



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL & DEPARTMENT OF JUSTICE

## CALL FOR SUBMISSIONS

### THE TASK FORCE ON REVIEW OF THE MANDATORY DEATH SENTENCE UNDER SECTION 204 OF THE PENAL CODE

The Supreme Court of Kenya in Petition No 5 of 2015 declared the *mandatory* nature of the death penalty contained in section 204 of the Penal Code **unconstitutional**. The Court **did not** abolish the death penalty. Instead, the decision gives a sentencing judge the power to impose a penalty **other than** the death penalty if the circumstances of the crime and the offender are not so serious as to justify ordering the death penalty. Judges therefore still have the option to impose the death penalty if the circumstances are sufficiently serious.

The Court further found that a life sentence should not necessarily mean the natural life of an offender, rather it could also mean a certain minimum or maximum time a person must serve a sentence in prison before being allowed to apply for permission to be released early and serve the rest of their sentence in the community. **The decision to release an offender is not automatic but will be guided by established parameters.**

The Court directed the Attorney General, the Kenya Law Reform Commission and the Speakers of the National Assembly and Senate **to give effect** to its judgment on the mandatory nature of the death sentence and the parameters of what ought to constitute life imprisonment through any necessary amendments, formulation and enactment of statute law.

The Court further **directed** the Attorney General and Director of Public Prosecutions **to within twelve months** prepare a progress report identifying an appropriate framework to address sentence re-hearings for other persons subject to the mandatory death penalty.

On 10 January 2018 the Attorney General constituted a Working Group to provide guidance pursuant to Article 156 of the Constitution of Kenya and on the Supreme Court's directive. Subsequently the Attorney General through **Gazette Notice 2610** dated 15 March 2018 constituted a Task Force to undertake among other things the assignment of establishing the process of removing the mandatory death penalty in alignment with the Constitution of Kenya, 2010. The Task Force is also responsible for providing guidance on the parameters of life imprisonment, drafting legislative reforms and determining the modalities for the re-sentencing of offenders who were sentenced to the death penalty under the previous mandatory legal provision.

The Task Force draws its membership from the Judiciary, Director of Public Prosecution, Kenya Law Reform Commission, Parliament, Kenya National Commission for Human Rights, Ministry of Interior, Power of Mercy Advisory Committee, National Crime Research Centre, Prisons Service, Probation and AfterCare Services, and the Office of the Attorney General.

The Task Force has prepared a summary of its work to date and proposed recommendations following successful stakeholder engagement in the context of the Judgment and the Order made by the Court. This includes setting up a framework to deal with sentence re-hearing cases, recommending a guide to death sentencing, formulating parameters of what ought to constitute life imprisonment, and formulating amendments and new legislative proposals to give effect to the judgment.

In this regard, members of the public are requested to review the Summary of the Recommendations attached and submit their comments and suggestions on the matter to:

**The Office of the Attorney General and Department of Justice,  
P.O. BOX 40112, 00100,  
Nairobi, Kenya.**

Email submissions can be sent to [reviewmds@ag.go.ke](mailto:reviewmds@ag.go.ke)

The Task Force **will submit** its report to the Attorney General who will in turn submit it to the Supreme Court within twelve (12) months from the date of the judgment in line with the Gazette Notice.

The Summary of the Recommendations is available online at [www.statelaw.go.ke](http://www.statelaw.go.ke).

**DATED: 8<sup>th</sup> OCTOBER 2018**

**CHAIR PERSON OF THE TASKFORCE ON REVIEW OF MANADATORY DEATH SENTENCE UNDER SECTION 204 OF THE PENAL CODE ACT**