 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 25 SEP 2024	DAY: WEDNESDAY
TABLED	HON. JANET SITIENGEI (VICE-CHAIRPERSON)
CLERK-AT THE-TABLE:	MOSES WONGOLE

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

PUBLIC PETITIONS COMMITTEE

REPORT ON

CONSIDERATION OF PUBLIC PETITION NO. 49 OF 2023 REGARDING 41 KENYANS
 COURT MARTIALLED AND CONVICTED FOR EIGHT YEARS IMPRISONMENT IN UGANDA
 PRESENTED BY THE HON. PROTUS AKUJAH, MP

JUNE 2024

Clerk's Chambers
 Directorate of Legislative and Procedural Services
 Parliament Buildings
 Nairobi

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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Public Petitions Committee regarding 41 Kenyans Court Martialled and Convicted for Eight Years Imprisonment in Uganda. The Petition was presented to the House pursuant to Standing Order No. 225 (2)(a) by the Hon. Protus Akujah, MP. on behalf the residents of Loima Constituency.

The Petitioner prayed that the Government of Kenya acts to secure the release of 41 unlawfully convicted Kenyans whose whereabouts were unknown.

In consideration of the Petition, the Committee collected the views from the Petitioner on two occasions, the Ministry of EAC, ASALs & Regional Development and the Ministry of Foreign & Diaspora Affairs.

The Committee observed that in a bid to resolve the matter diplomatically, the Turkana County leadership had engaged the President of Kenya to facilitate discussions with his Ugandan counterpart. The Committee recommends the use of diplomatic negotiations such as prerogative of mercy. Through the highest-level delegation appointed by the President as the most efficient means to secure the release of the 41 Kenyans convicted in Uganda. In the alternative, the Committee recommends that the Attorney General pursues transfer of the Kenyans through the Commonwealth Scheme for the Transfer of Convicted Offenders.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support offered during the consideration of the Petition. The Chairperson expresses gratitude to the Members of the Committee and the Secretariat for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to table the report before the House.



HON. NIMROD MBITHUKA MBAI, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date:19-06-2024.....

PART I

PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and advising the House and reporting on all public petitions committed to it.

1.2 COMMITTEE MEMBERSHIP

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency
United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency
Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency
Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

1.3 COMMITTEE SECRETARIAT

The Public Petitions Committee is facilitated members of the secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Senior Clerk Assistant

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Mr. Peninnah Simiren
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Ms. Roselyne Njuki
Senior Serjeant-at-Arms

Mr. Paul Shana
Sergeant at Arms

Mr. Calvin Karungo
Media Relations Officer III

Mr. Peter Muteithia
Audio Officer

PART II

BACKGROUND OF THE PETITION

2.1 INTRODUCTION

1. Public Petition No. 49 of 2023 Regarding 41 Kenyans Court Martialled and Convicted for Eight Years Imprisonment in Uganda was presented by Hon. Protus Akujah, MP, Member for Loima Constituency on Tuesday, 22nd August 2023 on behalf of concerned citizens of the Republic of Kenya.
2. The Petitioner drew the attention of the House that forty-one (41) Kenyans were arrested, detained and hurriedly convicted for between 8-40 years by a Moroto Third Division Military Court (MTDDC) after a cordon and search operation conducted by Uganda People Defence Force (UPDF).
3. The Petitioner also claimed that the Turkana Pastoralists were taken through a one-day court martial trial without any legal representation or right to appeal while the right to a fair trial was that every person would be presumed innocent until proven guilty.
4. Further, that majority of those convicted were minors below the age of 18 years who were rounded up in their kraals and alleged to be in possession of illegal firearms and ammunition.
5. The Petitioner averred that all the happenings were brought to the attention of the Kenyan Government but no action had been taken to secure the release of the unlawfully convicted Kenyans. There was no clear information on which prison facilities the convicts were confined in or trace to prove they were still alive.
6. According to the Petitioner, efforts made to the Kenyan Embassy in Uganda to address and follow up on the matter had not borne any fruits. That it was irrational and patently absurd for the Kenyan Government to give a deaf ear to the plight of its citizens who are suffering and mistreated in a foreign country.

2.2 PRAYERS

The Petitioners prayed that the National Assembly through the Public Petitions Committee makes inquiry into all matters raised in the petition with a view to ensure that—

7. The Government of Kenya acts with speed to secure the release of 41 unlawfully convicted Kenyans whose whereabouts were unknown.

8. The Ministry of Foreign & Diaspora Affairs through the High Commission in Uganda makes requests for the extradition and surrender of the accused persons to Kenyan authorities for trials.
9. The Ministry of Foreign & Diaspora Affairs together with the Ministry of East Africa Community affairs holds bilateral talks with the Governments of Uganda and Kenya to strengthen and foster the diminishing peaceful relations between the two states.

PART III

STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 THE PETITIONER

On Thursday, 26th September 2023, the Petitioner Hon. Protus Akujah, MP accompanied by Hon. Daniel Epuyo, MP, Member for Turkana West Constituency appeared before the Committee and submitted as follows—

Background of the Petition

10. The forty-one (41) Kenyans who were arrested and detained by a Moroto Third Division Military Court were Turkana pastoralists who were arrested after a search operation conducted by Uganda People Defence Force (UPDF) following the killing of two (2) officers from Uganda. That thirty-two (32) of them were arrested and detained in Moroto and court-martialled on 11th April 2023 on account of possession of illegal fire arms and live ammunition and nine (9) of them were arrested in 2022.

Efforts by the Petitioner

11. The efforts had been made to extradite the forty-one (41) Kenyans including engaging the Ministry of Foreign Affairs. All the happenings were brought to the attention of the Kenyan Government but no action was taken to secure their release. Efforts made to the Kenyan Embassy in Uganda to address the matter were equally unsuccessful.

12. The Government of Uganda opened talks for peaceful coexistence and offered a one hundred and sixty-eight (168) days period for feedback and reaction from the Government of Kenya but the same was not forthcoming. A further communique was done by Uganda vide a letter dated 3rd March 2023 requesting for an establishment of a resource sharing agreement within the area but no feedback was provided by the national government.

13. The resource sharing agreement was therefore overtaken by an Executive Order No. 3 of 2023 by the Ugandan President which indicated that the Turkana people should surrender their weapons for the release of their relatives.

The situation along the border

14. Turkana County which was about 77,000-kilometre square lacked presence of government along the border with Uganda hence causing suffering of the people. The lack of water and pasture on the Kenyan side led to the pastoralists moving upwards to feed their livestock. Further the relationship between the people in Kenya and Uganda was cordial as the communities were kinsmen sharing of culture

including language. However, the tribal fights were brought about by the struggle for resources.

15. The petitioner claimed that the UPDF officers were making life unbearable for the Turkana people as there were one-sided reporting in favour of Ugandans whenever a matter occurs between Turkana and Karamojong' such as theft of livestock, loss of lives and attacks. Further, the officers were also extorting Kenyans along the border.
16. The Petitioner requested the Committee to recommend the use of all available legal provisions to extradite the forty-one (41) Kenyans back to Kenya. The Government of Kenya to liaise with the Ugandan officials in Moroto Division to establish the status of the 41 Kenyans. Further, recommends that the Government of Kenya holds bilateral talks with Uganda to strengthen and foster the diminishing peaceful relations.

On Tuesday, 26th March 2024, the Petitioner, Hon. Protus Akujah, MP appeared before the Committee to provide additional information as follows—

17. The leaders of the region submitted a petition on behalf of the thirty-five (35) Kenyans who faced court-martial in May 2023. Among the forty-one (41) individuals, nine (9) had already been court-martialled in 2022, rendering them unable to appeal while serving their sentences. For the remaining thirty-two (32), a successful appeal argued that six (6) of the victims were minors, leading to their transfer to juvenile detention. A subsequent petition sought their release, with a hearing scheduled for 12th March, 2024, offering prospects for their freedom.
18. The arrest of the nine (9) Kenyans stemmed from their containment following the killing of three geologists and two UPDF soldiers. However, no substantial evidence linked them to the crimes. Conversely, the court-martial of the 32 individuals in May the previous year was based on charges of firearm possession.
19. Efforts were also made to review the sentences of the remaining detainees, highlighting discrepancies between Ugandan laws and the charges faced. Although Ugandan law stipulated a ten-year prison term for possession of unlicensed firearms, the detainees faced dual charges, resulting in a twenty-year sentence. A review hearing was slated for May to address this disparity.
20. In a bid to resolve the matter diplomatically, Turkana's leadership engaged the President of Kenya to facilitate discussions with their Ugandan counterpart. Plans were in place for a meeting in Kapchorwa and Moroto on 10th and 11th March 2024 but the meeting did not take place.
21. Responding to Uganda's directive, the Turkana leadership was tasked with drafting a resource-sharing agreement for the Moroto-Turkana corridor. Although the

agreement was slated for signing on 10th and 11th March, the cancellation of the meeting delayed its progression. Additionally, while the possibility of presidential pardon under Uganda's prerogative power of mercy was discussed, no action had been taken thus far.

22. The Turkana leadership's appeals to various ministries for assistance following the court-martial proceedings had yet to yield results or updates on the status of the affected individuals within the Moroto-Turkana corridor.
23. Regarding Uganda's proposals to address nomadism, their government directive was considering restricting nomadic activities. It also outlined conditions for Kenyan pastoralists within their jurisdiction and the need for apprehending the perpetrators of the crimes and compensating victims' families. These conditions prompted discussions on the resource-sharing agreement to determine the duration of Turkana presence in Uganda before the restrictions take effect.
24. The primary challenge contributing to border crossings was the inadequate water supply for the Turkana cattle. To mitigate nomadism's impact, the Turkana leadership advised reducing cattle numbers due to climate change and water scarcity, advocating for the establishment of abattoirs along the corridor for meat processing and exportation.

3.2 MINISTRY OF EAST AFRICAN COMMUNITY, ASALs & REGIONAL DEVELOPMENT

The Principal Secretary (PS) State Department of East African Community (EAC), Mr. Abdi Dubat appeared before the Committee on Thursday, 2nd November 2023 and submitted as follows—

Background

25. Over the years cases had been reported of Kenyans from either side of the EAC Partner States borders being arrested for various reasons including fishing and grazing. Efforts had been made through diplomatic channels to ensure harmony and peaceful coexistence.
26. Prior to the unfortunate incident that happened in April 2023, already nine (9) Kenyans from Turkana County were in prison in Uganda serving sentences related to security. The nine (9) Kenyans were arrested in March 2022 for allegedly killing three (3) geologists. Of the 9 Kenyans, eight (8) were in Kitalia Prison while one was in Kasese Prison.
27. In April 2023, thirty-two (32) Kenyan herders from Turkana County, Loima Sub-County, Lokirama/Lorengikipi Ward in Orum Location were arrested in Uganda allegedly for possession of weapons. In this regard, the UPDF went ahead and court-martialled them in line with Section 119 of the UPDF Act which stipulates

that if one is found in possession of a weapon, ammunition, or equipment then he or she is considered a combatant and tried in a military court.

Intervention by the Government to Resolve the Issue

28. The Ministry was aware of the diplomatic challenge and had been working to resolve it. In both cases, the Ministry of Foreign and Diaspora Affairs and the High Commission in Kampala had shared with the Ministry of EAC, ASAL, and Regional Development, the briefs in the spirit of the whole-government approach.
29. The Cabinet Secretary had also met with the leadership of Turkana County on several occasions to resolve the matter. Similarly, the Governor of Turkana County H.E Jeremiah Ekamais had a conversation with the Principal Secretary, State Department for the EAC on 7th August 2023. During the meeting, consensus was reached on the necessity of devising a lasting solution to the matter. It was agreed that the County Government of Turkana would collaboratively formulate a comprehensive plan of action, focusing on integrating developmental measures that enhance livelihoods. This strategic approach aims to transition the residents of the County towards a more settled lifestyle. Importantly, deliberate efforts would be undertaken to foster cross-border cohesion and facilitate peaceful coexistence in the region.
30. His Excellency the President of the Republic of Kenya consulted his counterpart the President of Uganda and the two Heads of State agreed that a joint high-level team should visit Moroto, Uganda to address the plight of the nine (9) herders from Turkana County jailed in Uganda.
31. The Kenyan delegation led by the Cabinet Secretary, Ministry of EAC, ASALs, and Regional Development comprised the Permanent Secretary State Department for Interior and National Administration, the former Army Commander, and Hon. Josphat Nanok the then Governor of Turkana County visited Moroto on 20th February 2023. During the mission, it was resolved that an appeal be made to H.E. the President of Uganda to graciously exercise his prerogative power of mercy and grant pardon to the nine (9) Turkana herders in Uganda prisons at that time.
32. An appeal was made by Kenya and the response of the Republic of Uganda was through Executive Order No. 3 of 2023, which demanded payment of reparation to the families of the deceased before any amnesty was considered. Similarly, it allowed Turkana herders to access grazing lands in Uganda, but they would only do so without carrying weapons.
33. Regarding the thirty-two (32) Kenyan citizens who were court-martialled and convicted in Uganda, the government had tracked their whereabouts and established that twenty-one (21) of them were in Jinja Maximum Prison, while eleven (11) were in Kitalia Minimax Prison, Busiro County, Wakiso District off

Kampala-Mityana Road. They were in good health although imprisoned in a foreign land away from their families even as the government engaged in bilateral diplomacy to resolve the matter.

34. The Ministry noted that in August 2023 a high-level meeting between Kenya and Uganda was held at the State House in Entebbe on the 41 Kenyans. As a result, a multi-agency team was established to organize a bilateral meeting with Uganda to resolve the matter. Members of the multi-agency team were drawn from the Ministries responsible for Foreign and Diaspora Affairs, Defence, Interior and National Administration, and the Office of the Attorney General.
35. The Ministry observed that the people of the Karamoja region of Uganda and the people of Turkana County shared ancestral, cultural, and historical ties and similar socio-economic livelihoods that had enabled these borderland communities to coexist peacefully while sharing pastures, water, trade, and other resources in that region.
36. The Karamojong and Turkana communities along the common border of the two countries were faced with numerous challenges including insecurity attributed to the proliferation of small arms and light weapons, limited economic and livelihood opportunities, impacts of climate change occasioning prolonged cyclical droughts and famine and limited infrastructures in the region.
37. There were past joint disarmament operations between Kenya and Uganda to remove illegal firearms in the hands of pastoralists in Northwest Kenya (Turkana-West-Pokot) and North-East of Uganda (Karamoja).
38. Kenyan pastoralists were seasonally forced to move with their livestock across the border into Uganda for pastures where they risked arrest when they went carrying weapons.
39. The Republic of Uganda was planning to subdivide land in the Karamoja region and educate the Karamojong Community to adopt a sedentary lifestyle. This policy would affect the Turkana Community as the grazing lands in Uganda would not be available to their livestock.
40. The Ministry therefore recommends that since there was already a high-level intervention by H.E. the President on the matter. There is need to allow the two Partner States to continue engaging diplomatically and within the confines of the EAC Treaty provision to address the matter. The Ministry would be actively engaged in the consultative framework established by the Executive Office of the President to deal with the matter conclusively.

3.3 MINISTRY OF FOREIGN & DIASPORA AFFAIRS

The Prime Cabinet Secretary (PCS) and CS, Ministry of Foreign and Diaspora Affairs H.E (Hon.) Musalia Mudavadi appeared before the Committee on Thursday, 14th December 2023 and submitted as follows—

Background

41. The Karamoja cluster refers to the area of the land that straddles the borders between Ethiopia, Kenya, South Sudan and Uganda. The region is inhabited by pastoralist communities from the Turkana and Pokot tribes from Kenya, the Karamojong of Uganda, the Toposa from South-Sudan and the Daasanach and the Nyanga'atom from southwest Ethiopia. Most of the pastoralist communities classified under the cluster share the same socio-cultural as well as dialectic roots.
42. On 12th September 2019 the two Heads of State for the Republic of Kenya and the Republic of Uganda signed a Memorandum of Understanding (MOU) that among other things allowed the Turkana of Kenya to graze in the areas of Karamoja in Uganda with a condition that they would not cross the border with firearms. On various occasions, Turkana herdsmen were arrested in Uganda with firearms contrary to the MOU. On many of occasions through the intervention of the liaison officer in Moroto, they were released. Nevertheless, in some instances, they were subjected to court-martial and sentenced.
43. That the forty-one (41) Kenyans were court-martialled including eight (8) Turkana herdsmen arrested and convicted for eight years each for possession of firearms on 26th March 2022; one (1) herdsman was arrested and convicted for eighteen years on 31st January 2023 for possession of firearms; on 11th April, 2023, thirty-two (32) Turkanas were arrested and convicted by a court martial for twenty years each on possession of illegal firearms and possession of ammunition.
44. The 41 Kenyans were imprisoned, twenty were in Kitalia Maximum Prison in Wakiso District, twenty were in Jinja Maximum Prison and one in Kasese Prison.
45. Some Turkana reside in Kobebe area which was 25 kilometres west of Moroto District in Uganda. They resided alongside the Matheniko which is a subclan of the Karamojong with whom they coexisted for years and had moved there in search of pasture and water at Kobebe dam. The area was characterized by cattle rustling, raids and ambushes between the Karamojong, Matheniko, Bokora, and the tribes assimilated in the area.
46. On 8th April 2023, the Uganda Peoples Defence Forces (UPDF) conducted a cordon and search operation within Turkana kraals in areas of Lokiriaut and Naput, in Moroto District. After the operation, thirty-two (32) Turkana herdsmen were

arrested for possession of illegal firearms and taken to Moroto Barracks to face court martial for the offense. The UPDF Act allowed civilians arrested with illegal firearms to be treated as combatants and therefore liable for court-martial.

47. In the same operation, six (6) people and five (5) children were injured and were taken to Moroto District Hospital for treatment while, fifty-seven (57) cattle were recovered.
48. Following the arrest on 8th April 2023, all thirty-two (32) Turkana herdsmen were rushed through a court martial and sentenced to ten (10) years for each count of illegal possession of firearms and ammunition. The total sentence was twenty (20) years concurrently for each herdsman. The charges were illegal possession of firearms and ammunition.
49. The County Government of Turkana had enlisted the services of a lawyer to appeal the conviction and they are awaiting the hearing.
50. On the 18th November, 2023, it was reported that UPDF allegedly killed six (6) individuals comprising three (3) Turkana and three (3) Karamoja engaging in gold mining in Naput, Moroto.
51. A statement by UPDF issued by the 3rd Division Intelligence Officer stated that the UPDF soldiers responded to fire when their patrol was attacked, hence resulting in the death of the victims. The victims included two (2) females, one 10-year-old Turkana girl, her brother or relative and a Matheniko lady and her husband.
52. The ministry observes that there is need to investigate the deaths of the Turkana. The victims were in their Kraal and were unarmed, they ought to have been arrested and prosecuted if they were undertaking in an unlawful activity.
53. That following the unfortunate killing of the three (3) geologists and two (2) UPDF officers in March 2022 while they were surveying. Several people were arrested including eight (8) Turkanas who were court-martialled and sentenced for eight (8) years. Some two (2) weapons with Ugandan registration were recovered and returned to Uganda by a high-power delegation led by Hon. John Munyes and the former Member for Loima Constituency, the Loima OCPD, and the County Commissioner.
54. According to Uganda law, possession of firearms by civilians was treated as terrorism and court-martialled. The incident caused the issuance of the Ugandan Executive Order No. 3 of 2023 which addressed several issues regarding pastoralism and environment. In part 6 It also addressed the issue of illegal

possession of firearms that destabilised the region. The Turkana herders were prohibited from entering Uganda with weapons.

55. The Turkana community in the Karamoja region of Uganda were to comply with the directive within a six (6) month period. Failure to adhere to the directive would result in their expulsion and that of their cattle from Uganda.
56. The order claimed that an estimate of 2,245 herds of cattle had been stolen in the region and on the issue of the alleged killings of the geologists the two governments needed to undertake a traditional justice system known as *Karaba*.
57. A valid and existing MOU between the Republic of Uganda and the Republic of Kenya in support of Uganda (KARAMOJA) - Kenya (TURKANA and WEST POKOT) - Cross Border Program for Sustainable Peace and Development was signed on 12th September 2019.
58. The objective of the MOU was to accord communities on the Uganda and Kenyan sides of the border opportunities for better cooperation, close coordination, and peaceful co-existence, as well as bridging isolation gaps to improve their livelihoods and socio-economic conditions for sustainable peace and development.
59. A joint Technical Steering Committee established under the Ministry of Uganda responsible for Karamoja Affairs and the Ministry of Kenya responsible for Arid and Semi-Arid Lands was to oversee the implementation of the MOU and work closely with relevant National Government Ministries, County/Local Governments, Regional Agencies, United Nations, Intergovernmental Authority on Development (IGAD), and other Development Partners to advance cross borders co-habitation and grassroots mitigation action for sustainable resource sharing and durable peace and stability.
60. The border communities of Kenya and Uganda shared a lot in common including historical ties and cultural practices, cross-border resources as well as transaction activities on their daily livelihoods, therefore, calling for the need to promote their peaceful coexistence.
61. The insecurity gripping the region had enormous implications on peace and security among border communities and was an obstacle to the policy of integration and free movement of persons, livestock and goods as envisaged in the EAC and IGAD Protocols.

Recommendation of the Ministry

62. The Turkana County leadership need to sensitize their community not to cross with weapons if they wish to graze their livestock in Uganda. National government officials in Turkana County to prevent any retaliatory attacks by sensitizing the population. In the long run, efforts should be made to facilitate the Turkana herdsmen to graze their livestock within the country. The Ministry of EAC, ASAL and Regional Development may be required to engage their counterpart in Uganda to have a more structured way of handling such cases other than the court-martialling of civilians.
63. H.E. the President be requested to intervene in the matter if all other avenues fail. The President could seek clemency on behalf of the herdsmen, from his counterpart.

Efforts by the Ministry

64. The Ministry of Foreign and Diaspora had tried to address the issue through the Ministry responsible for security. There was an MOU on border cooperation between Kenya and Uganda signed on 12th September 2019 to establish a long-term and effective cross-border coordination mechanism to allow for amicable settlement of disputes. However, the MOU has not been fully implemented.
65. There had been a technical committee meeting on both sides to address the perennial issue of Turkana herders entry into Uganda, especially during the drought season, while armed with weapons. However, Kenya and Uganda did not have a transfer of prisoners' arrangement that would allow for Kenyans arrested and convicted in Uganda to be transferred to Kenya. The Ministry was working with other MDAs to address the matter.
66. The Government of Kenya through the Mission in Uganda had tried to assist the prisoners and their families and was fully involved in dealing with the issues legally in Uganda. However, the law in place was Ugandan and the jurisdiction was outside the Constitution of Kenya hence the need to process the matter diplomatically.
67. There was a need to reignite the MOU between the two countries and utilise every avenue including political and diplomatic to address the issues.
68. There was also need for sustainable development and alternative means of livelihood within the region to eradicate cattle rustling and banditry that have created insecurity in the region.

PART IV

COMMITTEE OBSERVATIONS

The Committee observed that—

69. The people of Karamoja region of Uganda and the people of Turkana County shared ancestral, cultural and historical ties. The two border communities co-existed peacefully while sharing limited resources. More often, Kenyan Turkana pastoralists crossed over the Ugandan side in search of pasture and water for their animals and vice versa.
70. Out of the 41 Kenyans convicted under the Court Martial, nine Kenyans were arrested in March 2022, amongst the 9 Kenyans, eight (8) were in Kitalia Prison while one was in Kasese Prison. Further, thirty-two Kenyan herders from Turkana County, Loima Sub-County, Lokiriama/Lorengikipi Ward in Orum Location were arrested in Uganda. Amongst them twenty-one (21) were in Jinja Maximum Prison, while eleven were in Kitalia Minimax Prison, Busiro County, Wakiso District off Kampala-Mityana Road.
71. In 2019 an MOU existed on Cross Border Program for Sustainable Peace and Development that was signed on 12th September 2019 between Uganda, the Karamoja community and Kenya for the Turkana and West Pokot Community. However, pastoralists have often been in violation of the MOU through possession of illegal arms.
72. The 41 Kenyans have already been convicted thus extradition efforts will be futile and because the two countries do not have a bilateral agreement on transfer of prisoners. However, the Government under the commonwealth framework can seek the transfer of these prisoners to Kenya.
73. Section 7 of the Transfer of Prisoners Act No. 22 of 2015 provides for the conditions for transfer of persons serving imprisonment for criminal offences committed within or outside Kenya. One of the conditions include Kenya and the transfer country should have a bilateral agreement for the transfer of the prisoner.
74. There is need to enhance cooperation in handling cross border crime and mutual assistance between the two countries under the EAC Treaty and independent bilateral arrangements such as a transfer of prisoners' agreement and an agreement for sustainable co-existence between the two communities.


75. There is also need for incorporation of fair trial safeguards under the Fugitive offenders pursuits Act (cap 7). The Act through reciprocal arrangements authorises Ugandan police to pursue fugitives within Kenya. The fugitives are delivered to a Magistrate Court before surrendered to the reciprocal country. Upon delivery to the Magistrate Court the magistrate should ensure that fair trial safeguards under the Kenyan Constitution are adhered to before surrender of these fugitives.
76. The request for reparations for the victims' families as a proposed prerequisite of the release of the convicted Kenyans, through the exercise of the Power of Mercy. This however will require a significant budget from the Government of Kenya and such expenditure will not be legally justifiable.
77. The Turkana leadership was tasked with drafting a resource-sharing agreement for the Moroto-Turkana corridor which was pending before the Ministry of EAC, ASALs & Regional Development. Presently there is no agreement between the two countries on resource sharing.
78. There is also need to facilitate pastoralists in Kenya with necessary resources such as construction of water pans and dams to sustain their livelihoods especially during the dry season in order to limit their need for movement outside Kenya in search of vegetation or water resources.

PART FIVE

COMMITTEE RECOMMENDATIONS


Pursuant to the provisions of Standing Order 227, the Committee recommends that—

79. On the prayer for Government of Kenya acts with speed to secure the release of 41 unlawfully convicted Kenyans whose whereabouts were unknown. **The Committee recommends the use of diplomatic negotiations through the highest-level delegation appointed by the President as the most efficient means to secure the release of the 41 Kenyans convicted in Uganda. In the alternative, the Attorney General to pursue transfer of the Kenyans through the Commonwealth Scheme for the Transfer of Convicted Offenders.**
80. On the prayer for the Ministry of Foreign & Diaspora Affairs through the High Commission in Uganda makes requests for the extradition and surrender of the accused persons to Kenyan authorities for trials, **the Committee recommends that the Government through the Ministry develops bilateral agreement for transfer of prisoners between countries and especially the East Africa Community.**
81. On the prayer for the Ministry of Foreign & Diaspora Affairs together with the Ministry of EAC, ASALs & Regional Development holds bilateral talks with the Governments of Uganda and Kenya to strengthen and foster the diminishing peaceful relations between the two States, **the Committee recommends the Ministry of EAC, ASALs & Regional Development fast-tracks the conclusion of the resource-sharing agreement between Kenya and Uganda.**
82. **The Office of Attorney General and Department of Justice and Ministry of Foreign & Diaspora Affairs to pursue the negotiation of a transfer of prisoners' bilateral agreements with the other States pursuant to Section 7 of the Transfer of Prisoners Act.**
83. **The National Government and the County Government of Turkana to consider budgetary allocation for construction of dams and water pans in the Turkana County to reduce the movement of the Kenyans into Uganda in search of water for their cattle.**
84. **The Ministry of Foreign & Diaspora Affairs to be issuing regular updates to the affected persons and the relevant Committee of the House whenever there are similar issues concerning Kenyans in the diaspora.**

Signed: 

Date: 19-06-2024

THE HON. NIMROD MITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 25 SEP 2024	
DAY: WEDNESDAY	
TABLED BY:	HON. JANET SITIENEI (VICE-CHAIRPERSON)
CLERK-AT THE-TABLE:	MOSES LOMALE

