

THE SENATE
RECEIVED

26 JUL 2021

FORM OF PETITION

THE CLERK OF NATIONAL ASSEMBLY

Parliament Buildings

P.O. Box 41842 – 00100

NAIROBI

10th July 2021

RE: PETITION TO THE NATIONAL ASSEMBLY TO AMEND SECTIONS 47 AND 49 UNDER PART TWO, OF CHAPTER FOUR OF CONSTITUTION OF KENYA 2010 AND AMEND CHAPTER SECTION 123(1) AND (2) OF 75 AND PART 5 OF CHAPTER 80 LAWS OF KENYA AND OTHE RELEVANT LAWS AND REGULATIONS

I, the undersigned,

Citizen of the Republic of Kenya, a resident of Embu County and a community leader in different spheres of life;

DRAW the attention of the Senate to the following:

That, after having worked in the Kenya Police service as a Criminal investigating Officer, I have enough experience and knowledge on the most probable cause of the situation that we are experiencing in our Country.

THAT, from the year 2010 when the current constitution was born there has been a high increase of extrajudicial killing purportedly through by Government Agencies and or through mob injustice.

THAT, extrajudicial killing, murder and mob injustice has continued to increase year by year and coming to an alarming level in 2021.

That, if this trend is not stopped through a drastic action, such killing ,rape, robbery with violence ,abduction and cold blood murder will continue and this country will turn into a state of anarchy in a very near future.

That, some felonious offence cannot be investigated while the suspect is free as by doing so would curtail the process of investigations.

That, our investigation Agencies, the general Police service and the entire population of Kenya is frustrated by the current security situation in our Country.

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That, our investigation Agencies is currently frustrated lot and on a helpless and hopeless situational mode due to so many handles which curtails their investigation capability and capacity.

That, in our current constitution under the bill of rights, we have a strong indicator to an extent that the rights of suspects is absolute as compared to the rights of victims while bearing in mind that no right of an individual is absolute.

That, the law should be very precise on the nature of the cases, the bond and bail terms ,the punishment and the time frame in which the cases should be concluded in lower courts, high court, court of appeal and up to the supreme court in cases where the appeals are allowed to such level.

That, sections 47 and 49 under part 2 of Chapter 4, Constitution of Kenya 2010 on human rights was introduced to tame away the then frequent abuse of human rights by the then dictatorial government which was notoriously arresting and detaining its opponents unlawfully and without trail.

That, the positive changes made in our constitution as far as section 49 sub-section (f)(i) and (ii) of part 2 ,Chapter four of Constitution of Kenya 2010 are extreme since it does not consider the victims of crimes did not bear in mind that there are different types of offences which would require the not less than 7 days of investigation and the actual presence of the suspected person(s) in police custody in mandatory during investigation.

That, some cases are committed through a string of activities in many different places and by a chain of different persons which requires the suspects to be held for some days and sometimes moved from one county to another.

That, investigation is a process and in many cases investigators are required to gather and investigate relevant facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction and which might have occurred at the same time and place or at different times and places thus consuming investigator's substantial time.

That, the window given to the investigators of requesting the courts to give them more time to hold suspects in custody so as to have enough time for investigation falls under the cloud of uncertainty given that the some disclosers which are required on the affidavit sworn by the investigator some of which should have been confidential in protection of investigation process, some court houses are distance away from the police stations a fact which hinders the investigating officer from abandoning the investigation leads to travel the court house to swear an affidavit requesting for more time for holding the suspect, sometimes the local courts are not seating due to various reasons and in some instances the presiding the judicial officers who are supposed to given the investigating officer more time for holding up the suspect in a lawful custody is biased against the investigation and any other reasons which

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denies the investigating officer the chance to unveil all the evidence which could not have been gathered when the suspect(s) is out there.

That, the current Clauses on the rights of accused person as spelt out in our constitution is so much bent into protecting the suspects and accused persons leaving the offended and the prosecution to the mercies of such suspects and accused persons.

That, the 24 hours given to the police for holding a suspect in custody for all the types criminal cases is not enough to allow the police to undertake a thorough investigation which would provide water prove evidence for prosecution.

That, section 25 evidence Act Cap 63 laws of Kenya is ambiguous on what constitutes to a confession.

That, section 25A(1) evidence Act Cap 63 laws of Kenya is limits the capacity of the Police to take down a confession as puts strenuous conditions which includes the mandatory presence of a person invited by the suspect and which in many cases is not possible given the nature of our society.

That, most suspects who are serial offenders and accused of capital offences and felonies have been released on bond and in most cases such bonds are so lenient which encourages them to commit series of similar or more serious offences immediately after their release by the court.

That, the Police investigators and prosecutors are so much frustrated by the judicial system process whereby suspects who have multiple criminal cases pending before court are released on bond to go out to commit more similar or related offences:

That, our court hands are tied up by our constitution which gives more rights to an accused person as compared to the complainant as they seek to provide justice to both parties.

That ,it has become very normal for an accused person charged with felonious offences like murder, robbery with violence or rape to be charged before court and released just to go home and eliminate the key witnesses or threatening them to silence thus shattering the window of justice for the victim(s).

That, it has become very normal for an accused person charged with felonious offences like murder, robbery with violence or rape to be charged before court and released just to go back to the society and commit more similar crimes as many times as possible and in every case gets released on bond and eventually becoming a professional offender .

That, a constitutional amendment is a necessary to remedy for the current uncivil sickening situation in our country as we seek to stop the escalating cases of cold blood murder and extrajudicial killing among other serious crimes in our society.

That, there is a very urgent need to amend our constitution under the Bill of Rights to give a mandate to parliament create a classification Schedules which would guide the Police and the court on the types of the offences and the maximum numbers of days in which a suspect

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could be held in a Police custody, types of cases and amount of Bond to be given and types of offenders who must not be given any Bond.

That, there is also an urgent need to amend some laws under Chapter 63 Laws of Kenya and other Penal laws, Anti-corruption and economic crimes Act Chapter 65 Laws of Kenya, Evidence Act chapter 80 laws of Kenya and Criminal procedure Code Chapter 75 Laws of Kenya and other laws and regulations governing our judicial system and dispensation of justice which should include but not limited to:-

- a. The review of evidential threshold of proving criminal cases.
- b. The review of the maximum number of days in which a suspect can be held in police custody before being charged before the court, depending on the magnitude of the offence committed.
- c. The review of the bond rights on the persons who commits felonious offences.
- d. The introduction of maximum period within which trials before the courts should be concluded on different types of offences in our laws.
- e. The introduction of the minimum and maximum jails term, fine and any other punishment for each category of punishable offences.

That, this petition squarely falls under the National Assembly which by law is mandated to review and enact legislation as proposed in this petition.

THAT, I confirm that the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.

HEREFORE your humble petitioners Pray that Parliament—

- a. Amend Clause f (i) and (ii) of section 49, Part 2 of chapter 4 constitution of Kenya 2010, by introducing a legislation through which a classification of different types of crimes and offences and the maximum number of days which a suspect(s) of a classified crime or offence can be lawfully held before being charged in court or released by any law enforcement agency or investigative Agency, for adequate and proper investigations.
- b. Review and enact legislation on administrative action to give full effect to the rights in clause (1) of section 47, Part 2 of chapter 4 constitution of Kenya 2010, under Article which states that "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair", by amending the whole of section 47 and introducing the maximum period in which every trial of criminal and civil in nature should be concluded by every court from the subordinate court, the high court, court of appeal to the supreme court as per the cases classification.

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- c. Amend section 123(1) of the Criminal Procedure Code Cap 75 the under Provision of Bails to include crimes involving theft of public funds, corruption and fraud as crimes of which the suspects would not be released on bail while at custody of the Police or of a person lawfully detaining such a suspect.
- d. Amend section 123(2) of the Criminal Procedure Code Cap 75 to remove ambiguity by Introducing Scheduled heavy bail and bond on all financial crimes in nature, economic crimes and all crimes against public wellbeing.
- e. Lay down a precise time frame as far as the judicial process within our court should be concluded as dictated by the magnitude of various offences within our laws.
- f. Amend the whole of part V of the evidence act Cap 80 Laws of Kenya to include admissibility of the mentioned documentary evidence under both criminal and civil proceeding as provided under section 35 and 36 of the same Part v.
- g. To introduce any other laws which will not favour the culprits of crime at the expenses of the victims and at the same time giving unlimited protection to Kenyans lives and their property and also giving confidence to the Kenya citizens ,our investigative Agencies and the judicial system process that the administration of justice will be timely and just.
- f. To introduce minimum and maximum jails term, fine and any other punishment for each category of offences under our laws.

And your PETITIONERS will ever pray.

That his petition heard and considered with a view of having it dealt with in accordance with the law and disposed off appropriately and expeditiously.

Dated this 10th day of July2021.

	Name of petitioner	Full Address	National ID	Signature
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