenters were dismayed that to-date the Government does not seem to recognize the Swahili community of the Coast. In fact, the perception is that all Muslims in Kenya are from the North Eastern Province. This is a historical factor, where Coast people are deemed to come from the Mijikenda tribe yet Coast is composed of other communities who are Muslim. It was observed that this has in effect reduced opportunities and positions for Coastal Muslims in Government because they are lumped in one category with people from North Eastern Province.

There was reference by some people to Parliamentary Bills which they felt are being drafted without any consultations with the Muslim Community. The examples given were the Marriage Bill, the Anti-Terrorism Bill and the Property Bill. The public felt that since

the Muslim community has a major stake in all legislation under review, their interests and input should be taken into consideration.

On matters of education, the people expressed the view that there is no commitment by the Government to register long pending applications of Muslim institutions of higher learning e.g. the Mombasa Islamic University. The Government should provide clear guidelines on the registration procedure for such institutions. It was pointed out that there are no national Schools at the Coast and there are inadequate educational institutions and facilities.

Many told the Committee about the land problem at the Coast where there has been a lot of land grabbing and double allocation of land to undeserving people. Many indigenous people have been denied their constitutional right to property ownership, even where the land involved is ancestral land. The frustration is even worse because there are many "settlers" in the region who have title documents to land yet the locals have none. The Lamu people of Mpeketoni were given as an example of a community struggling to reclaim its ancestral land and preserve its culture.

There was a general complaint on corruption in public offices which has affected service delivery. The public felt that the Government should take appropriate action to improve the working conditions of public servants so as to reduce or minimize the incidence of corruption.

The Committee was told by many who spoke about cases of the disappearance of many youth who had been taken outside the country on allegations of terrorism. One man who identified himself as Salmin Mohamed Khamis, told the Committee he was arrested at Kiunga border as he was fleeing Somalia during the war between Islamic Military forces and Ethiopia. He claimed that all his identity documents were confiscated and he was later rounded-up at his home and harassed by the Police. He was incarcerated for 27 days and released without any charges preferred against him. This case and many others that were

presented to the Committee are based on allegations and/suspicions of anti-terrorism activities.

There was a general feeling that the Government is not doing enough to revive or open up business opportunities for the Coastal people. The closure of Ramisi Sugar Factory and Kenya Meat Commission were cited as businesses which are not operational and could benefit the local people. This also applies to the fishing industry and mangrove cutting in Lamu. The fact that most people do not have Title Deeds to land and property has been an impediment to credit access.

The banning of some International Islamic Organizations (NGOs) was of great concern to many who were of the view that it has now impoverished the community even more. In some instances aid was stopped because Government was levying VAT yet the aid was not for commercial purposes. The community is now unable to complete some of the projects that were affected.

It was noted that health standards at the Coast are very low. This is compounded by the fact that there are no adequate health facilities and people have to travel for long distances to access medical attention.

On land issues, the problem of squatters was raised and there was a general feeling that the Government should intervene and help in their resettlement. This has been exacerbated by the question of absentee landlords. Witu Settlement was cited as the only area in Tana River with titles.

The rampant problem of drug abuse at the Coast was highlighted. It was felt that the National Campaign Against Drug Abuse (NACADA) was limited to upcountry regions and left out the Coast which has a big problem. The frustration of the youth being unable to get employment has inevitably led to the escalation of this situation.

General development for Muslims was seen as lacking due to unequal distribution of national resources. This is in terms of

bursaries (education), micro-finance and other grants to the public by the Government; and the lack of appropriate policies on agriculture for the Coastal region.

2.4 GARISSA

Generally, there were complaints about delays and/or denials of applications for national Identity Cards and Passports. The public was dismayed at the length of time it took for one to be issued with an Identity Card or a Passport. This is particularly so amongst the Somalis, who complain that upon application for a national Identity Card one is issued with the waiting card, locally known as “**Kusug**”, which is not recognized by the Police upon search.

The Committee heard that the problem of Police harassment often results in demands for bribes from members of the public. The public was incensed by the denial of Identity Cards for Kenyan Somalis yet through corruption refugees have been able to obtain Kenyan Identity Cards. The problem is exacerbated by middle men who work in cahoots with Civil Servants to defraud innocent people under the pretext of fast tracking their applications.

It was also pointed out to the Committee that procedures for applying for a national Identity Card or Passport are not clear. The registration officers have assumed powers not conferred upon them by law to deny Kenyans of their rights. Many observed that public officers interrogate applicants to authenticate very obvious facts and still reject applications for instance, whether one understands and speaks Kiswahili or whether the applicant bore the inoculation scar on the right arm.

The public expressed discontent at the high likelihood of their delayed applications and “misplaced” documents being used for issuance of Identity Cards or Passports to foreigners.

Insecurity and anti-terrorism matters were of great concern. The Committee heard that when civil war broke out in Somalia in 1991, the Government did not immediately address the ensuing border security concerns. Consequently, this led to the proliferation of

small arms and light weapons as well as the massive influx of refugees. This resulted in the region being a high risk security zone and subsequently subjecting the resident to arbitrary security operations and anguish. This was compounded by the global threat of terrorism and particularly the impact of 9/11 which has negatively profiled the Muslim Community.

The recent outbreak of conflict in Somalia between the Islamic Courts Union (ICU) and Transitional Federal Government (TFG) backed by the Ethiopian Government further complicated the security situation in the region. One of the presenters told the Committee how he was arrested in Liboi on claims that he was an Al-Qaeda operative on 6th January, 2007. He was incarcerated for 25 days during which time he was beaten and mistreated. The security agents accused him of fraudulently obtaining Kenyan documents. His documents were confiscated and he lost business contracts with World Food Programme and Red Cross.

Police harassment, the Committee heard, is a rampant problem in Garissa. Some of the glaring and thorny issues with the Police are:-

1. The forcing of women to remove their veils (*hijab*) while giving statements during interrogation.
2. While conducting searches at the barriers, the Police usually order all Muslim passengers to disembark from buses in single file and display their national Identity Cards. This was specifically so at the Garissa bridge. It is at this bridge where one is "presumed" to be crossing into Kenya. Many people feel that their citizenship rights and other constitutional rights are grossly violated.
3. Complaints were raised on the number of barriers between Liboi and Garissa. At all these barriers, there were allegations of constant Police harassment.

The Committee was also told that for those people who lose their Identity Cards, on re-application, a letter is written by the local registration office to Nairobi on the issue, but no copy is issued to

the applicant as evidence of loss. Many confirmed that even with a Police abstract one is vulnerable to harassment by the Police.

Complaints were also raised to the Committee on how School rules have interfered with freedom of worship by adopting inappropriate School uniforms which contradict Islamic values.

The presenters also lamented that places of worship are not demarcated in town plans as is the case with churches. This has forced Muslims to purchase land for construction of mosques.

The lack of access to justice in the whole of North Eastern Province was highlighted. The question of access to justice is a nationwide challenge, however, in North Eastern Province, the public said that there are only 3 subordinate courts in the whole Province – Garissa, Wajir and Mandera, and they are 300 Kms apart. The Province does not have a High Court and the nearest court is in Embu, Meru or Nairobi for filing High Court matters.

The Committee heard that the Province does not have a land registrar and that no land adjudication has ever been done in the Province.

Those who spoke noted that although the land is not productive, the Government has not made any effort to woo investors in other activities that could generate income. An example was given of Ijara which has the potential of attracting tourists because of its fauna and flora.

There was a proposal that the Government should set up a Commission on minority rights to look into specific issues of the community so as to integrate them into national development plans.

There was bitter complaint from the people that the perpetrators of the Wagalla massacre have not been brought to book despite numerous pleas to the Government to take action to redress this past atrocity. The view was that such atrocities of the past must be addressed by the Government through a Commission of inquiry.

The Report of the Task Force on the establishment of a Truth, Justice and reconciliation Commission (2003) found from the North Eastern Province that "Exposing and publicizing these gross violations of human rights is important for posterity so that the country's shameful past may never be repeated against the people."

The public expressed its concern over the banning of Islamic NGOs in the area which were receiving aid and assistance from friendly Islamic countries for the benefit of local communities. There was dismay that the Government had banned the NGOs without providing any alternative means of support for the affected people.

In conclusion, Garissa people expressed the view that they are discriminated against and marginalized. The Government has not made any changes in the governance structures from colonial times; policies are the same and not serving the interests of the community. They generally feel that they are treated like second-class citizens and that the Government is not doing enough to ensure that they enjoy their constitutional rights as Kenyan citizens.

2.5 KISUMU

The attendance in Kisumu was fairly good and there was representation from as far as Kisii and Migori.

A representative of the Kisumu Muslim Association pointed out to the Committee several issues including discrimination; harassment on allegations of terrorism, wrongful detentions (renditions) and arbitrary searches by Police. This presenter was of the view that the media is being used to discriminate against Muslims by reporting negatively on Muslims "engaged" in criminal activities.

The Committee was told that Mosques are charged land rates yet this does not apply to churches. One presenter lamented that the Nubian Mosques had been grabbed and the Kariakor Muslim Cemetery had been encroached by a third party. It was reported to the Committee that Muhoroni Cemetery had been taken over

by the Municipal Council and as a result Muslims are now forced to pay for burial land. It was sadly noted that a Muslim Cemetery had been taken over by the Kenya Breweries which has built a beer plant on it.

The Committee was told that many settlement areas that are predominantly inhabited by Muslims have no Title Deeds. These include Manyatta - Arab, Mukendwa, Kibos and Kaloleni.

On the Education sector, the Committee heard that although Islamic Religious Education (IRE) is an examinable subject the Government has not provided Teachers for it. Muslim students are compelled to study Christian Religious Education (CRE) and attend church. In addition, female students are not allowed to wear *hijab* (veil); examples of Schools given were Kisumu Girls High School, St. Teresa Girls, Ahero Girls and a host of other public Schools. It was noted that Kisumu Girls High School, which was the top School in national examinations does not have a full-time IRE Teacher and parents are forced to pay a private IRE Teacher.

With regard to the issuance of national Identity Cards, the public informed that Muslims are asked to produce baptismal cards for registration. Since baptismal cards are not applicable in Islam, Muslims are forced to improvise a “baptismal” card so as to complete the application process. A practice they found tantamount to harassment.

In highlighting the problems Muslims face when applying for the hajj Passports, one presenter said that even though the Government had created the special Hajj desk, it appeared a strategic move in view of the fact that elections were due. The presenter recommended that the Government should issue Passports to Muslims without any conditions such as the time limit of one year validity.

There were suggestions made to the Committee on the expansion of the Kadhi's Court so as to create a three-tier court – Lower Court, High Court and Court of Appeal. In addition, the Committee was told that it will be necessary to have another

office which will work in consultation with the Attorney General's office on the concerns of the Muslim community.

The Committee was also told of slaughter houses which are run by municipalities but have practices that are harmful to those who profess the Muslim faith. The Committee was informed that in this regard, Muslims have started their own initiative of certification of products and the presenter on this matter proposed that the Government should assist in strengthening this initiative. It was noted that most establishments do not prepare food in accordance with Islamic rites.

The marginalization and under-development of North Eastern Province was also raised, particularly the poor road network and the insecurity problem.

The Committee heard that during the month of Ramadhan the Police harass Muslims especially when they attend evening prayers.

The speakers lamented that religious materials donated by foreign countries and foodstuff are usually detained for payment of taxes by the Kenya Revenue Authority. Most of the food stuff goes to waste. It was proposed that the Government should waive any tax.

It was pointed out to the Committee that female applicants for Identity Cards or driving licenses are not allowed to wear the veil (*hijab*) and are usually asked to remove them so that they can be identified "properly" when taking the photograph. The presenter also complained that applicants in Kisumu who are born and raised in Kisumu are sometimes referred to process their Identity Cards in Busia. Many youths in Kisumu do not have Identity Cards because they are unnecessarily harassed by registration officers.

The Committee also heard that job opportunities for Muslim are scarce unless someone has a "god-father" to assist them.

It was reported that religious Teachers from foreign countries are given harsh conditions in applying for Work Permits. Consequently, most of them end up going to neighbouring countries e.g. Uganda and Tanzania.

The Committee was told that there was undue delay in the registration of Islamic organizations. One presenter gave an example of a pending application since 2005 for a society for Imams and Teachers in Kisumu.

A presenter from Kisii stated that there was no Muslim representation in District Development Committees (as a minority group). Therefore, the views of Muslims are never heard, particularly in matters of town planning and development. Representation of Muslims at all levels was proposed.

The same presenter told the Committee that there were no Islamic Schools in Kisii and the Getembe Primary School which was built by the Nubian community in 1960 has been taken over by the Government, without consultation with the community.

The Nubian community in Kisii lacks Title Deeds for the land they were allocated by the colonial Government and as a result the community cannot develop permanent structures on the land.

The entire Kisii District has a two (2) acre cemetery which has no Title Deed despite a letter of allotment having been issued in 1998. The same applies to a Mosque built in 1945 and now requires expansion but cannot proceed due to lack of proof of ownership.

The squatter problem in Kaloleni in Kisumu was raised with presenters lamenting that to-date there are no Title Deeds. They also complained that Kaloleni Muslim Primary School, which was built by Muslim parents and managed by Kisumu Muslim Association, has been taken over by the Kisumu Municipal Council and now managed by a non-Muslim Organization.

It was observed that Government policies on nursing, birth delivery and other sensitive health issues should be gender sensitive and alive to religious concerns.

The Committee heard that most educational institutions did not allocate worship areas for Muslim students. A presenter gave the example of Migori Teachers Training College which has no place for worship for Muslims whereas Christians have one.

There were suggestions that more Kadhis be appointed in Nyanza Province. It was further suggested that the Kadhis jurisdiction be enhanced.

2.6 KAKAMEGA

This was the best attended public hearing. There was representation from all over Western Kenyan from as far as Bungoma and Busia.

Once again, the public expressed strong resentment of harassment and discrimination, especially on matters pertaining to security and terrorism. They told the Committee that the Government should not be hasty to enact laws that are insensitive to the rights of citizens. Security agents were accused of arbitrary arrests and unfair treatment and isolation of Muslims during incarceration.

There was concern raised over the high drop-out rate of Muslim students in Schools and there was a proposal that the Government should address this issue.

Other issues raised at the hearing include the following:-

1. Prohibition of wearing of *hijab* (veil) in public and private Schools.
2. Studying CRE instead of IRE for Muslim students; compulsion in attendance of church service in public and missionary

Schools. Examples given include St. Mary's Mumias, Butere School, Kisembe Muslim School and Weremba School.

3. The problem in the educational institutions has left some parents with no alternative but to take their children to Uganda. The presenters were disturbed by the fact that Christians are trained to teach IRE yet there are trained Muslim Teachers.
4. The taking over by Government of Muslim Schools.
5. Discrimination in issuance of Passports and national Identity Cards.
6. Wearing of *hijab* (veil) is not allowed when taking photographs for women applicants.
7. Employment and lack of opportunities for Muslims, especially youth and women.
8. Need for Government to introduce policies which will address the problem of inequality in the society and participation in governance and decision making processes.
9. Government to facilitate reinstatement of banned International Islamic NGOs.
10. The Committee was told about the issue of Muslim organizations being charged rates for public utility land. An example was given of Muslims at Lubao who had to pay rates for the plot which was allocated for a Mosque.
11. The presenters decried the fact that media has been highlighting Muslims as "criminals" which in effect has victimized and criminalized them unfairly in society.
12. The lack of representation of the Muslims in local authority boards was pointed out to the Committee. Legally, even in

the CDF which requires 2 religious leaders in their local Committees, Muslims have no representation.

The squatter problem reared its ugly head in Kakamega as well. The Committee was told of Kambi Somali, Majengo and Mjini settlements which have since colonial times been inhabited by Muslims. The Committee heard that the Mjini settlement had its name changed to Amalemba and has been invaded by squatters who have displaced the original Muslim inhabitants.

Despite several disputes relating to the following mosques namely Chavakali, Jamia, Ndalua, Sirakhalu and Naitiri having been resolved, no titles relating thereto have been issued.

It was reported that the law enforcements agencies target and harass Muslims who wear beard and Islamic attire.

There was a call for affirmative action to address the development agenda amongst Muslims. It was noted that Muslim Youth are unable to access the National Youth Fund as some of the conditions for application are not in compliance with the Islamic practice. The same applies to the National Fund for Women.

The Muslims of Western Province, despite forming 35% of the Muslim population in Kenya, complained of being left out in the appointments of Kadhis in preference to the Coast Province.

There was a complaint raised concerning the Prisons Department and especially the remand institutions. It was stated that most institutions lack places of worship for Muslims and that this problem should be addressed by the Commissioner of Prisons.

One presenter raised the Wagalla Massacre, which he noted with great disappointment, that the Government has not addressed to-date.

The Committee was informed by one presenter that the Masinde Muliro University has no Mosque on site because the Muslim

student population is small. This was not an acceptable excuse for the administration to deny the “few” students their right to worship.

2.7 ELDORET

There was very good attendance of the public hearing and many people showed a lot of enthusiasm about the Committee’s mandate.

The Committee was told that historically, the Muslim community was marginalized and isolated by colonial the Government, particularly the North Eastern Province.

The war on terrorism has had a negative impact on Muslims who are now labelled terrorists on the basis of their dress code.

The operations of the ATPU were criticized as being extra judicial and the public is apprehensive that this Unit is foreign funded to serve external ulterior motive to the detriment of Kenyan Muslims.

The Committee was informed that the Youth and Women Enterprise Fund follow procedures that are contrary to Islamic Law. As a result, Muslim youth and women are unable to access the funds.

On issuance of Identity Cards and Passports, many complained of delays and that Hajj Passports should not be limited for Hajj purposes only. On Identity Cards, there was a complaint on the vetting process – that applications are rejected even after the local vetting is approved. The prevailing conditions are discriminatory against Muslims.

The banning of Islamic Philanthropic organizations/NGOs by the Government was cited as a set back to the many activities the banned organizations were involved in e.g. education, construction of Mosques etc. Unwarranted deportations of officials of the Islamic NGOs have to a great extent affected their operations and this has, in turn, adversely impacted the welfare of the local beneficiaries.

Kenya Revenue Authority (KRA) restrictions on international aid to Muslims raised great concern with presenters feeling that the Government has not given clear guidelines on tax waiver policies.

The role of the media was again termed as divisive in society as it has been used to cause hatred amongst and against Muslims. The public was of the view that the Government should intervene in this matter.

There was the view that the office of the Chief Kadhi should be strengthened and expanded to cover areas occupied by Muslims.

The challenge of the unavailability of trained IRE Teachers was raised and the Kapyemit Primary School was quoted as an example where 900 students are taught by one trained Teacher. At other Schools such as Laboret Secondary School, Muslim students are forced to study CRE, for lack of IRE Teachers.

It was reported to the Committee that ATPU placed Muslim students at Al Abraha Secondary School, under constant surveillance on the allegation that the School was associated with terrorism activities.

There was a serious complaint raised on the Kambi Somali plots which were allocated to the Muslim community in 1930s. The owners are currently being harassed by powerful people who have grabbed the land. The rightful owners claim that the plots were given to them during the colonial regime. The Council's promise to compensate the owners has not been honoured.

Islamic preachers complained of Police discrimination in the issuance of permits for "Muhadhara" –public propagation of Islam, which is a violation of freedom of worship.

There was also a complaint that projects undertaken by Muslims are frustrated by Christian organizations which are usually consulted by the local authority, to give views on the impact/effect of such projects on the local community.

It was noted that in Schools with large Muslim student population, the Muslim community is not allowed to employ their own IRE Teachers, where Government has not provided Teachers. Examples given were Uasin Gishu Primary School, Uasin Gishu Secondary School, Harambee Secondary School, Hill School - Primary and Secondary, 64 Secondary School.

There was concern expressed that the health care system does not take into account interests of Muslims.

The Committee was told that Muslims lack access to bursary funds, and most of them are referred to their mosques for assistance.

The Muslims proposed that they be given adequate representation in both the Universities Joint Admissions Board and Higher Education Loans Board in order to enhance their access to education.

2.8 NAKURU

There was a complaint about lack of IRE Teachers in Nakuru. A total student population of 1,500 in 73 Schools has only one IRE Teacher. In addition, out of the 73 Head Teachers, only two are Muslims; and out of the 1,300 P1 Teachers, 5 are Muslims.

The dress code for girls in Schools was cited as a big problem, while the Friday classes prevent students from attending Friday prayers. Some presenters lamented that Muslim Madrassas are not recognized by Government.

There was a complaint that there is discrimination in issuance of bursaries, Constituency Development Fund and Local Authority Transfer Funds to the Muslim community.

It was claimed that Islamic international universities and higher institutions of learning, e.g. Medina and Khartoum Universities have been denied registration in Kenya.

It was asserted that Muslims are perceived negatively in society because of their attire and labeled as terrorists. At workplaces, Muslims are discriminated for wearing 'Kanzus' and keeping beards. The presenter complained that on arrest Muslims are never booked in the occurrence books at Police Stations nor arraigned in Kenyan Courts. One such case cited was that of Abdul Malik who was illegally removed from Kenya and taken to Guantanamo Bay.

The Committee heard again of discrimination against Muslims in issuance of Identity Cards, Birth Certificate and Passports, and delays in processing of the same. It was also pointed out that Muslims at border towns are unnecessarily screened.

Muslims of Somali origin complained of the screening cards, an exercise which they viewed as discriminatory and unfair.

The Committee was told that no Title Deeds have been issued in settlement areas inhabited by Muslims e.g. Eldama Ravine, Gilgil, Mogotio etc. The following are some of the concerns that were highlighted on the issue of land:

1. Landlessness and squatter problem
2. No access to clean water and drainage
3. Public utility land for Muslims has been grabbed, e.g. St. Joseph's Catholic Church in Racecourse, Githurai and Shabab Mosque, Section 58, Islamia Estate, Karima Farm, Njoro, Corner Tatu and Bondeni in Nakuru and Nubian Village in Eldama Ravine

On the health sector, the Committee heard that the Government has not employed female Muslim midwives to assist in delivering mothers in accordance with Islamic practice.

The presenters also complained that the dead are usually taken to mortuaries against Islamic faith.

The ban and deregistration by the Government of some Islamic International NGOs which were providing aid and essential social

services to the community was cited as having negatively impacted on the local community, without an alternative means of support.

The presenters complained of lack of regulation of media against negative portrayal of Muslim teachings and morals.

It was reported to the Committee that there is lack of adequate representation and recruitment of Muslims at national level, for instance in the Cabinet and other high level Government appointments.

On access to justice, there was the view presented that the Kadhi's Courts should be restructured and strengthened so as to conclusively handle Muslim personal law. The presenter pointed out that is no appellate system in the Kadhi Court.

2.9 NYERI

The attendance in Nyeri was very good. It was argued that the timing of the appointment of the Committee was inappropriate due to the impending general elections.

The Committee was presented with a Memorandum on the following concerns from the Muslim Community of Murang'a: The Muslim population in Murang'a Mjini which is currently over 4,000 on more than 100 plots without Title Deeds despite having settled there over 102 years ago. Due to the increase in their population, the land is not adequate and they have no space for Mosques and graveyards.

The above situation obtains in Majengo where inhabitants cannot construct permanent dwellings on their plots. They have no Title Deeds and still hold Temporary Occupation Licences (TOLs) under the jurisdiction of Municipal Council.

Muslim sponsored Schools in Muranga had been taken over by the Government without consultations. Cases in point are Mjini Primary School and Mumbi Muslim Girls Secondary School which were

initially funded by Muslims. These Schools are no longer under the management of Muslims despite efforts to reclaim them.

The IRE issue was revisited here. Presenters told the Committee that Mumbi Muslim Girls School does not teach IRE because of lack of Teachers. And the School prohibits girls from wearing the *hijab*. This is the same scenario at Wambaa Primary School, formerly Muslim Primary School. It was constructed for Muslims and management has changed to Government.

Discrimination in issuance of national Identity Cards was cited as a major problem with Muslims having to wait as they go through the vetting process. One, Mr. Suleiman Mwangi Kimani, a Muslim related his personal experience, where his brother, John Mwangi Kimani, a Christian, got an ID much quicker than himself because of his Christian identity.

The Muslims concerns on political representation in the local authorities are not taken into account. As a result resources allocated for upgrading of Mjini in Muranga have been misappropriated.

Muslims bitterly complained about the presence of drugs and miraa stalls in their residential areas, which have a negative impact on the youth and security.

The presenters made a case for affirmative action for the Muslim community, a vulnerable minority group in Kenya.

Many felt that there is urgent need to develop a proper scheme of Service for the Kadhis in order to attract and retain qualified persons. The current rules of procedures of the Court need to be reviewed to make them compatible with Islamic Law.

The Committee was told that plots approved by the Municipal Council for change of user from commercial to places of worship were subsequently levied with rates.

The Committee was informed that Muslims in central Kenya face discrimination in the allocation of plots because of the general public perception that a “Mswahili” does not need plots; the same discriminatory practice is common in public job recruitments. This profiling of Muslims has been detrimental to the development of the community.

The Committee was told that Nyeri has more than five Mosques built on purchased land. However, part of the land of one of the Mosques has been irregularly allocated to a Medical Training Institute.

The presenters were of the opinion that the Government should take responsibility for undertaking civic education on land matters especially in the settlement areas like Majengo where legitimate owners have been displaced.

The presenters stated that public health institutions should be sensitive to the religious beliefs and practices of all the patients.

It was reported to the Committee that the Muslim recruits at the Kiganjo Police Training College have difficulties accessing the Mosque adjacent to the college for their daily prayers.

2.10 ISILOLO

The attendance in Isiolo was good, although most lamented that the timing of the Committee did not reflect good will on the part of the Government and that it was seen as a public relations exercise due to the imminent general elections.

Presenters argued that the problems of the region started during the colonial times when the divide and rule principle was applied. This is further compounded by lack of security, infrastructure, public utilities and social amenities in Northern Kenya.

The security of the region is especially of great concern. The many road barriers and Police checks have caused frustrations and

exposure of the public to corruption and unnecessary harassment by law enforcement agencies.

Issuance of national Identity Cards is of great concern. There appears to be a different system for people of Northern Kenya, which has emanated from the Somali screening exercise of 1989.

International Islamic Organizations based in the region cannot easily secure Work Permits for their staff due to cumbersome processes and procedures. The same applies to applications for registration as Kenyan citizens by non – Kenyan Muslims.

The Committee was told of the operations of the Anti-Terrorist Police Unit which seems to target only Muslims and operates outside the law. The Unit was accused of harassing and conducting searches at odd hours of the night at residential premises. Further, the Unit has been blamed for removals of Kenyan Muslims to foreign countries.

Presenters argued that surveillance on Islamic organizations countrywide has instilled fear in those managing them which has resulted in some relocating to neighbouring countries or opting to close down to the disadvantage of local beneficiaries.

Some people were concerned that if a law on anti-terrorism is enacted, it will cause more fear and anxiety amongst Muslims should the prevailing trend be maintained.

Again here the Kadhi's Court was revisited and it was proposed that the Court should be reviewed so as to expand it and increase the number of Kadhis.

On education, it was noted that the available IRE and Arabic Teachers are unqualified and not of Islamic faith.

It was argued that there is need for affirmative action for the people of Northern Kenya by the Ministry of Education in awarding Government scholarships.

The presenters were concerned that the agricultural development of the productive areas of Northern Kenya has been neglected yet they could improve the living standards of people.

The discrimination of Muslim students in Christian sponsored Schools was decried and the following Schools were cited as examples:

1. The Sacred Heart (Catholic) Secondary School and St. Mary's Girls Secondary School in Merti where Muslim students are forced to go to Church.
2. At the Sacred Heart Secondary School, one of the requirements on admission is for a student to buy a Bible and Muslim students are forced to attend Church service on Sundays.
3. At the St. Mary's School, Muslim students are not allowed to worship in accordance with their faith.
4. In fact at the time of the hearing, ten students at the Sacred Heart School had been expelled for practicing their religion. Other affected Schools are Mwangaza Primary School and Machi Girls Secondary School.

The presenters complained about the de-registration of Al Hamein, an International Islamic NGO which had operated in Isiolo for over seven years and provided assistance to orphans and other needy persons. Since its de-registration in 1998, its beneficiaries have been neglected.

Some presenters appreciated the vetting system for application of IDs as a good initiative but suggested that it should be reviewed regularly to check malpractices. However, they singled out the discriminatory practice which requires students from the region to travel to their home for application of Identity Cards.

The Committee heard that the history of the Northern Frontier Districts contributed to the marginalization and impoverishment of

the region. The past massacres of Wagalla Bagalla and Malka Mari in the region have to-date not been addressed and have further aggravated the situation.

The disparities in prices for livestock products have discouraged many livestock farmers from developing their trade. The presenters were of the view that the Government should develop policies for the livestock industry and market for livestock products.

The Committee heard from Muslims from Meru on the following issues:-

1. Lack of Title Deeds for Muslim settlements
2. Lack of Muslim representation at the local level
3. Low education standards
4. High levels of poverty among the Muslims
5. Lack of IRE Teachers in Schools
6. Allocation of land to landless Muslims
7. High unemployment levels among the Muslim youth
8. Muslims should be considered for allocation of stalls in local markets.

CHAPTER THREE

3.0 THE APPLICATION OF THE LAW AND THE IMPACT OF SECURITY OPERATIONS ON THE MUSLIM COMMUNITY

3.1 Introduction

During the colonial administration the Governor was empowered by the existing laws to declare a state of emergency in the country or any part thereof. During the same period, the Governor was vested with absolute discretionary powers to determine the law applicable to the North Eastern Province and other adjoining Districts (Lamu, Tana River, Marsabit, Isiolo and Moyale). Such laws were: The Special Districts Ordinance and Special Districts Administration Ordinance. The objective of these special laws was to regulate movement into and out of these areas and the zones were referred to as prohibited zones. This in effect alienated, marginalized and isolated the people of the area from the rest of the country. This colonial policy created discontent among the population of the affected areas.

At independence there was agitation from the area to secede from Kenya and join Somalia given the history of isolation. In 1962, the British Government appointed a Commission which found that five of the six Northern Frontier Districts (NFDs) favored secession and union with the Republic of Somalia. However, this issue was left unresolved for the Independent Kenya.

The oppressive laws which hitherto were vested in the Governor in the colonial administration were literally transferred to the President of independent Kenya, in the promulgation of Northern Eastern Province Contiguous District Regulations of 1966. These regulations remained in force till they were repealed in November 1991. During this period, the fundamental rights and freedoms guaranteed by the Kenyan Constitution were virtually suspended in the Province.

3.2 The Effects of the 1966 Regulations on Security

These regulations created new sets of crimes other than those in the Penal Code and laid down punishments for these crimes. These Regulations were able to achieve the following in the North Eastern Province (NEP) and the adjoining Districts. Firstly, they created a new set of crimes. Secondly, they laid down punishment for these crimes. Thirdly, they empowered certain officials with extra judicial powers. Fourthly, they singled out a community in Kenya in which to exclusively apply these Regulations.

The region was divided into two, namely: "**Prescribed area**" and the "**Prohibited Zone**". To the former being the whole of NEP, Isiolo, Marsabit, Tana River and Lamu Districts and the latter being nearly all the areas that run parallel to the international boundary dividing Kenya and Somalia. With regard to areas that came under the Prescribed Area, the law was concerned with firearms. It prescribed punishment for being in possession of firearms; for example, it was considered a grave offence for one to possess a firearm without any lawful authority. Such an offence carried a death sentence¹ once there was a reasonable doubt that such firearm had been or was intended for use against the preservation of public security.²

The law stated further that if an individual is found guilty of harboring a person with intentions against the preservation of the public security, such individual will be imprisoned for life.³ As for the Prohibited Zone, the law was more concerned with entry into this area. Only members of the security forces or those in their company were allowed entry. Anyone else outside this category, if found in the area became subject to imprisonment for life.⁴ The law gave extraordinary powers to members of the security forces and administrative officers to enter and search any premises

¹ The Preservation of the Public Security Act, Cap 57. (Part 1, sec 4. par 1)

² Ibid. (Part II. Sec 3)

³ Ibid. (sec.4)

⁴ Ibid (sec 4)

without warrant and detain any person, stock, conveyance, vehicle found entering or leaving the area⁵.

Within the Prohibited Zone, the law gave powers to security and administrative officers to arrest, without warrant, anyone suspected of associating with someone whose presence in the area is considered prejudicial to the preservation of public security.⁶ Furthermore, any member of the security forces, provided he or she was not below the rank of Corporal, was empowered to destroy any building or structure in the interest of public security within the Prohibited Zone.⁷ Within the prescribed area, members of the security forces were given similar powers.

These draconian laws breached every tenet of fundamental human rights, the Bill of Rights under the Kenyan Constitution and International Human Rights and Humanitarian Law. Moreover, these laws were applied discriminatorily, only to a certain community in the country. From the public hearings the Committee concluded that the Anti-Terrorism Police Unit in carrying out its operations seems to borrow heavily from the repealed laws.

To date, the security forces still operate in the area as if the repealed regulations are still in force. During the hearings the issue of the Garissa bridge barrier was singled out as an obstacle to the freedom of movement in and out of the Province. The Committee found it disturbing and retrogressive that at the barrier point, Kenyan Muslims were required to undergo a humiliating and degrading inspection by disembarking and embarking in a single file whilst displaying conspicuously their Identity Cards.

This situation was confirmed to the Committee by the North Eastern Provision Administration who indicated that the barrier check was a necessary security measure aimed at curbing the proliferation of small arms and light weapons into the "other parts" of the country. The Committee found this explanation to be absurd and insensitive to the security and human rights of the people Northern Eastern

⁵ (Part 111.sec 8)

⁶ (Part IV. Sec 10)

⁷ (Part V. sec 12)

Province. It in effect means that the security agents are only concerned with the entry of the arms beyond the bridge yet their prime responsibility should be more at the Kenya – Somali border and within the province. This scenario and attitude is replicated at the numerous security barrier check points throughout Northern Kenya.

The same level of harassment, same security checks at Police barriers into and out of the Province, same lack of regard for the inhabitants, and the same excessive discretionary powers of the security forces continue to be exercised with impunity. The Committee was informed that nothing has changed since the repeal of the regulation save minor cosmetic changes, such as change in the Police uniform from combat gear to regular “blue” uniform.

3.3 Impact of the War against Terrorism

In the fight against terrorism, the country has witnessed a persistent, deliberate and unwarranted erosion of fundamental human rights of the Muslim Community that are guaranteed by the Kenyan Constitution and International human rights instruments. The Kenyan Anti-Terror Police Unit (ATPU) has come under intense criticism in its operations and collaborations with foreign agents in subjecting the Muslims to arbitrary arrests, detention, torture and renditions without regard to due process of the law.

Drawing on interviews with alleged terror suspects and human rights organizations, this report shows credible evidence of abuse and mistreatment of suspects. The suspects have been subjected to custodial interrogation without access to lawyers and family members, prolonged arbitrary confinement; including detention without charge; not to mention deplorable conditions – including solitary confinement – as well as physical and mental abuse.

The effect of the foregoing has been to negatively profile the Muslims based on their attire and religious practice. This reflects the general perception that ATPU has a “policy” of presuming

members of the Muslim Community guilty contrary to the Constitution.

The ATPU unit has often withheld the suspect's names from public domain and held them incommunicado in the name of preserving national security. The veil of secrecy the Police has wrapped around terrorist suspects cases reflects a stunning disregard for democratic principles of public transparency and accountability and erodes the public confidence in the security organs.

3.4 Renditions, Arbitrary Arrests and Detention

One of the most serious complaints received by the Committee against the Government is the rendition of Kenyan and foreign Muslims suspected in the involvement of terrorisms activities to foreign jurisdictions. Rendition is the act of transferring terror suspects to detention camps outside their countries for interrogation. Amnesty International uses the term "rendition" to refer to a variety of practices by the United States authorities involving transfers of individuals from one country to another, without any form of judicial or administrative process such as extradition. This practice, usually carried out in secret, includes transferring "war on terror" detainees into the custody of other states, assuming custody of individuals from foreign authorities and abducting suspects on foreign soil.

The Committee was informed by the Department of Immigration that it had processed 96 deportation orders of persons who had fled from the Somali conflict of January - February 2007 on the recommendation of the Police. Further, the Department informed the Committee that it was not directly involved in the arrest of the individuals. The Department further confirmed that the sole reason for these deportations was the absence of any documentary evidence from the 96 individuals proving Kenyan citizenship at the time of the removal. The Department of Immigration alleged that the said individuals had failed to co-operate with the arresting agency. Therefore, according to the Department, no Kenyan was deported.

The Committee, however, received credible evidence of the rendition of at least 19 Kenyans to Ethiopia, Somalia and Guantanamo Bay, Cuba. Flight manifests availed to the Committee show that in January and February 2007, chartered planes left Nairobi with about 80 people on board suspected of links with Al-Qaeda to Somalia's capital Mogadishu and the town of Baidoa. The flights left at night, and the manifests appear to have deliberately omitted important details.

The terror suspects were allegedly interrogated by foreign security agents while in Kenyan custody. The Committee received reports from the Muslim Human Rights Forum (MHRF), that the foreign agents had direct access to the prisoners.

The report cites the case of one detainee, Amir Mohamed, who was taken out of his cell at the Kileleshwa Police Station by American agents in a US registered motor vehicle and taken to a local hotel for interrogation. MHRF witnessed him being brought back to Kileleshwa from one interrogation session on February 5, 2007, in a US Embassy vehicle registration number 29 CD 389K. The detainee confirmed to the MHRF that he was interrogated by FBI agents and questioned about links to Al-Qaeda training military camps in Mogadishu. Another detainee Mohammad Ezzouek told MHRF that he has been interrogated by British intelligence agents at the Kileleshwa Police Station between the 3rd and 5th of February 2007.

MHRF also reported that during a fact finding mission to Kiunga, Lamu District, the residents of the area reported seeing foreign security personnel together with Kenyan security forces in the hunt for people fleeing from Somalia fighting seeking refuge in Kenya.

A Kenyan citizen, Abdulmalik Mohamed, suspected of being involved in the bombing of Paradise Hotel in Mombasa, was arrested in Kenya and rendered to foreign agents in Guantanamo Bay, Cuba, after being held in Mombasa and Nairobi in Police custody for one month. The MHRF report quotes a statement released by the US Department of Defense on March 26th, 2006, indicating that Abdulmalik had admitted his involvement in

terrorist attacks in Mombasa in 2002 and the US Embassy bombings in 1998.

According to the MHRF, the renditions were conducted in an inhumane manner, with captives blindfolded, feet shackled and handcuffed to their back. One suspect who appeared before the Committee, Fatma Ahmed Chande, a Tanzania national married to a Kenyan, narrated her ordeal as she and her husband, Salim Awadh Salim, were fleeing from Somalia. She stated as follows:

“It was so chilly and drizzling. We were bundled into pick-ups and driven to the runway. I saw very many people, including women kneeling. The lady called Tuwei Kamilya was sitting down crying. The men were blindfolded and had their hands handcuffed behind their backs and their feet were chained. I was led to the group of women and ordered to kneel there too. An armed man came to me and pulled down my veil to cover my face. Some of the detainees were crying loudly. The men had black hoods covering their heads. We stayed kneeling there for quite sometime, till our knees ached. We were taken up to the plane, still blindfolded. I could, however, see through my veil as it was of a light material. It was very scary, cold and wet”.

Fatma's statement confirms the report by MHRF that her husband, Salim Awadh Salim, a Kenyan was removed from Kenya to Ethiopia, where he is still being held.

The Committee received reports that on 31st March, 2007; heavily armed Policemen cordoned off a whole residential area at Kongowea, Mombasa, and harassed everyone in sight as they sought terror suspects. After the ordeal, the ATPU arrested two people and later released them without any charges.

Still on the heavy handedness of the unit, the Committee received further reports that on the night of 24th and 25th April, 2007, heavily armed hooded ATPU personnel carried out a similar raid in the Guraya area of Mombasa. Again, they cordoned off the area and blocked off the adjacent Jomo Kenyatta Highway, and proceeded to break doors to all the homes and paraded all residents, including children and the elderly in the rain at 3am. It

was alleged that the Police ransacked their homes and took away valuables and cash, arrested 11 residents, out of whom 10 were later released without any charges, while one was deported to the Comoros. These raids carried by ATPU have been a common occurrence among the Muslims.

The Committee also heard from Noor Sheikh Hassan, a Kenyan citizen who was together with five others arrested in Liboi, a town on the Kenya–Somali border on 6th January, 2007, and later transferred to Langata Police Station in Nairobi, where he was held in solitary confinement for 25 days. He was denied access to a lawyer and family members and could not make any phone call. He informed the Committee he was physically and mentally tortured and questioned about links to the terrorist organizations.

This case of Noor Sheikh Hassan seems to reveal a grim picture of the treatment of those while in Police custody.

As of today, none of the arrests have yielded any prosecution for crimes connected with terrorism. Some of those arrested were later released without any charges whereas others were prosecuted for minor immigration offences and deported.

The rendition of the terror suspects is illegal under the Kenyan Constitution and International Law because it disregards all judicial and administrative processes.

Most Kenyan victims of "rendition" were arrested and illegally detained while others were abducted and denied legal representation. It also violates a number of other human rights safeguards: for instance, victims of rendition have no opportunity to challenge their detention, or the arbitrary decision to transfer them to another country.

The Kenyan security agents have continued to defend themselves with regards to the rendition by stating that those rendered to foreign countries are not Kenyans. International human rights law, however, does not permit countries to discriminate between citizens and non–citizens with regards to fair trial and due process.⁸

⁸ ICCPR, art. 14 ("All persons shall be equal before the courts and tribunals")

The fact that a person is not a Kenyan Citizen should not be used as an excuse to undermine their internationally recognized rights. The Committee established that at least 19 of those rendered by the security agents to foreign countries are indeed Kenyans as shown in table 2 below:-

Table 2: List Of Persons Removed From Kenya

NO	NAME	PLACE	DATE
1	Aden Sheikh Abdullahi	Ethiopia	20.01.07
2	Saidi Shifa	Ethiopia	20.01.07
3	Salam Ngama	Ethiopia	20.01.07
4	Bashir Hussein Chirag Mohammed Sader	Ethiopia	27.01.07
5	Said Hamisi Mohamed	Ethiopia	27.01.07
6	Swaleh Ali Tunza	Ethiopia	27.01.07
7	Hassan Shaban Mwazume	Ethiopia	27.01.07
8	Hussein Ali Said	Ethiopia	20.01.07
9	Tsuma Solomon Adam Ayila	Ethiopia	27.01.07
10	Abdi Muhammed Abdillahi	Ethiopia	27.01.07
11	Salim Awadh Salim	Ethiopia	27.01.07
12	Abdulrashid Mohamed	Ethiopia	27.01.07
13	Kasim Musa Mwarusi (brother to 14 below)	Ethiopia	10.02.07
14	Ali Musa Mwarusi	Ethiopia	10.02.07
15	Abdallah Halifan Tondwe	Ethiopia	10.02.07
16	Nasru Tuko	Ethiopia	-
17	Mohammed Said Mohamed	Ethiopia	-
18	Mohamed Abdulmalik	Guantanamo Bay, Cuba	-
19	Sagaawi Diin Wahab	Ethiopia	-

Kenya is party to the International Covenant on Civil and Political Rights) (ICCPR), which under Article 2(1) provides that:

“Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its

jurisdiction that their rights are recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Under International law, a state is deemed to have jurisdiction over all individuals within its territory under article 2(1) of the Covenant. Therefore, the measure taken by foreign agents on Kenyan soil does constitute a violation by Kenya of its obligation under the Covenant.

Given Kenya's experience with the past terrorists attacks and the contemporary global threat of terrorism, it is not surprising that the Kenya Government desires retribution against those suspected to have links with terrorist organizations.

However, as a Committee we believe the Government should not blur the line between liberty, the protection of human rights and security. The renditions are wrong, unjust, illegal and would most likely be counter-productive on the war against terrorism.

3.5 Disregard of Habeas Corpus Orders

The writ of habeas corpus, as provided in the Kenyan Laws, is a judicial remedy designed to protect personal freedom or physical integrity against arbitrary detentions. It is a judicial decree ordering the appropriate authorities to bring before a Judge, a detainee so that the lawfulness of the detention may be determined. In addition, Article 9(4) of the ICCPR states “ Anyone who is deprived his liberty by arrest or detention shall be entitled to take proceeding before a Court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is unlawful.” Habeas corpus performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or keeping his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment.

Muslim Human Rights Forum (MHRF) reported to the Committee that it had filed 34 habeas corpus applications at the High Court in

Nairobi, while six other applications were filed in Mombasa. Despite the High Court having granted the orders in all the cases, the State defied the orders, and only released two, while rest were rendered to foreign jurisdictions.

3.6 Violation of the Vienna Convention on Consular Relations

The Committee heard that most of the non-Kenyan Muslims terror suspects arrested by the ATPU were denied access to consular officials of their Embassies here in Kenya. This is in violation of the Vienna Convention on Consular Relations, which Kenya is party to and bound to inform any foreign national detained in Kenya without delay to seek consular assistance. Moreover, the Kenya Government's ability to protect its citizens abroad can be enhanced or jeopardized by its record of compliance with the Vienna Convention.

3.7 Anti – Terrorism Legislation

Unlike many other States, Kenya has not yet enacted a specific anti-terrorism legislation, even though then Foreign Minister introduced the failed controversial *Suppression of Terrorism Bill* to Parliament in June 2003. Despite the absence of specific legislation, the Anti-Terrorism Police Unit (ATPU) was established as a division of the Kenya Police in February 2003. While the precise role of the ATPU is not clearly defined - due to the lack of definition of the term "anti-terrorism" - it appears to carry out specific investigations and arrests related to terrorism, conduct specialist operations (sometimes joining up with other units of the force to do so) and plays a major role in the interrogation of terror suspects.

The Bill came under strong criticism for its potential to violate Constitutional and human rights as well as the potential to be used to silence political opinion, discrimination against marginalized groups and curtailing freedom of expression. Among the main public concerns were that the proposed definition of terrorism was extremely wide and thus, could allow Police to carry out arbitrary arrests and investigations under the guise of acting under the new law.

Additionally, a range of minor criminal offences would be classified as terrorist acts. The Bill also reversed the presumption of innocence, for example requiring anyone suspected of harboring a terrorist to prove they are not, thus shifting the burden of proof. Again, this would have allowed Police wide discretion to arbitrarily arrest anyone, needing little evidence to prove suspicion. Also proposed were provisions that allow officers above the rank of Inspector to hold suspects incommunicado for up to 36 hours.

This contravened the constitution, which protects fundamental human rights, including the right to appear before a court within 24 hours and the right to legal representation. Despite the controversial provisions of the *Suppression of Terrorism Bill* not being in force, human rights activists in Kenya claim that the APTU often acts as if it were empowered by similar law, acting under rules of its own that allows for disregard of fundamental human rights.

Since the establishment of the APTU in 2003, there have been many complaints with respect to its use of unwritten powers to discriminate and target Muslims with harassment, arrests and detentions.

CHAPTER FOUR

4.0 THEMATIC ISSUES, FINDINGS AND ANALYSIS

4.1 Education

4.1.1 Background

Formal education in Kenya began with the coming of Christian missionaries, who established missions from the coast to the hinterland. However, in the predominantly Muslim areas of the country, particularly the coast and northern Kenya, formal education was introduced much later. This is because the colonial Government delegated the provision of education to the missionaries. The Muslim community did not take their children to School for fear of being converted to Christianity, since Islam had by this time taken root in these areas. As a result, the Muslim community lagged behind in education, hence the disparity in education standards.

4.1.2 Findings on Education

In the course of its work, the Committee received a number of Education related issues and complaints. Some of these were raised in public hearings while others were presented to the Committee in the form of memoranda.

The Committee heard that there was poor implementation of Islamic Religious Education (IRE) in the School syllabi. Many presenters indicated that while the Ministry of Education had an approved policy of the teaching of IRE and Christian Religious Education (CRE) as examinable subjects at both primary and secondary levels, it had failed to train and post adequate number of IRE Teachers. This omission has resulted in Muslim students being forced to study CRE. The shortage of IRE Teachers in the Schools was confirmed by Ministry of Education officials.

Another issue presented to the Committee, relates to the freedom of worship in Schools and institutions of higher learning. Many presenters stated that Muslim students were denied the right to hold prayers in some Schools while others were denied an appropriate room for prayer while others were punished for exercising their freedom. In other Schools Muslims students were forced to attend Christian prayers services.

When these issues were raised at the meeting with the Ministry of Education officials they informed the Committee that a Ministerial circular had already been issued to all School administrations, stopping the practice. An example was cited by the officials where a School in Naivasha had been instructed by the Ministry to assign a specific room for prayers. The officials also indicated that an additional circular would be issued to give directions on all aspects related to protecting the right/freedom of worship for all students including Muslim students.

The Committee received a serious complaint from the Muslim community on the Kenyatta University administration's intention to demolish a Mosque under construction. The Committee visited the University and inspected the site in the company of the Chief Kadhi of the Republic of Kenya and the affected parties. After consultations with the parties and on advice of the Chief Kadhi, the Committee directed the University to allow the completion of the construction of the Mosque without further delay.

A related issue where Muslim students were not allowed to wear Islamic attire, in particular the *hijab* for girls, was raised in many of the public hearings.

The officials of the Ministry of Education informed the Committee that Muslim students have a right to wear their Islamic attire in Schools in line with the Ministry's policy on the freedom of worship. They undertook to address any incidences inconsistent with the policy.

The issue of diversion Moroccan Government scholarship intended to benefit Muslim students was reported to the Committee by a

Muslim NGO. There were complaints about other Government scholarships and allocation of bursaries to Muslim students. These matters were taken up with the Ministry officials by the Committee.

The Committee was informed that educational institutions originally built and managed by Muslims have gradually been taken over by the Ministry of Education and other FBOs without due consultations with the affected parties. The examples were cited of Mjini Primary and Mumbi Girls Secondary Schools in Murang'a, Kisii DEB School, Kaloleni Primary School Kisumu, Nyeri DEB School, just to mention a few.

Additionally, the Committee was informed that Muslim organizations had been deliberately and systematically locked out of sponsoring educational institutions.

The Committee was also informed at the public hearings that in both Coast and North Eastern Provinces, unlike most provinces, do not have adequate educational facilities and national Schools. This has negatively affected the quality and standards of education in areas inhabited by Muslims.

At the public hearings, the Committee received complaints of unjustified delays and denials by the Government to confer university status for Mombasa Islamic University and the Thika Islamic College. The Committee also heard that North Eastern Province does not have a university.

A presentation was made to the Committee on the need for affirmative action for admission to institutions of higher learning for students from marginalized Muslim areas.

4.2 Citizenship and Registration of Persons

4.2.1 Introduction: Citizenship in Kenya

Citizenship in Kenya is conferred in accordance with the provisions of the constitution and other relevant statutes. The Kenyan

constitution provides for acquisition of citizenship through the following ways:-

1. By Birth
2. By Descent
3. By Registration
4. By Naturalization

Registration of persons in Kenya dates back to 1915 when the colonial Government enacted the Native Registration Ordinance whose objective then was to supervise and control the recruitment of male Africans into colonial labour. Currently under Cap 107 of the laws of Kenya it is mandatory for every Kenyan attaining the age of 18 years to register and be issued with a National Identity Card (ID).

Failure to register within 90 days after attaining the age of 18 years constitutes a criminal offence under the Act.

4.2.2 Relevance of Identity Cards in Kenya

The Identity Card has a crucial link to citizenship and nationality in Kenya and is at the core in determining the extent to which an individual enjoys his/her fundamental rights and freedoms within our borders.

While the human rights framework guarantees persons the right to a nationality the language of Kenya's domestic law suggests that for one to enjoy the rights and freedoms of citizens, he or she must register and be issued with a national Identity Card. Since an Identity Card has attained such an important role it should be issued as matter of right for all Kenyans. Consequently, lack of or denial of an ID implies denial of the rights and freedoms accorded to citizens as detailed below:

4.2.3 Violation of the right to citizenship

Often times an Identity Card has been used to prove citizenship in Kenya. The lack of an Identity Card to eligible persons results to limited enjoyment of rights of citizens.

1. **Discrimination in participating in political processes:** In Kenya, one needs a national Identity Card in order to register as a voter, and to exercise the right to vote.
2. **Impedes on the freedom of movement:** In certain circumstances, persons without Identity Cards are not allowed to move freely within their country. Some experience Police harassment when they fail to produce an Identity Card while traveling. The freedom of movement is curtailed also because one requires a national ID in order to obtain a Passport and other necessary travel documents.
3. **Denial of the right to own property:** In other circumstances, a person has to produce an Identity Card in order transfer or purchase property. Further, in order to engage in normal business transaction e.g. in opening a bank account one requires an Identity Card.
4. **Denial of the right to access to basic social services:** Lack of an Identity Card may mean inability to access admission to colleges and universities, acquire a driving license, access banking services, enter Government buildings and obtain services from Government offices etc. In situations of emergency, relief workers, mainly in arid areas, rely on Identity Cards as a form of identification.
5. **Denial of the right to seek and obtain employment:** Many employers often demand for an ID card without which it is extremely difficult to access employment opportunities.

6. **Violation of the right to marry and found a family:** Under existing statutory laws regulating marriages, one must submit proof of adult age-an ID card for purposes of registration of the marriage union.

4.2.4 Findings on Citizenship and Registration of Persons

Special Cases

It was brought to the attention of the Committee that there are stateless persons of African origin, e.g. the Nubians, Makonde, Wachangamwe, Washirazi and other ethnic groups from East Africa, whose issues have not been resolved despite there being a constitutional provision on their right to apply for Kenyan citizenship.

Processing of Passports and National Identity Cards

1. Muslim applicants are being discriminated against when applying for Passports and IDs by being asked to produce additional documents and/or requirements which are not demanded from other applicants.
2. Muslim applicants are required to go through vetting processes both at the local levels and national levels. Despite this rigorous process of vetting, applicants are not guaranteed to be issued with the documents.
3. The findings in the NEP were that applicants wait for long periods after being issued with the waiting card (**Kusug**). This situation has put them in a vulnerable position with the security agents who frequently harass them for lack of Identity Cards. The security agents do not seem to recognize the waiting card as an identification document.
4. The public also decried the inhuman and degrading treatment by security agents during their operations. This was highlighted to the Committee in NEP where there are

barrier checks at various points and the most notorious is the Tana River Bridge barrier checkpoint on the Nairobi/Garissa Road. It was alleged that at this point, the public travelling from the border of Kenya/Somalia and from within the Province in public transport (mostly buses) are usually asked to alight from the bus and hold their IDs in single file as they re-enter the bus. In the process the Police harass and manhandle them without due regard to their constitutional rights.

5. **Discrimination in the issuance of Passports:** In all the Provincial hearings the Committee was told of discrimination in the issuance of Passports with many reporting of unjustified denial of the document. The public complained that Muslims are vetted for Passports in a separate and discriminatory manner from other Kenyans, a fact which was confirmed by the Committee during its visit to the Department of Immigration Head Office. The public also complained that during Hajj festivities, Muslims are issued with Passports that are restricted for use only in Saudi Arabia and valid for one year.
6. **Vetting Process:** There was grave concern on the vetting process in issuance of both the id and Passport. The Committee heard that the process of vetting is not clear to members of the public and it is apparent that the Ministry does not have clear policy guidelines on the issue. The vetting for IDs is done at the local level.
7. **The Composition of the Vetting Committees:** It was pointed out as a problem, especially at the Headquarter level where the applicant is not known to the vetting Committee and is unjustifiably and unfairly denied registration. For Passport applications, there was an issue raised as to why Muslims are vetted separately from other citizens. This is an administrative practice which the Immigration Department admitted.

8. **Corruption:** The incidence of corruption was highlighted as a major impediment to acquisition of IDs and Passports. This is even compounded by the existence of brokers who operate in cahoots with public servants to frustrate unsuspecting applicants. This situation has given undue advantage to unscrupulous dealings resulting in foreigners acquiring Kenyan documents provided they can pay “under the table”, thus denying many deserving Kenyans their rights. This has been rampant especially at the refugee camps in the North Eastern province where Somali refugees are a majority.
9. **Harassment:** The public complained that, Kenyan Muslims are harassed when entering the country at various border entry points.
10. **Restriction of movement:** The public complained that residents of the NEP feel isolated from the rest of the country and are treated like “foreigners” in their own country. There was a specific complaint that residents near refugee camps are restricted in their movement.
11. **Birth and Death Certificates:** In general, there were few complaints on births and deaths registration. The complaints were that one is required to produce documents of his/her grandparents to prove he is making a genuine application.
12. **Discretionary powers:** The Committee found that the registration and immigration officers have assumed wide discretionary powers which they grossly abuse, especially where the law does not expressly provide direction. The officers also take advantage of applicant's ignorance on procedure.
13. **Decentralization:** The Committee established that the Department of Immigration is highly centralized with only three Passport issuing offices country-wide: Nairobi, Mombasa and Kisumu.

14. **Computerization:** The Committee also found that the Department of Immigration operates on manual systems which are slow and prone to abuse and fraud.

4.3 Land Issues

4.3.1 The History of Land Laws in Kenya

Before the coming of foreign powers, all communities in Kenya were autonomous and had internal governing orders depending on the ethic-cultural structure of the various groups. As soon as the British rulers established themselves in Kenya, many of those independent structures were dismantled and replaced with alien systems.

The scramble for Africa in the last quarter of the 19th century at Berlin Conference brought defined territories in Africa under various European Colonial rule.

The British legitimized the arbitrary colonization first through “protectorate” and later colony. The Legislative Council was founded in 1905 to provide the British rulers and settlers with a platform to make laws to further legitimize their rule over Kenya.

Loss of land, and forced labour for European settlers and the break out of first and second world wars politically sensitized Africans to forcefully drive away the uninvited colonialists. Under the camouflage of social and welfare associations, African leaders planted the seed of nationalism and patriotism. Later the armed uprisal against the rulers and their collaborators forced the British to negotiate the independence of Kenya.

This led to the Lancaster House Constitution conference in 1960-63, where the independence of Kenya was agreed. Kenya became an internal self-rule state in 1963 and a republic in 1964 through the new constitutional process. The constitution incorporated the

existing land law, with minor changes. The British constitutional legacy haunted and continues to haunt Kenya.

In Kenya, the colonial objective was achieved through a plethora of legislation beginning with the 1901 East Africans Order, which defined all land in Kenya to be invested in Her Majesty, the Queen of England.

The incorporation of land laws into the independent Kenya constitution had the effect of perpetuating the inequities suffered by the Kenyans under colonial rule. These laws amongst others can be identified as:

1. Crown Land Ordinance
2. (Native Areas) Trust Land Ordinance in Council 1939
3. Native Lands Trust Ordinance

Case law relevant to this issue can be summarized as follows:

In the cases of Ole Njogo against A.G for the E.A protectorate (1914), which is usually, referred to as Maasai Case, decided that the Maasai could not bring an action against the Protectorate Government for breach of the 1904 and 1911 so called "Maasai Agreements".

The other case was that of Wainaina against Murito Wa Indangara (1923) which stated that the effect of the Government Land Act (1915) was to make all Africans in Kenya Colony tenants – at- will of the Crown, with no right in land at all.

The other event was Kakamega Goldfields incidents of 1933, where a portion of Kavirondo reserve in which gold had been found was excised by Government without land being provided elsewhere as was required by the Native Land Trust Act.

That incident and the two earlier cases caused unease among the Kenya – Africans.

As a direct result of successive independent Kenya Governments having chosen to continue with the inequitable laws the Muslims have suffered land related discriminations.

4.3.2 Findings From The Hearings On Land Issues

4.3.2.1 The Squatter Problem and Urban Muslim Settlement

The Squatter problem and the Muslim urban settlement are direct consequences of the colonial land policy and law. Ever since the Supreme Court declared Africans as Tenants at Will of the Crown following the promulgation of the Crown Lands Ordinance of 1915, the problem of landlessness has never really been resolved. The dispossession of many Africans from their lands meant that only a massive resettlement programme could provide a solution to the problem of landlessness.

The colonial policies and laws fundamentally affected the land rights of certain communities, including the Muslims. The decision by successive Governments to continue with this colonial legacy has meant the intensification of these problems over the years.

During the hearings the Committee found the effect of these laws as manifested in the current situation where Muslims who occupied land for the last hundred years in urban centers have not been issued with title deed. Many of the Muslims who were allocated land by the colonial Government continue to hold Temporary Occupation Licenses (TOLs).

The following are some of the Muslim urban settlements without titles:

1. Kibera Nubian Village,
2. Majengo and Kariokor in Nairobi;
3. Manyatta Arab and Kaloleni,
4. Mukendwa and Kibos in Kisumu;
5. Majengo in Nyeri;
6. Mjini in Muranga;
7. Ntakira in Meru;

8. Nubian Village in Kisii;
9. Kambi Somali and Bondeni in Nakuru;
10. Kambi Somali in Eldoret;
11. Nubian settlement in Eldama Ravine and Koibatek Districts etc.

The Coastal Land Problem

The colonial Government introduced a system whereby those claiming ownership rights within the Ten Mile Coastal Strip could get titles under the Land Titles Ordinance. This process gave undue advantage to the few who were aware of the office of the Recorder of Titles. The majority of the local inhabitants at the Coast were ignorant of this procedure. They could therefore not lay any claim of ownership as envisaged in the Ordinance. All land inhabited by them was consequently declared Crown Land. Such land became Trust land at independence. Many people of Arab origin had acquired titles to vast parcels of land within the Ten-Mile Coastal Strip. To this day, they continue to collect rent from the local inhabitants. There is thus a twin problem of absentee landlordism and landlessness. During the constitutional reform hearings conducted by the Constitution of Kenya Review Commission, it emerged that this twin problem is a deeply felt grievance by the local coastal people. Many of the people are technically squatters on their own land.

Land titles have been issued to people who are not ordinarily resident in the coastal area contrary to the provisions of the constitution regarding the privatization of Trust land.

The prevailing situation in the 10-mile coastal strip is that land occupied by the indigenous Kenyans is still held under communal customary tenure as most of the land has not been adjudicated, hence there is potential for land grabbing and conflicts.

During the hearing the Committee received a complaint from a former Kadhi of Mombasa who was forcefully dispossessed of his land and could not get any assistance from the relevant authorities. This scenario is a common occurrence in the entire 10-mile coastal strip.

The Nubian Question

The Nubian Muslim community moved and settled in Kenya from the Sudan as part of the Kings African Rifles (KAR) during the First World War. They were moved and settled in the Kibera area of Nairobi by the colonial Government. After the Second World War, they made demands for land given the fact that their counterparts were being settled in what became known as the "White Highlands". The Nubians have lived in Kibera since then to the present time.

There are Nubian generations who know Kenya as their only home. However, Government policy has treated the Nubians as second-class citizens especially regarding their rights to the land they occupy. They have been denied Title Deeds to their land, yet other communities who have since moved into the area have acquired titles. As indicated above, the Nubian community, who have also settled in other regions of the country are in similar predicament.

1. The Committee found that in the Government urban development Planning policy, Mosques, cemeteries and other Muslim institutions are not provided for. The Committee was concerned that even in predominantly Muslim areas the official development plans provide for churches and do not provide for Mosques. Consequently, Muslims have no alternative but to purchase land for purposes of construction and development of the same.
2. The Committee received complaints to the effect that Muslim charitable institutions and Mosques have been paying land rent and rates, without enjoying exemption or waiver.
3. The Committee received complaints that the Wakf Commission has not been managed in a transparent manner resulting in gross loss of revenue to the detriment of the beneficiaries. Criticism was received of the manner in which the Commissioners are appointed, and a demand was made

that the Government urgently reviews the Wakf Commissions Act (Cap 109).

4. The Committee also received complaints that the entire NEP does not have a land registry restricting the economic development of the community.
5. The Committee found that in Lamu district, the indigenous people who settled in the district in the 10th Century have to date not been issued with Title Deeds whereas recent arrivals have received Title Deeds.

4.4 Adequate Representation and Effective Participation in Decision Making Process

The Muslim population, according to statistic accounts for one third of the total population in Kenya. Ideally on the basis of a fair and equitable representation, the Muslims ought to be awarded one third of all the appointments to public offices. Despite this, there have been complaints of discrimination and marginalization of Muslims both in political and administrative in public appointments.

The Committee engaged Muslim audiences in various towns in the eight provinces across the country received submissions from individuals and organizations on issues of concern to the community. Featuring prominently in nearly all the hearings was the crucial complaint regarding inadequate representation and lack of effective participation by the community in Government institutions and agencies. According to documents presented to the Committee on the issue of under – representation, the Muslim leaders have on numerous occasions raised it with relevant Government organs.

The under-representation of Muslims in Government has profoundly impacted the community's involvement in decision making processes. This in turn has resulted in the community lagging behind in all spheres of development. They feel justifiably marginalized. From the foregoing there is urgent need for

affirmative actions in public appointments and especially at the decision making level: Cabinet, Permanent Secretaries, Court of Appeal Judges and High Court Judges, Heads of Departments, Heads of State Corporation, Ambassadors and other senior public appointments.

The Committee also found inadequate representation of Muslims in Government Commissions and Committees. The Kenya Law Reform Commission was singled out as a glaring example of a significant statutory body without any Muslim representation both at the Commissioners' level as well as the secretariat. The following organizations were among Government bodies cited as having inadequate Muslim representation:-

1. East African Legislative Assembly (EALA)
2. Electoral Commission of Kenya (ECK)
3. The Judiciary
4. National Constituency Development Committee
5. National Commission Against Drug Abuse (NACADA)
6. Kenya Anti- Corruption Commission (KACC)
7. Kenya Revenue Authority (KRA)

The Committee found in areas where Muslims are a minority that there was no representation in the decision making bodies at the local level. These include, amongst others:-

1. Constituency Development Fund (CDF)
2. District Development Committee (DDC)
3. District Education Board (DEB)
4. District Land Control Board
5. Bursary Committees
6. School Management Committee
7. Schools Board of Governors
8. Local Authorities.

The Committee was informed that in areas where Muslims are a minority they are disadvantaged in the recruitment into the public service, especially in the disciplined forces.

4.5 Under-Development and Investment

In nearly all the public hearings the Committee held one of the most critical issues raised was that of under-development and lack of incentive for investment in their areas both by the Government and the private sector. It was noted that majority of Muslims reside in the arid and semi arid land areas which constitutes more than 80 per cent of the country's land area.

This prevailing economic situation can be attributed to various historical factors through policies of political exclusion and marginalization by the colonial administration. This is further aggravated by the volatile security situation which obtains to-date.

Some of the salient concerns raised in this regard were:-

1. Insecurity
2. Poor physical infrastructure (roads, water, electricity, telecommunication, air transport)
3. Poor health facilities
4. Poor education facilities
5. Inadequate food security
6. Lack of incentives for private sector investment
7. Lack of Title Deeds (as collateral)
8. Lack of market for main produce from the area (livestock, fishery, mangrove, mangoes)
9. Prohibitive interest- based financial system

This has led to a condition where more than 60 percent of inhabitants of the region live in abject poverty.

In the midst of the high incidence of poverty lies an immense potential of natural resources. More than 70 percent of the national livestock population and unexploited commercial mineral wealth and tourism in Kenya are to be found in the region.

Lastly, on this issue, an appeal was made to the Committee that the Government urgently develops a marshal plan for the area to

address the under-development issue and encourage private sector investment. In addition, the Government should provide a conducive environment and incentives for investment.

CHAPTER FIVE

5.0 RECOMMENDATIONS AND CONCLUSION

It is commendable that the Government has undertaken wide reforms in the public sector, which have embraced the concept of a human rights-based approach. The citizen has a role to play in governance and development; and the citizen can now demand constitutional rights from the Government. Arising from the public hearings, the Committee deliberated on the issues raised and makes the following recommendations.

5.1 CITIZENSHIP AND REGISTRATION OF PERSONS

- 1. The Government should ensure that our porous borders are secured and have tight border patrols to prevent entry of illegal immigrants into the country.**
- 2. The Government should fast-track the formulation of a comprehensive policy to address the question of citizenship, immigration and registration of persons. There is also an urgent need for the review of all legislation affecting the same.**
- 3. The Government should initiate a process for the immediate return of all Kenyan Muslims who were unlawfully removed to foreign countries.**
- 4. The Department of Immigration should strictly comply with the provisions of Sec 8(2) of the Immigration Act in the deportations of persons and must satisfy itself beyond reasonable doubt that there is credible evidence that the person being deported is a non – Kenyan.**
- 5. The Government should urgently direct the Ministry of State for Immigration and Registration of Persons to eliminate all discriminative measures and practices against Kenyan Muslims with regard to the issuances of Identity Cards, Passports and Birth Certificates.**

- 6. The Government should direct the Ministry of State for Immigration and Registration of Persons to develop a secure waiting card for applicants of IDs with the photograph and other personal details.**
- 7. Discretionary powers of Immigration and Registration of Persons officers in issuance of Passports and Identity Cards should be curtailed.**
- 8. The Special Desk for the issuance of Passports for Muslims travelling to the Hajj should be institutionalised and strengthened.**
- 9. The issuances of Passports to Kenyan Muslims with restrictions on the validity period and destination should be eliminated.**
- 10. The provision of Passport services should be decentralized to include all Provincial Headquarters.**
- 11. The Ministry of State for Immigration and Registration of Persons should simplify their procedures and sensitize members of the public on the requirements for obtaining Passports, Identity Cards and birth certificates.**
- 12. The Government should consider granting citizenship to the following stateless Muslim communities the Nubians, Makonde, Wachangamwe and Washirazi as provided under section 96 of the Constitution of Kenya.**
- 13. The Government should provide sufficient funds to the Ministry of State for Immigration and Registration of Persons to enable it adapt new technology, including automation of its services so as to eliminate corruption, fraud and brokerage.**
- 14. The Government should review the issuance of Work Permits and referred visas for non-Kenyan Muslims.**

15. The Department of Registration of Persons should be allocated sufficient budgetary provision to facilitate a wider coverage and a continuous process of registration.
16. The Government should hasten the implementation of the Integrated Population Registration System within national registration agencies.
17. The Ministry of State for Immigration and Registration of Persons should strictly adhere to its service charter in the issuance of national documents and put in place an effective monitoring and evaluation mechanism.
18. The Government should harmonize the Citizenship Act, the Immigration Act and the Registration of Persons Act.
19. The Vetting Committee for the Kenyan Muslims at the Department of Immigration Head Office, Nyayo House, should be abolished forthwith.
20. The Government should establish an independent oversight body to handle complaints related to immigration, citizenship and registration of persons.

5.2 SECURITY

21. The Government should establish an independent oversight body to handle complaints related to the operations of security agencies.
22. The Government should ensure that our porous borders are secured and have tight border patrols to prevent terrorist and other criminal activities in the country.
23. The security forces should not target communities for investigations or arrest on the basis religion, ethnicity, race, and origin.

24. Due process of law should be adhered to and the law should not be deemed to be selectively applied during investigations, arrests, detentions and deportations.
25. All searches by the security forces should be conducted with due regard to human rights.
26. The Government should immediately institute independent investigations into the following:
 - a. The disappearance and the alleged kidnap of Farah Mohamed Abdullahi (ID No. 22644891) by the security forces as reported to Kasarani Police Station, Nairobi (OB 87/20/8/07) on the 20/8/2007.
 - b. Complaints of alleged human rights abuse and loss of property of Said Abeid Baswaleh (ID No. 2271116) reported at Makupa, Mombasa Police station (OB.37.25-4-2007) against the ATPU.
 - c. The alleged unlawful arrest and detention of Noor Sheikh Hassan (ID No. 20384214) by the ATPU at Liboi and Langata Police Stations.
 - d. The denial of Passport to Said Omar Abdallah (ID no. 20378763) by the security agents at Mombasa Passport Control Office.
27. The Government should strengthen its efforts in the training of security forces with respect to gender issues and provide sufficient gender desks in all public institutions.
28. The Government should officially rescind its decision to screen Kenyan Somalis and abolish the Somali Screening Cards.
29. The Government should enhance the collaboration and participation of Muslims in the community policing programme in fighting crime.

30. The Government should make it mandatory for security agencies to avail the particulars of all persons detained or arrested on suspicion of terror activities, to their families and lawyers, and any other person having a legitimate interest in the information within reasonable time.
31. The security agencies should permit independent human rights bodies, counseling, pastoral, or other services to have access to all facilities in which suspects are held.
32. The immediate cessation of the checking of National Identity Cards at the exit of North Eastern Province, particularly at the Tana River barrier bridge on the Nairobi-Garissa road.
33. The Government should review the operations and location of Tana River barrier bridge Police Check Point in Garissa.
34. The Government should, through a legislative framework, establish an autonomous multi-disciplinary body to replace the ATPU.
35. The Kenya Government should ensure that the security agencies comply with the provisions of the Vienna Convention on Consular Relations to non-Kenyan detainees.
36. The Government should review the role of security agents in issuance of Passports and IDs as well as in the registration of NGOs.

5.3 ACCESS TO AND ADMINISTRATION OF JUSTICE

37. The Government should restructure the office of the Chief Kadhi with the aim of strengthening it through allocation of adequate financial and human resources.
38. The Government should transfer the office of the Chief Kadhi to Nairobi for ease of access to all Muslims.

39. The Government should repeal all laws currently referred to as Mohammedan and replace them with Islamic Personal Laws.
40. The Government should expand the Kadhi's Court to create an appellate system within its hierarchy.
41. The Government should establish High Courts and more subordinate courts in Northern Kenya.
42. The Government should be sensitive to the concerns of the Muslim community when reviewing laws, policies and regulations.
43. The Government, as a matter of urgency, should appoint competent Muslim Lawyers as Commissioners and recruit other technical staff to the KLRC.
44. The Government, as a matter of urgency, should review the Laws governing the Wakf Commission.

5.4 LANDS

45. The Government should expedite the processing and issuance of Title Deeds to members of the Muslim community specifically in informal urban settlements including Kibera, Majengo, Kariakor in Nairobi, Kambi Somali in Eldoret, Mjini Village in Murang'a, Manyatta Arab in Kisumu, to mention but a few.
46. The Government should immediately conduct a special land adjudication programme in Lamu for the purpose of issuing the indigenous Muslim inhabitants with Title Deeds.
47. The Government should consider Muslims as a special group in its settlement programmes

- 48. The Government should urgently establish a Land Registry in North Eastern Province and issue Title Deeds in urban settlements in Northern Kenya.**
- 49. The Government in all physical planning and development programmes should provide land for Mosques, cemeteries and other Islamic institutions.**
- 50. The Government should exempt all Mosques and other Islamic charitable institutions from paying land rent and rates.**

5.5 EDUCATION

- 51. The Government should expedite the registration of Muslim institutions of higher learning (Mombasa Islamic University, amongst others) with a view to encouraging and improving the standards of education in Muslim areas.**
- 52. The Government should provide sufficient Islamic Religious Education (IRE) Muslim Teachers in all public Schools so as to fully assimilate the teaching of Islamic studies into the Schools curriculum.**
- 53. The Government should direct the Ministry of Education to ensure that the constitutional right to freedom of worship for pupils professing the Muslim faith is not infringed.**
- 54. The Government should ensure that all Muslim educational institutions which were previously taken over by the Ministry of Education or other Faith Based Organizations (FBOs) do revert to the respective Muslim community.**
- 55. The Government should direct Kenyatta University to allow the Kenyatta University Muslim community to resume immediately the construction of the Mosque as earlier directed by this Committee.**

56. The Government in its policies should encourage all public institutions to safeguard the constitutional right to freedom of worship.
57. The Government should review policies on scholarships from friendly countries earmarked for Muslim students to ensure that they reach the intended beneficiaries.
58. The Government should ensure that there is an affirmative policy in place in the allocation of bursaries and admission to institutions of higher learning.
59. The Government should set a University in North Eastern Province as a matter of urgency.
60. The Government should consult and involve the National Muslim Education Trust in the development of education policies and laws.

5.6 REPRESENTATION AND PARTICIPATION

61. The Government should undertake affirmative action for Muslims in the appointments in the Public Service particularly at policy and decision-making levels, with respect to the Cabinet, Permanent Secretaries, Court of Appeal and High Court Judges, Departmental Heads, Ambassadors, Heads of State Corporations, and other senior public appointments.
62. The Government should also undertake affirmative action for Muslims in recruitment into the public service, especially in the disciplined forces in areas where Muslims are a minority.

5.7 DEVELOPMENT AND INVESTMENT

62. The Government should develop a Marshal plan with adequate budgetary provision for predominantly Muslim areas to address the historical marginalization and under – development.

- 63. The Government should provide the necessary incentives for private sector development and investment in Muslim areas.**
- 64. The Government should establish a Livestock Marketing Development Authority and construct Abattoirs in Northern Kenya.**
- 65. The Government should commercialize Wajir Airport for the purpose of export of livestock and livestock products.**
- 66. The Government should invest in the development of road infrastructure in Northern Kenya.**
- 67. The Government should connect the Northern Kenya region to the national power grid.**
- 68. The Government should create a conducive environment and establish a statutory body to exploit the existing potential in commercial mineral, tourism and livestock in Northern Kenya.**
- 69. The Government should review de-registration of international Islamic NGOs in order to promote development amongst the Muslim community.**
- 70. The Government should waive tax duty due on donations to Islamic charitable organizations in Kenya**

5.8 GENERAL RECOMMENDATIONS

- 71. The Government should create a permanent advisory body to advice the state on Islamic matters and act as liaison between Government and the Muslim community.**
- 72. The Government should conduct civic education on a continuous basis.**

- 73. The Government should ensure that the media plays its rightful role particularly in its portrayal of the Muslim community.**

5.9 CONCLUSION

At the time of writing this final report, Kenya is gradually emerging from the ashes of the recent political upheaval following the December 2007 general elections. The situation has brought to the surface the weakness of our highly centralized system of governance which has historically ethnicized politics with the effect of excluding many regions and communities from equitably accessing national resources. From the Committee's analysis of the findings, Northern Kenya is evidently one such region and the Muslims are one such community. The impact has been to weaken national unity and disintegration of the country after the December 2007 elections.

Kenya should now seize this watershed moment in its political history to address all past injustices and ensure that there is equitable distribution of national resources. This is the focus of agenda item No. 4 of the National Dialogue and Reconciliation mediation talks which were led by H.E. Dr. Kofi Annan, former United Nations Secretary General. The mediation talks acknowledged that poverty, inequitable distribution of resources and perceptions of historical injustices and exclusion on the part of segments of the Kenyan society constitute the underlying causes of the prevailing social tensions, instability and cycle of violence. One of the main proposals of the talks is the establishment of a national Truth, Justice and Reconciliation Commission to address past historical injustices. It is the hope of the Committee that some of the findings in this report will find their way into the proposed Truth, Justice and Reconciliation Commission.

Finally, the Committee found the complaints raised by the Muslim community credible and deserving of serious redress. The Committee therefore, recommends that the Government should develop specific regional policies that will seek to integrate the

Muslim community with other Kenyan communities in the development agenda and build national cohesion and unity.

APPENDIX I : GAZETTE NOTICE NO. 10008

SPECIAL ISSUE



THE KENYA GAZETTE

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NAIROBI, 16th October, 2007

Price Sh. 50

GAZETTE NOTICE NO. 10008

THE CONSTITUTION OF KENYA

APPOINTMENT OF A SPECIAL ACTION COMMITTEE TO ADDRESS SPECIFIC CONCERNS OF THE MUSLIM COMMUNITY IN REGARD TO ALLEGED HARASSMENT AND/OR DISCRIMINATION IN THE APPLICATION/ ENFORCEMENT OF THE LAW

APPOINTMENT

IT IS notified for public information that in exercise of the powers conferred by section 23 (1) of the Constitution of Kenya, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya appoint Special Action Committee to look into and address specific concerns raised by the Muslim community with regard to alleged harassment and/or discrimination in the process of the application of the law particularly as regards to security issues.

1. The Committee shall comprise of—

A. M. H. SharaWe (Eng.)—(Chairman);

Members:

Attorney-General,
Permanent Secretary, Ministry of State for Provincial
Administration and Internal Security,
Permanent Secretary, Ministry of State for Immigration,
Permanent Secretary, Ministry of Justice and Constitutional
Affairs,
Permanent Secretary, Ministry of Foreign Affairs,
Sheikh Abu Hamza,
Yunis Maalim Mahat (Amb.),
Hassan Lakicha,
Shiraz Magan,
Amina Mohamed (Amb.)—(Secretary).

The Committee shall be in office for a period of four (4) months.

2. The functions of the Committee shall be:

- (a) To receive individual complaints of alleged harassment and/or discrimination in the treatment of persons who profess the Muslim faith with regard to security operations.
- (b) To ascertain whether, on the face of it, there is merit in a complaint, and thereafter to act on the complaint appropriately,

which may include channeling it to the responsible department of Government for action.

- (c) To inquire into allegations of wrongful or illegal denial of entry into or exit out of Kenya by Kenyan citizens who profess the Muslim faith.
- (d) To take immediate action so far as is possible to solve the problem disclosed in (a), (b) and (c) above.
- (e) To oversee, co-ordinate, monitor and follow up specific action on identified problem cases.
- (f) To review regulations, codes of conduct, processes and procedures in the public service and recommend changes necessary to avoid or reduce similar complaints.
- (g) To prepare advisory opinions or proposals on appropriate remedial action to be taken by the Permanent Secretaries or chief executives of responsible Ministries or public bodies.
- (h) To recommend appropriate policy and legislative reforms.

3. In the performance of its functions the Committee:

- (a) Shall be responsible to His Excellency the President.
- (b) Shall hold such number of meetings in such place and at such times as the Committee shall consider necessary for the proper discharge of its functions.
- (c) May use official reports of any previous investigations or complaint of a public nature relevant to its mandate.
- (d) May carry out or cause to be carried out such studies, investigations or research as may inform the Committee on its mandate.
- (e) Shall have all the powers necessary or expedient for the proper execution of its mandate, including the power to regulate its own procedures.
- (f) Shall prepare and submit, to the President, an initial progress report on its interventions within one month from the date of its appointment.
- (g) Shall in the said initial report make recommendations for longer term interventions in regard to administrative, legal and policy issues and set out a time-bound action plan for the implementation of the said recommendations.

4. The Secretariat of the Committee

The Secretariat of the Committee shall be provided by the Office of the President, Harambee House. The Secretariat shall be responsible to the Committee for—

- (a) Preparing appropriate background briefing to the Committee;
- (b) Facilitating access to relevant documentation and;

- (c) Liaising with the relevant Government ministries, departments and agencies to facilitate the effective discharge of the Committee's mandate.

Dated the 15th October, 2007.

MWAI KIBAKI,
President.

APPENDIX II : INITIAL PROGRESS REPORT



PRESIDENTIAL SPECIAL COMMITTEE ON SPECIFIC CONCERNS OF THE MUSLIM COMMUNITY

COMMITTEE MEMBERS:

Eng. A.M.H. Sharawe, CBS, EBS, FIEK (Chairman)
Hon. S. Amos Wako, EGH, FCI Arb, SC, MP
Mr. Cyrus T. Gituui, CBS
Mr. Emmanuel M. Kisombe, CBS
Ms. Dorothy N. Angote, CBS
Mr. Thuita Mwangi
Sheikh Abubakar A. Abubakar
Amb. Yunis Maalim Mahat
Mr. Hassan Lakicha
Mr. Shiraz Magan
Amb. Amina C. Mohamed (Secretary)

SECRETARIAT:

2nd Floor
Kenyatta International Conference Centre
P. O. Box 30872 - 00100 – NAIROBI
Tel: 254-020-341982, 246278

15 November 2007

His Excellency Hon. Mwai Kibaki, CGH, MP
President and Commander-in-Chief of the
Armed Forces of the Republic of Kenya
State House
NAIROBI

Your Excellency,

INITIAL PROGRESS REPORT OF THE SPECIAL ACTION COMMITTEE TO ADDRESS SPECIFIC CONCERNS OF THE MUSLIM COMMUNITY IN REGARD TO ALLEGED HARASSMENT AND/OR DISCRIMINATION IN THE APPLICATION/ENFORCEMENT OF THE LAW

Sir, you appointed us as members of the above captioned Special Action Committee on the 16th October 2007 to look into and address the specific concerns raised by the Muslim community with regard to alleged harassment and/or discrimination in the process of the application of the law particularly as regards security issues.

Part of the Terms of Reference required the Committee to submit to Your Excellency, an initial report of our preliminary findings within one month of the appointment of the Committee.

We have commenced our functions as appointed. We now have the honour to submit this Initial Progress Report, which contains our unanimous initial findings and recommendations.

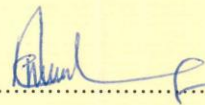
We take this opportunity to thank Your Excellency for the honour and trust which you have bestowed on us.

Accept, Sir, assurances of our highest regard.

Yours faithfully

Chairman:

A. M. H. Sharawe

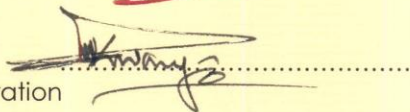


Committee Members:

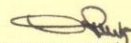
Attorney General



† Permanent Secretary
Ministry of State for Provincial Administration
and Internal Security



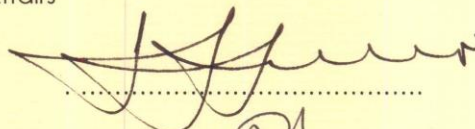
† Permanent Secretary
Ministry of State for Immigration
and Registration of Persons



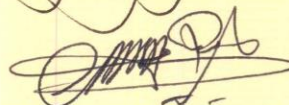
† Permanent Secretary
Ministry of Justice and Constitutional Affairs



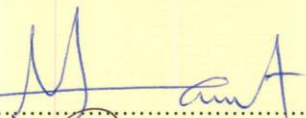
Permanent Secretary
Ministry of Foreign Affairs



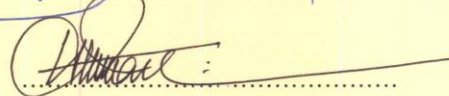
Sheikh Abubakar A. Abubakar
(Abu Hamza)



Ambassador Yunis M. Mahat



Mr. Hassan Lakicha

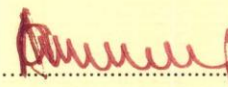


Mr. Shiraz Magan



Secretary

Ambassador Amina Mohamed





**Initial Progress Report of The Special
Committee to Address Specific Concerns of
the Muslim Community in Regard to Alleged
Harassment and/or Discrimination in the
Application/Enforcement of the Law**

Submitted to:

**His Excellency Hon. Mwai Kibaki, CGH, MP
President and Commander-in-Chief
of the Armed Forces of the
Republic of Kenya**

On 15th November, 2007

INTRODUCTION

We, A. M. H. Sharawe, the Attorney General, the Permanent Secretary, Ministry of State for Provincial Administration and Internal Security, the Permanent Secretary Ministry of State for Immigration and Registration of Persons, the Permanent Secretary, Ministry of Justice and Constitutional Affairs, the Permanent Secretary, Ministry of Foreign Affairs, Sheikh Abu Hamza, Ambassador Yunis M. Mahat, Mr. Hassan Lakicha Mr. Shiraz Magan and Ambassador Amina Mohamed, were appointed by His Excellency the President of the Republic of Kenya, Hon. Mwai Kibaki under Section 23 (1) of the Constitution of Kenya as per:-

- i. Gazette Notice Number 10008 dated 16th October, 2007.

CITATION

To look into and address the specific concerns raised by the Muslim community with regard to alleged harassment and/or discrimination in the process of the application of the law particularly as regards security issues.

TERMS OF REFERENCE

- a) To receive individual complaints of alleged harassment and/or discrimination in the treatment of persons who profess the Muslim faith with regard to security issues,
- b) To ascertain whether on the face of it, there is merit in a complaint, and whether to act on the complaint appropriately, which may include channelling it to the responsible department of Government for action,
- c) To inquire into allegations of wrongful or illegal denial of entry into or exit out of Kenya by Kenyan citizens who profess the Muslim faith,

- d) To take immediate action as far as is possible to solve the problem disclosed in (a), (b), and (c) above,
- e) To oversee, coordinate, monitor and follow up specific action on identified problem cases,
- f) To review regulations, codes of conduct, processes and procedures in the public service and recommend changes necessary to avoid or reduce similar complaints,
- g) To prepare advisory opinions or proposals on appropriate remedial action to be taken by the Permanent Secretaries or chief executives of responsible Ministries or public bodies,
- h) To recommend appropriate policy and legislative reforms.

Under Gazette Notice Number 10008 the Committee members, Secretary and Assisting Counsel were appointed as hereunder:

Chairman:

A. M. H. Sharawe

Committee Members:

Attorney General

Permanent Secretary, Ministry of State for Provincial Administration and Internal Security,

Permanent Secretary, Ministry of State for Immigration and the registration of persons,

Permanent Secretary, Ministry of Justice and Constitutional Affairs,

Permanent Secretary, Ministry of Foreign Affairs,

Sheikh Abubakar A. Abubakar (Abu Hamza),

Ambassador Yunis M. Mahat,

Mr. Hassan Lakicha,

Mr. Shiraz Magan

Secretary

Ambassador Amina C. Mohamed

Under Gazette Notice Number 10008 the Terms of Reference were set out and the Committee members were directed to carry out the functions stated in the citation with all due diligence and speed and submit two reports within its stipulated lifespan of four months from the date of the said Gazette Notice. Appendix "A" constitutes Gazette Notice Number 10008.

The Committee shall prepare and submit to the President an initial progress report on its deliberations within one month from the date of its appointment. This translates to the 16th November 2007.

In accordance with the powers granted to the Committee under Gazette Notice Number 10008 Sections 3 (b) and (e), the Committee started work from 22nd October 2007. The Rules of Procedure for the Conduct and Management of Committee meetings as well as public hearings were drawn and adopted. Appendix "B" hereof constitutes the said Rules of Procedure.

PART I: THE PROCEDURE

1. The Committee acknowledges that it is not a judicial tribunal. However, it set out the Rules of Procedure for the Conduct and Management of its proceedings to enable it to have a standard method for the receiving of complaints from the public. The Committee drafted forms which all persons presenting their complaints filled so as to ensure that any requisite action to be taken would be centred on cogent evidence.
2. The Committee relied on documentary evidence of alleged acts of discrimination against Kenyan citizens who profess the Muslim faith. These documents were marked as primary evidence for purposes of resolution of complaints.

3. Where documentary evidence was not available, the Committee collected information on the particulars of the persons who submitted complaints before it.
4. Whilst conducting the public hearings, the Committee heard all the complaints brought before it. However, two of the complaints were heard in private.
5. The schedule of public hearings was drawn, adopted and published in the local press on the 11th October 2007 with reminders being published on the 26th and 28th October 2007 as well as one on the 4th November 2007. Appendix "C" hereof constitutes the said advertisement of the public hearings.

PART II: THE PUBLIC HEARINGS

1. The Committee held its first public hearing in Nairobi at the Kenyatta International Conference Centre on the 5th and 6th November 2007. Thereafter hearings were held as scheduled in Mombasa and Garissa.
2. The hearings raised the following main areas of concern from persons who profess the Muslim faith:
 - *Grave and systematic violations of human rights by security agents in the regions visited.*
 - *Discrimination in the registration of persons and in the acquisition of passports*
 - *Unlawful removal of Kenyans who profess the Muslim faith from Kenya. Annexed is "Appendix D" which contains a list of names of persons unlawfully removed.*
 - *Harassment of Kenyans who profess the Muslim faith when entering the country at various entry points.*

- *Police Harassment and Brutality whilst dealing with Muslims. Of particular concern is the Anti-Terrorism Police unit which was singled out as operating extra judicially.*
 - *Discrimination in educational institutions.*
 - *Inadequate provision of public institutions in Muslim regions.*
 - *Discrimination in public recruitment.*
 - *The state of affairs with regard to ownership of land is reported to be highly discriminatory.*
 - *Grave deficiency in the provision of judicial services.*
 - *Inappropriate and unfair treatment of aid donated by Islamic governments and organisations.*
 - *Closure of Islamic Non Governmental Organisations set up to support local communities in areas such as health, education, agriculture.*
 - *The lack of investment in predominantly Muslim areas.*
 - *The closure of the Kenya-Somali border and its economic impact.*
 - *Restriction of movement into and out of areas adjacent to refugee camps within the Lagdera and Fafi districts.*
3. The Committee in accordance with Section 2 (d) of the Gazette Notice took action immediately and addressed some of the complaints. Others are under review and being pursued by the Committee.

PART III: PERLIMINARY FINDINGS

The Committee finds substance in the complaints raised so far by the Muslim community.

PART IV: RECOMMENDATIONS

The Committee recommends as follows, **THAT:**

1. The Ministry of Foreign Affairs be directed to initiate procedures for the immediate return of Kenyans who were unlawfully removed from the country to foreign countries as per the list in Appendix D.
2. The Ministry of Lands and Settlement should be directed to process and issue expeditiously title deeds to members of the Muslim community specifically in Kibera, Majengo, Kariakor in Nairobi, and Mombasa, Malindi, Kwale and Lamu.
3. An urgent directive be issued to the Ministry of State for Immigration and Registration of Persons to remove all discriminative measures and practices against Muslims.
4. The Special Desk for the issuance of passports for Muslims travelling for Hajj should be institutionalised and strengthened.
5. Islamic Religious Education should be integrated into the public education system with immediate effect. Pupils professing the Muslim faith be permitted to practice their faith freely in all educational institutions.
6. All security checks within the North Eastern Province and particularly at Police barriers should be done without violating the human rights of the area citizens.

7. Immediate establishment of more subordinate courts and a High Court in North Eastern Province.
8. The Ministry of Lands and Settlement should be directed to establish a Lands Registry in North Eastern Province.
9. The Ministry of Education should expedite the issuance of Letters of Accreditation to Muslim institutions and in particular to the Thika Islamic College and Mombasa Islamic University whose applications have been pending for many years.
10. The deregistration of International Islamic NGOs should be reviewed.
11. All law enforcement agents and specifically the Anti-Terrorism Police Unit must operate strictly within the law in the discharge of their mandate.
12. The Attorney General to direct the Commissioner of Police to carry out immediate investigations into the disappearance of one Mr. Farah Mohamed Abdullahi Identity Card Number 22644891 whose disappearance was reported to Kasarani Police Station on 20th August, 2007, and entered as OB 87/20/8/07.
13. The Ministry of Foreign Affairs be directed to follow up on the case of Abdullahi Adan Sheikh Ali who is being held in Medina in Saudi Arabia.
14. Taxation on donations made to Muslim charitable organisations be waived.
15. A Judicial Commission of Inquiry be established to address the past human rights violations in North Eastern Province, including the Wagalla incident.

APPENDIX "B"

RULES OF PROCEDURE OF THE PRESIDENTIAL SPECIAL COMMITTEE ON SPECIFIC CONCERNS OF THE MUSLIM COMMUNITY

The Presidential Special Committee makes the following rules for the conduct and management of proceedings of the public hearings

1. The Committee shall hold public hearings at places and at such times as will be determined by the Committee. The public shall be admitted to all or any specified part of the proceedings. The Committee may exclude any person from any part of the proceedings if satisfied that it is desirable to do so for the preservation of order, for the conduct of the hearings, or the protection of the persons, property or reputation of any person referred to in the course of the hearings
2. No matter shall be heard that concerns or relates to any matter prejudicial to the security of the State or the Head of State in public.
3. The Committee may hear the evidence of any individual or group in private.
4. The Committee shall have the powers to determine the duration of every individual submission before it, and subject to any such direction, every submission shall not exceed ten minutes.
5. The Committee shall require all persons making submissions before it to properly identify themselves and provide all relevant personal details.
6. The submissions by the public may be oral or in writing.

7. Any person who is in any way implicated or concerned in any matter brought before the Committee shall be entitled to make comments in rebuttal before the Committee.
8. The Committee may require the production of further information on any point relating to any matter before them and may recall any person to give further information.
9. The Committee may take immediate action as far as is possible to resolve any proven individual complaints of harassment and/or discrimination.
10. The Committee, in reaching a decision, may use official reports of any previous investigations or complaints of a public nature.
11. All public hearings of the Committee shall be conducted with decorum at all times and members shall carry themselves with all due respect and courtesy and refrain from untoward conduct during the hearings.

MEETINGS OF THE COMMITTEE

1. The Committee shall hold meetings on notice from the Secretary.
2. The meetings shall be presided over by the Chairman of the Committee. In the absence of the Chairman the members shall nominate one from among the members to preside over the meeting. In the absence of the Secretary, the Assisting Counsel shall take the minutes.
3. Meetings of the Committee shall be conducted with decorum at all times and members shall carry themselves with all due respect and courtesy.

4. Members of the Committee shall treat all matters deliberated and handled within the auspices of the Committee with the strictest confidence at all times.
5. The Chairman and the Secretary shall be the spokespersons for the Committee with regard to making public statements on its matters.
6. The quorum for the Committee shall be Five (5) members and/or their alternates.
7. Decisions of the Committee in meetings shall be by way of consensus.
8. The Committee shall set up sub-committees which shall be subservient to it and which shall perform the duties specifically allocated to them.

REPORTING

1. The Secretary shall ensure that the Initial Report is prepared and made ready for presentation to the Committee on or before the 14th November 2007. The Committee shall endorse the report for onward presentation to the President of the Republic of Kenya on or before the 16th November 2007.
2. The Final Report of the Committee shall be submitted on or before the 16th February 2008 unless otherwise determined.
3. The reports shall be produced in bound hard-cover copies.

GENERAL

1. Any circumstances not elaborated in the present Rules shall be determined by the Committee as and when they arise.
2. The Committee may amend these Rules at any time.

APPENDIX "C"

PRESS ADVERTISEMENT OF PUBLIC HEARINGS

PRESIDENTIAL SPECIAL COMMITTEE ON SPECIFIC CONCERNS OF THE MUSLIM COMMUNITY

PUBLIC HEARINGS

H.E. Mwai Kibaki, CGH, MP, the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, on 15th October, 2007 appointed a Special Action Committee to Address Specific Concerns of the Muslim Community in regard to alleged harassment and/or discrimination in the application/enforcement of the law particularly as regards security issues.

Members of the Committee are:-

Eng. A.M.H. Sharawe - (Chairman)

Members

Attorney General

PS, Ministry of State for Provincial Administration and Internal Security

PS, Ministry of State for Immigration

PS, Ministry of Justice and Constitutional Affairs

PS, Ministry of Foreign Affairs

Sheikh Abubakar A. Abubakar (Sheikh Abu Hamza)

Amb. Yunis Maalim Mahat

Hassan Lakicha

Shiraz Magan

Amb. Amina Mohamed - (Secretary)

Mandate

The Committee has been mandated to carry out the following functions:-

- a) To receive individual complaints of alleged harassment and/or discrimination in the treatment of persons who profess the Muslim faith with regard to security operations.
- b) To ascertain whether, on the face of it, there is merit in a complaint, and thereafter to act on the complaint appropriately.
- c) To inquire into allegations of wrongful or illegal denial of entry into or exit out of Kenya by Kenyan citizens who profess the Muslim faith.
- d) To take immediate action so far as is possible to solve the problem disclosed in (a), (b) and (c) above.
- e) To oversee, co-ordinate, monitor and follow up specific action on identified problem cases.
- f) To review regulations, codes of conduct, processes and procedures in the public service and recommend changes necessary to avoid or reduce similar complaints.
- g) To prepare advisory opinions or proposals on appropriate remedial action to be taken by the Permanent Secretaries or chief executives of responsible Ministries or public bodies.
- h) To recommend appropriate policy and legislative reforms.

Schedule of Hearings

The Committee will hold public hearings as follows:-

Place	Venue	Date	Time
Nairobi	KICC	5 th – 6 th November, 2007	9.00 – 12.00 2.30 – 4.30
Mombasa	Jubilee Aga Khan Hall	7 th – 8 th November, 2007	9.00 – 12.00 2.30 – 4.30
Garissa	Nomad Palace Hotel	13 th – 14 th November, 2007	9.00-12.00 2.30 – 4.30
Kisumu	Municipal Hall	27 th November,	9.00-12.00

		2007		2.30 – 4.30
Kakamega	Municipal Hall	28 th 2007	November,	9.00-12.00 2.30 – 4.30
Eldoret	Municipal Hall	29 th 2007	November,	9.00-12.00 2.30 – 4.30
Nakuru	Municipal Hall	4 th 2007	December,	9.00-12.00 2.30 – 4.30
Nyeri	PC's Information Hall	5 th 2007	December,	9.00-12.00 2.30 – 4.30
Isiolo	Rural Agricultural Training Centre	6 th 2007	December,	9.00-12.00 2.30 – 4.30

The Committee appeals to Imams, other Muslim leaders, Muslim and other relevant organizations to sensitize the Muslim community on the mandate and the programme of work of the Committee.

The Secretariat
 Presidential Special Action Committee
 Kenyatta International Conference Centre
 2nd Floor
 P.O. Box 30872-00100
NAIROBI

Tel: 254-020-341982 or 246278
 Email: psac@mfa.go.ke

Amb. Amina C. Mohamed
SECRETARY

APPENDIX "D"

LIST OF PERSONS REMOVED FROM KENYA

NO	NAME	PLACE	DATE
1	Aden Sheikh Abdullahi	Ethiopia	20.01.07
2	Saidi Shifa	Ethiopia	20.01.07
3	Salam Ngama	Ethiopia	20.01.07
4	Bashir Hussein Chirag Mohammed Sader	Ethiopia	27.01.07
5	Said Hamisi Mohamed	Ethiopia	27.01.07
6	Swaleh Ali Tunza	Ethiopia	27.01.07
7	Hassan Shaban Mwazume	Ethiopia	27.01.07
8	Hussein Ali Said	Ethiopia	20.01.07
9	Tsuma Solomon Adam Ayila	Ethiopia	27.01.07
10	Abdi Muhammed Abdillahi	Ethiopia	27.01.07
11	Salim Awadh Salim	Ethiopia	27.01.07
12	Abdulrashid Mohamed	Ethiopia	27.01.07
13	Kasim Musa Mwarusi (brother to 14 below)	Ethiopia	10.02.07
14	Ali Musa Mwarusi	Ethiopia	10.02.07
15	Abdallah Halifan Tondwe	Ethiopia	10.02.07
16	Nasru Tuko	Ethiopia	-
17	Mohammed Said Mohamed	Ethiopia	-
18	Mohamed Abdulmalik	Guantanamo Bay, Cuba	-

APPENDIX III: LETTER OF EXTENSION OF THE TERM OF THE COMMITTEE



OFFICE OF THE PRESIDENT
PERMANENT SECRETARY, SECRETARY TO THE CABINET
AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address: "Rais"

Telephone: Nairobi 227411

When replying please quote

Ref. No. PSCAB.17/110A

and date

P.O. Box 62345-00200

NAIROBI

11th March, 2008

URGENT

Eng. A.M. H. Sharawe

Chairman

Presidential Special Action Committee on
Specific Concerns of the Muslim Community
NAIROBI



Dear Eng. A.M.H. Sharawe

EXTENSION OF THE TERM OF THE COMMITTEE

Reference is made to your letter Ref. No. PSC.COMPLY.VOL.1 of 15th January, 2008 on the above subject matter.

Following your request for an extension of Presidential Special Action Committee' on Specific Concerns on the Muslim Community's term to on or before the 30th June, 2008, it is **agreed** that the Committee will be expected to conclude all its works inclusive of writing the report and presentation of the same to H.E. the President **by 31st March, 2008.**

Please take further necessary action.

Yours *Sincerely*

for M. Muthaura

for AMB. FRANCIS K. MUTHAURA, EGH
PERMANENT SECRETARY, SECRETARY TO THE
CABINET AND HEAD OF THE PUBLIC SERVICE

APPENDIX IV: LIST OF PUBLIC OFFICERS CONSULTED BY THE COMMITTEE

Office of the President, Cabinet Office

1. Amb. Francis K. Muthaura, EGH
Permanent Secretary, Secretary to the Cabinet and Head of the Public Service
2. Mr. Francis K. Musyimi, CBS
Former Principal Administrative Secretary

Ministry of State for Immigration and Registration of Persons

3. Mr. Emmanuel M. Kisombe, CBS
Permanent Secretary, Ministry of State for Immigration and Registration of Persons
4. Mr. Joseph K. Ndathi
Director, Immigration
5. Mr. Peter B. Kusimba
Commissioner, Refugees Department
6. Mr. Edward K. Rintaugu
Assistant Director
7. Ms Jane O. Nyandoro
Chief Immigration Officer
8. Ms Lucy N. Njihia
Chief Immigration Officer
9. Ms Evelyn T. Cheluget
Chief Immigration Officer
10. Mr. Maurice M. Anyanda
Chief Immigration Officer
11. Dadu s. Katelo
Refugee Department, US
12. Anastasia Mutua
Civil Registrar
13. Mr. Henry M. Karanga
Senior Assisting Principal Registrar

14. Mr. John M. Kinyumu
Senior Registrar
15. Mrs. Joice W. Mugo
Principal Civil Registrar
16. Mr. Reuben Kimotho
SAPR Director
Ministry of Education
17. Prof. Karega Mutahi, CBS
Permanent Secretary, Ministry of Education
18. Prof. George Godia
Education Secretary
19. Mr. David Siele
Director of Higher Education
20. Mr. Stephen Karaba
Ag. Director of Basic Education
21. Mr. Luka Spira
Representative, Teachers' Service Commission

Ministry of Lands

22. Mr. Z. Mabeya
Commissioner of Lands
23. Mr. Augustine Masinde
Deputy Director of Physical Planning, Ministry of Lands

Ministry of Local Government

24. Mr. Reuben Rotich
Deputy Secretary of Administration, Ministry of Local Government

Ministry of State for National Heritage

25. Mrs. Alice K. Mayaka, OGW
Permanent Secretary, Ministry of State for National Heritage
26. Mr. David Isoe
Executive Director, NGOs Co-ordination Board

Ministry of State for Youth Affairs

27. Mr. Japheth K. Mwanja, CBS
Director of National Youth Service (NYS)

Office of the President, Provincial Administration and Internal Security

28. Mr. Ernest Munyi, EBS
Provincial Commissioner, Coast Province
29. Mr. Kiritu Wamae, EBS
Provincial Commissioner, North Eastern Province
30. Mr. Paul Olando, EBS
Provincial Commissioner, Nyanza Province
31. Ms. Clare Omollo
Personal Assistant to the Provincial Commissioner, Western Province
32. Mr. Hassan Noor Hassan, EBS
Provincial Commissioner, Rift Valley Province
33. Mr. Japheth Rugut, EBS
Provincial Commissioner, Central Province
34. Ms Shufar Omar
Personal Assistant to the Provincial Commissioner, Eastern Province
35. Mr. Benard Kinyua
District Commissioner, Uasin Gishu District
36. Mr. Geoffrey Mayama
Ag. District Commissioner, Isiolo District

Other Public Officers

37. Hon. Farah Maalim, MP
Deputy Speaker of the National Assembly
38. Mr. Abdi Ismail
Office of the Deputy Speaker
39. Sheikh Hamad Mohamed Kassim
Chief Kadhi
40. Mr. Kamau Muthanua
Ministry of Justice and Constitutional Affairs
41. Mr. Anthony I. Okara
State Law Office
42. Mr. Njonjo Mue
Kenya National Commission on Human Rights (KNCHR)

43. Hassan Omar
Kenya National Commission on Human Rights (KNCHR)

Kenyatta University

44. Prof. Olive Mugenda
Vice Chancellor, Kenyatta University
45. Prof. Daniel Mugenda
Deputy Vice Chancellor, Kenyatta University
46. Prof. Onesmus Ole Moi Yoi
Chairman, Kenyatta University Council
47. Dr. Jamleck Mutugi
Member, Kenyatta University Council
48. Ms Jennifer Muna
Member, Kenyatta University Council
49. Prof. O. Njula
Kenyatta University
50. Mr. Godfrey Mse
Registrar, Administration, Kenyatta University
51. Dr. N. M. Karagu
Registrar, (F, P & D), Kenyatta University
52. Mr. Gabriel Katana
Registrar, Academic Affairs, Kenyatta University
53. Prof. Muluvi
Kenyatta University
54. Mr. Farid R. Hamir
Kenyatta University

APPENDIX V: LIST OF MUSLIM LEADERS CONSULTED BY THE COMMITTEE

1. Abdallah Ali
Supreme Council of Kenya Muslims (SUPKEM)
2. Hussein Shariff Omar
SUPKEM
3. Hassan Ole Naado
SUPKEM
4. Ibrahim Sadala
Majlis Ulamaa (K)
5. Anas Ali Abdalah
Majlis Ulamaa (K)
6. Nura Ng'ang'a
Muslim Human Rights Forum (MHRF)
7. Mohamed Maloba
Muslim Human Rights Forum (MHRF)
8. Hussein Khalid
Muslims for Human Rights (MUHURI)
9. Dr. Ahmed Yasin
Chairman, Muslim Education and Development Network (MEDAN)
10. Abdulatif Sheikh
MEDAN
11. Sheikh Hamad Mohamed Kassim
Chairman, National Education Muslim Trust
12. Hassan Mohamed
National Education Muslim Trust
13. Juma Ali Munga
Islamic Foundation
14. Zool Nimji
Secretary General, Ummah Foundation
15. Mohamed O. Warfa
Chairman, Jamia Mosque Committee (JMC)
16. Mahmoud Farouq Adan
Vice Chairman, Jamia Mosque Committee (JMC)
17. Abdulatif Esajee
Treasurer, JMC

18. Abdul B. Khamid
Secretary, JMC
19. Ibrahim Ahmed
Jamia Mosque Committee (JMC)
20. Dr. Ekuru Aukot
Executive Director, Kituo cha Sheria
21. Soipan Tuya
Kituo cha Sheria
22. Kigen Korir
Kituo cha Sheria
23. Riziki Omar
Kituo cha Sheria
24. Adan Mohamed
Ahmed Abdikadir & Co. Advocates
25. Ali Mahmoud
Mohamed & Lethome Advocates
26. Ibrahim Lethome
Mohamed & Lethome Advocates
27. Mohamed Bulle
Hassan, Bulle & Co. Advocates
28. Ms Rahma Jillo
NGOs Co-ordination Board

APPENDIX VI: LIST OF MUSLIM AND HUMAN RIGHTS ORGANIZATIONS CONSULTED BY THE COMMITTEE

1. Supreme Council of Kenya Muslims (SUPKEM)
2. Majlis Ulamaa
5. Muslim Human Rights Forum (MHRF)
6. Muslims for Human Rights (MUHURI)
7. Young Muslim Association
8. Muslim Education and Development Network (MEDAN)
9. National Education Muslim Trust
10. Islamic Foundation
11. Kenya National Human Rights Commission (KNHRC)
12. Kenya Human Rights Commission (KHRC)
13. Kituo cha Sheria
14. Jamia Mosque Committee (JMC)