

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 16th December, 2010

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

MEMBERSHIP/MANDATE OF DISTRICT STEERING GROUPS

Dr. Nuh: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) Could the Minister give an overview of the membership of the District Steering Groups (DSGs), specifically for Tana River District and also explain their source of funding, roles and mandate?

(b) What are the respective contributions of the Government and the World Food Programme (WFP) in the Protracted Relief and Recovery Operation (PRRO)? Could the Minister also explain their respective mandates in that regard as well as the process of identifying the lead agencies?

(c) Could the Minister provide the minutes of the meetings of the Tana River DSG on the selection of the lead agency to undertake distribution of relief food, the details of the three entities who applied for the distribution, state why the recommendations of the DSG in the selection were disregarded and indicate what action she is taking to resolve the issue?

Mr. Deputy Speaker: Where is the Minister of State for Special Programmes? We will come back to that Question later. Next Question!

OWNERSHIP OF PLOT NO. L.R. 7785/1173

(Mr. Kabogo) to ask the Minister for Lands:-

(a) Who are the rightful owners of Plot No. L.R. 7785/1173, Nairobi?

(b) Is the Minister aware of Civil Suit No. 758 of 2006 filed in the High Court Nairobi, Central Registry on the same plot?

(c) What is the Ministry doing to expedite the finalization of that suit?

Mr. Deputy Speaker: Where is hon. Kabogo? Is he not in? We will move to the next Question.

GOVERNMENT SHIFT IN POSITION ON FUEL PRICE CONTROL

(Mr. Ochieng) to ask the Minister for Energy: -

(a) What is the reason for Government shift in position with regard to fuel price control, considering that the Minister has previously indicated that he was unable to control fuel prices?

(b) Is the Minister aware that the recent astronomical increase in fuel prices is as a result of faulty machines at the Kenya Petroleum Refineries, demurrage charges accrued from the imported crude oil and the delay in offloading which is due to under-handling capacity at Kipevu which can only store up to 33,454 metric tonnes of petrol?

(c) What urgent measures is the Minister taking to address the issues in "b" above?

Mr. Deputy Speaker: Is Mr. Ochieng not here. We will come to his Question at the end. Let us move on to the next Question.

CANCELLATION OF WAMALWA/MAINA NJENGA
KAMUKUNJI MEETING BY POLICE

(Mrs. Shebesh) to ask the Minister of State for Provincial Administration and Internal security:-

(a) Could the Minister give reasons as to why the police cancelled the meeting scheduled for 12th December 2010 and organized by hon. Eugene Wamalwa and Mr. Maina Njenga at Kamukunji Grounds, Nairobi in disregard of the Constitution?

(b) Could the Minister also explain why the Government failed to provide security at the venue as required when the meeting was rescheduled on 13th December 2010?

Mr. Deputy Speaker: We will go again to the second round of the same Questions.

MEMBERSHIP/MANDATE OF DISTRICT STEERING GROUPS

Dr. Nuh: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) Could the Minister give an overview of the membership of the District Steering Groups (DSGs), specifically for Tana River District and also explain their source of funding, roles and mandate?

(b) What are the respective contributions of the Government and the World Food Programme (WFP) in the Protracted Relief and Recovery Operation (PRRO)? Could the Minister also explain their respective mandates in that regard as well as the process of identifying lead agencies?

(c) Could the Minister provide the minutes of the meetings of the Tana River DSG on the selection of the lead agency to undertake distribution of relief food, the details of the three entities who applied for the distribution, state why the recommendations of the DSG in the selection were disregarded and indicate what action she is taking to resolve the issue?

Mr. Deputy Speaker, Sir, until now, I do not have a written response.

Mr. Deputy Speaker: Do you wish to proceed without a written reply?

Dr. Nuh: Yes.

The Minister for State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I wish to first of all seek an apology for coming in late. I came here running. I got this Question yesterday, late in the afternoon and I had to pass by the office to see if the answer was ready. They are still working on it and I would like to seek the indulgence of the hon. Member that I answer it in the next sitting.

(Mr. Deputy Speaker consulted with the Clerk)

Mr. Deputy Speaker, I do not know if you heard me. I said that I seek your indulgence to answer this Question in the afternoon.

Mr. Deputy Speaker: Yes, I heard you.

The Minister for State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I have had several meetings with the hon. Member of Parliament and I am even surprised that he asked the Question. However, I do not want to---

Mr. Deputy Speaker: The Chair directs that you bring an answer to this Question in the form of a Ministerial Statement this afternoon. The Order Paper for the afternoon is already out. The hon. Member can seek more information through clarifications.

The Minister for State for Special Programmes (Ms. Mathenge): Mr. Deputy Speaker, Sir, I have to get some of the information that he wants me to respond to from Tana River. By the time I came here, they were not ready. Tana River is a little bit far and I may not have all the information that he wants.

Dr. Nuh: Mr. Deputy Speaker, Sir, I do not think I have asked for any documents from Tana River. Those documents were forwarded to the Ministry of State for Special Programmes three months ago. The Minister says that she is surprised that I brought this Question. It is because the Ministry has betrayed the goodwill it had with hon. Members from that region. It has not lived up to our expectations. It has not fulfilled the promises it has made. I agree that we may not be able to ventilate on the Ministerial Statement and I request that if the Question has to be deferred, it appears in the Order Paper in the afternoon since this is a very important matter.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Besides what Dr. Nuh has said, the Minister had also confirmed to us that she has been talking to the hon. Member. That obviously means that the material that she needed for the same Question was subject of the discussions. So, it must be within her custody. But, more importantly, this is a matter that is very important to many of us. I think it cannot be treated as a private matter for two parties. It must come appropriately before the House because what the Minister told us is not the same thing that is happening on the ground. She just has to respond to this. It is about food and life!

Ms. Mathenge: Mr. Deputy Speaker, Sir, I have had several meetings with two hon. Members on the issue of food. This is not a matter that can be done the way they want. It is a matter that has taken over ten years to reach where it has reached and whatever we have agreed, we are doing it. The documents that Dr. Nuh gave me--- It is him who gave them to me. But I need the documents from the DSG to verify that what I

have is correct. It is not that I am doubting what he has given me is correct. But I also want what the DSG has.

Dr. Nuh: Mr. Deputy Speaker, Sir, the Ministry has made critical decisions regarding food distribution in northern Kenya. The Ministry must have made those decisions on the basis of documentation they received from the districts. So, I do not expect the Minister to rely on the documents that I took to her office. That is because the Ministry oversees those departments. I expect that they must have had the documents before I even took them there.

Ms. Mathenge: Mr. Deputy Speaker, Sir, I still would like your indulgence.

Mr. Deputy Speaker: Madam Minister, it is common knowledge that this is the time when the House, kind of, concludes its business for the year and goes on recess. You realize that we might be adjourning the House. But I am not anticipating the direction in which the debate is going to take on the Motion of Adjournment. But in the event that there is a Motion of Adjournment you are seeking more time and the Question will lapse. In other words, you want the Chair to give a direction that essentially absolves you from giving an answer.

Ms. Mathenge: Mr. Deputy Speaker, Sir, then, I will give whatever answer I have in the afternoon.

Mr. Deputy Speaker: Fair enough! The Chair directs that this Question appears on the Supplementary Order Paper in the afternoon today.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. You have heard the Minister say that she will give whatever answer she has. We are not listening to “whatever”. We want the answer to the Question! Can you direct that the Minister answers the Question and not “whatever”? That is because she might decide to give something else in the name of an answer.

Ms. Mathenge: Mr. Deputy Speaker, Sir, if they do not want to give me time to give them an appropriate answer, then whatever answer I have is what I will give. That is if I will have to do it in the afternoon.

Mr. Deputy Speaker: Is that a way of saying that you will give an inappropriate answer?

(Laughter)

Madam Minister, you have a responsibility to the House and the nation.

Ms. Mathenge: A very big one, Mr. Deputy Speaker, Sir, and I appreciate.

Mr. Deputy Speaker: Order! You have a responsibility to Parliament and the nation. In any case, if you give an answer that essentially falls short of what, in the opinion of the Chair, is satisfactory, then the Chair has also the discretion to feel that you have not executed your role adequately. You will also be subject to further scrutiny by hon. Members. So, it is only good that you try and come with as good an answer as you can. In this age and day, you can get any information you want in a matter of minutes. That is why we have the so-called information highway age. So, please, bring a good answer to the House.

(Question deferred)

Next Question by Mr. Kabogo! He is not here. Question dropped!

OWNERS OF PLOT NO. L.R. 7785/1173

(**Mr. Kabogo**) to ask the Minister for Lands:-

a) Who are the rightful owners of Plot No. L.R. 7785/1173, Nairobi?

(b) Is the Minister aware of Civil Suit No. 758 of 2006 filed in the High Court Nairobi, Central Registry on the same plot?

(c) What is the Ministry doing to expedite the finalization of that suit?

(Question dropped)

GOVERNMENT SHIFT IN POSITION
ON FUEL PRICE CONTROL

Mr. Ochieng: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Energy the following Question by Private Notice.

(a) What is the reason for Government shift in position with regard to fuel price control, considering that the Minister has previously indicated that he was unable to control fuel prices?

(b) Is the Minister aware that the recent astronomical increase in fuel prices is as a result of faulty machines at the Kenya Petroleum Refineries, demurrage charges accrued from the imported crude oil and the delay in offloading which is due to under-handling capacity at Kipevu which can only store up to 33,454 metric tonnes of petrol?

(c) What urgent measures is the Minister taking to address the issues in "b" above?

I am sorry I came in late. It is because of the traffic jam.

The Assistant Minister for Energy (Mr. Magerer): Mr. Deputy Speaker, Sir, with your indulgence, may I request that this Question be answered in the afternoon. That is because it just came to us in the evening yesterday. I really do not have a very appropriate answer. I request that, if possible, I do it in the afternoon.

Mr. Ochieng: Mr. Deputy Speaker, Sir, the Assistant Minister has just approached me a few minutes ago and we have agreed that, if this Question could come up in the afternoon, I would really agree. He says he does not have a sufficient answer at this particular time. If it can be brought in the afternoon, then we will interrogate it properly.

Mr. Deputy Speaker: The Chair further directs that this Question also appears on the Supplementary Order Paper in the afternoon. Mr. Magerer, I hope you are comfortable with the Question appearing on the Order Paper in the afternoon.

The Assistant Minister for Energy (Mr. Magerer): I am okay, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Fair enough!

(Question deferred)

Next Question, by Mrs. Shabesh! She is not here and so, the Question is dropped!

CANCELLATION OF WAMALWA/MAINA NJENGA
KAMUKUNJI MEETING BY POLICE

(Mrs. Shebesh) to ask the Minister of State for Provincial Administration and Internal Security:-

(a) Could the Minister give reasons as to why the police cancelled the meeting scheduled for 12th December 2010 and organized by the hon. Eugene Wamalwa and Mr. Maina Njenga at Kamukunji Grounds, Nairobi, in disregard of the Constitution?

(b) Could the Minister also explain why the Government failed to provide security at the venue as required when the meeting was rescheduled on 13th December 2010?

(Question dropped)

(Loud consultations)

COMMUNICATION FROM THE CHAIR

CHANGE IN ORDER OF BUSINESS

Mr. Deputy Speaker: Order, hon. Members! The Chair wishes to communicate that, notwithstanding the provisions of Standing Order No.36(1)(a), which indicates the order or the sequence in which the business of the House is to be executed--- Standing Order No.36(2) says:-

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the House, direct.”

You realize that we have already gone through the sequence and dealt with Papers Laid. But for the benefit of the country, the Chair now uses its own discretion and directs that the Committee on Justice and Legal Affairs tables the Report of the Interim Independent Boundaries Review Commission (IIBRC) and, at the same time, gives Notice of Motion for the same.

(Applause)

PAPER LAID

The Following Paper was laid on the Table:-

The report of the Departmental Committee on Justice and Legal Affairs on the report of the Interim Independent Boundaries Review Commission (IIBRC)

(By Mr. Namwamba)

NOTICE OF MOTION

ADOPTION OF REPORT ON THE INTERIM INDEPENDENT BOUNDARIES REVIEW COMMISSION (IIBRC)

Mr. Namwamba: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the report of the Departmental Committee on Justice and Legal Affairs on the report of the Interim Independent Boundaries Review Commission (IIBRC) laid on the Table of the House on Thursday, 16th December, 2010.

POINTS OF ORDER

USE OF COAT OF ARMS BY AMB. FRANCIS MUTHAURA IN HIS PERSONAL STATEMENT

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, I rise on a point of order to demand for a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on a widely circulated statement which is in the public domain by Amb. Francis Muthaura who is the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service. In the statement, I wish him to clarify to this House who authorised the use of the Coat of Arms on a personal statement. Who paid for the advertisement that was greatly circulated around the country? Could he table receipts to show who paid for the statement in the daily newspapers? Could he also address himself as to whether there was, in fact, abuse of office in utilizing public funds to defend personal names? When will Amb. Muthaura refund the taxpayers money if it is found that, in fact, it was the Government that paid for the statement?

The Minister of State for Provincial Administration and internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I will be quite happy to issue that statement sometime next week. I really need to ensure that I get all the necessary documents and examine their authenticity before I table them here. I believe the statement relates to those who have been named by Mr. Ocampo.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. It is true that those who have been named have given various statements. However, that is not the issue. I am concerned with a public servant who used our money to circulate a personal statement. He circulated a statement paid for by taxpayers' money to defend himself. It is not the Government that was put on trial.

Hon. Members: How do you know? How do you know?

Mr. Deputy Speaker: Order! Hon. Members, the Chair will not hesitate to throw out of this House as many Members who decide to take away the rights of the hon. Mungatana to raise a point of order. We cannot turn this august House into some kind of fish market.

Proceed, Mr. Mungatana!

Mr. Mungatana: Mr. Deputy Speaker, Sir, that information that the Minister requires can be found within a day. He can give this House the information we require in the course of the day. He is aware that, probably, there will be a Motion of Adjournment. Why could he not come this afternoon and explain to the Republic of Kenya what is going on?

The Minister of State for Provincial Administration and internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, as I said, I will try my level best to do so. However, I may very well not be able to get those receipts immediately. Incidentally, I do not want to table anything here that may not be genuine.

Mr. Deputy Speaker, Sir, the hon. Member has already made an allegation that Amb. Muthaura actually used public funds. Could he substantiate that Amb. Muthaura used public funds to circulate his personal statement in daily newspapers? He has made a presumptuous statement that Amb. Muthaura actually used public funds.

(Applause)

Mr. Deputy Speaker: Fair enough! Order, hon. Mungatana. That is how the business of the House should be transacted not by choruses.

Hon. Mungatana, could you substantiate the allegations you have made against somebody who cannot defend himself on the Floor of this House?

Mr. Mungatana: Mr. Deputy Speaker, Sir, to the extent that the Coat of Arms of the Republic of Kenya has been put in the personal statement, I can justifiably claim public funds were used. I need no further clarification beyond that.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Mr. Deputy Speaker, Sir. As you said, this is an honourable House and any claim which Members make must be substantiated. The fact that the Coat of Arms was used in the statement does not necessarily mean that taxpayers' funds were used. Would I be in order to ask my good friend to either substantiate or withdraw the remarks that Amb. Muthaura used public funds?

(Applause)

Mr. Deputy Speaker: Hon. Mungatana, the Standing Orders provide that in the event you make a claim, you can be asked to substantiate instantaneously or withdraw. The fact that the civil servant in question had the Coat of Arms behind him is a matter that you can essentially pick up in another way, but it cannot be a confirmation that, indeed, Mr. Muthaura used public funds to circulate that statement. If you can substantiate your remarks, please, proceed and do so. However, if you cannot substantiate, I am afraid you will have to withdraw your remarks.

Mr. Mungatana: Mr. Speaker, Sir, I have been in this House for a while now and I take your ruling and direction very seriously. However, if you listened to the Statement I requested, you will find that I said that there was utilization of the Coat of Arms. I demanded from the Minister to find out who paid for those advertisements and whether

he could table the receipts. The Minister has already said that he will do that if given time. Now, if you will turn this thing back to me then---

Mr. Deputy Speaker: If it is in the form of a question and seeking a clarification, it is okay. However, if it is in the form of a categorical statement that, indeed, Mr. Muthaura used public funds, then you are obligated to substantiate that.

Mr. Mungatana: Mr. Deputy Speaker, Sir, I said that possibly---

Hon. Members: No! No!

Mr. Deputy Speaker: Order, hon. Members! Order!

Mr. Mungatana: Mr. Deputy Speaker, Sir, I said in my earlier statement that these are the things I wanted the Minister to clarify. If I asserted something to the effect that he has already paid – I do not know and that is why I asked for a Statement – I would like to withdraw that bit. I am an hon. Member and Mr. Ojode and the Minister know this. I just want that information because the public is concerned.

Mr. Deputy Speaker: Fair enough! You have a perfect right to seek that information. Under the circumstances, the matter rests there.

Mr. Minister, when will the Statement be ready?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, as I said earlier, it is not that easy for me to get the Statement this afternoon. I will, of course, after today, at the next sitting of this House give that information.

Mr. Deputy Speaker: Hon. Minister, the Chair is conscious of the fact that to find out whether Mr. Muthaura used public money or his own money is not a matter that needs a day. This is a matter you can find out, as a matter of fact, in a matter of minutes. The House has got to be seen to be transacting its business. So, can you give an undertaking to give this Statement today in the afternoon?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I will do my best to ensure that the information is available today. I also ask for flexibility in the event that I am not able to get it today.

Mr. Deputy Speaker: But it is in the interest of the Government---

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I agree absolutely, but it is not unreasonable to ask for some level of flexibility.

Mr. Deputy Speaker: Fair enough. The Chair directs that the Statement be delivered today in the afternoon.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I sought a Ministerial Statement from the Minister of State for Provincial Administration and Internal Security on 17th November, 2010 and it was promised to be delivered on 1st December, 2010. Subsequently, the Deputy Leader of Government Business, Dr. Kosgei, gave an undertaking that she was going to ask the Minister to deliver the same Statement on Tuesday, this week. That did not happen. Since both the Minister and his Assistant Ministers are in the House, could they deliver my Statement? This also includes the Statement I sought from the Ministry of Public Health and Sanitation on the maternal health.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I have the Statement. However, I seek the indulgence of the Chair to give me five minutes before I deliver the Statement.

Mr. Deputy Speaker: The Business of the House cannot be put on hold for five minutes because we have to dispose of Statements. You can issue it in the afternoon.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, can I issue it in the afternoon?

Mr. Deputy Speaker: Fair enough!

How about the Minister for Public Health and Sanitation?

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Deputy Speaker, Sir, I have the Statement ready and I will issue it this afternoon if that is okay. Otherwise, I can rush for it because it is in the car.

Mr. Deputy Speaker: It is so directed!

KILLING OF MR. OPIYO BY ADMINISTRATION POLICE

Mr. Outa: On a point of order, Mr. Deputy Speaker, Sir, I had sought a Ministerial Statement from the Ministry of State for Provincial Administration and Internal Security about the killing of Mr. Opiyo by the Administrative Police (AP) in Turkana. The Minister and his Assistant Ministers are here. Could they tell me exactly what they are doing about that Statement?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, as I indicated, I have all the Statements ready, but you suggested that I issue them in the afternoon. I concur with your ruling.

Mr. Deputy Speaker: Fair enough. It is so directed!

Hon. Members, the Chair directs that we move on to Order No.9. Order No.8 will be called out after the disposal of Order No.9.

MOTIONS

PEACEFUL REFERENDUM IN SOUTHERN SUDAN

Mr. Ethuro: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, recognizing the critical role by the Government of Kenya, as chair of IGAD and a party to the Comprehensive Peace Agreement for the Sudan peace and noting that the Comprehensive Peace Agreement has specific protocols towards a referendum on 9th January, 2011; further aware that Parliament passed a resolution to become a member of the AMANI FORUM whose vision is a region free of conflict, this House urges the Government to do all in its power to ensure there is a peaceful Referendum on the future of South Sudan and further urges that the Referendum scheduled for 9th January, 2011 be held on the stated date and calls upon all parties to the comprehensive Peace Agreement to respect the outcome of the Referendum.

In moving this Motion, I would like to pay tribute and homage to Kenya as a country for the leadership that it has provided in this region. Kenya has been the Chair of IGAD from the very beginning, that is, from the days of the retired President Moi. He brought together the President of Sudan, Omar Al Bashir; the President of Uganda, H.E.

Museveni; and, the President of Ethiopia in order to solve the issues affecting Southern Sudan. Kenya has also played host to the Somalia peace negotiations. All these efforts bore fruit particularly in Southern Sudan where the parties to the conflict signed a Comprehensive Peace Agreement (CPA) in January, 2005. In that agreement, they agreed on an interim period in which the Southern Sudan would be autonomous while still a unitary State.

Mr. Deputy Speaker, Sir, the same protocols made arrangements that there will be a referendum. We want to draw from our own history. We suffered a lot as a result of post-election violence in 2007 and 2008. There has been a conflict in Sudan from the time it got her Independence in 1956. They have never had peace except during the time of the CPA. There is real danger that if the process of the referendum is not managed properly, particularly by the parties to the CPA, then the spectre of violence and conflict will be seen again.

Mr. Deputy Speaker, Sir, I speak as a Kenyan neighbour who has hosted refugees in Kakuma Refugee Camp. As a result of the 21-year civil war in Sudan, over two million people have lost their lives, about 20 million have been uprooted from their land, and about 650,000 other people have sought refuge in neighbouring countries, particularly in Kenya and Uganda.

I think it is only responsible for us as a good neighbour to ensure that the people of the Sudan--

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! Hon. Affey and hon. Mohamed Ali, unless you want to spend the rest of the day out of the House, maintain order! Order, hon. Members! Let us listen to hon. Ethuro!

Mr. Ethuro: Mr. Deputy Speaker, Sir, I thank you for telling hon. Members to listen to me. This Motion is extremely important, and I would like every hon. Member to listen and contribute to this particular Motion.

Mr. Deputy Speaker, Sir, as a good neighbour, responsible state and a country which has been, even at its worst moment during the post-election violence in 2007/2008, able to come together within two months and sort out its mess to the extent that we now have a Grand Coalition Government which is working, it is in our own interests to ensure that the situation in South Sudan is calm and peaceful, so that they can practise democracy and ensure that good governance prevails in that particular area.

As in other parliaments in East and Central African, Members of the Kenyan Parliament are active members of the Amani Forum. The Amani Forum also took part in auditing the cost of the post-election violence in Kenya. As Members of this House, who are also members of the Amani Forum, we also came together and moved around the country to preach peace to our people. We believe that we made our modest contribution to the peaceful co-existence of our people.

Although the work of national healing and reconciliation is ongoing, it is important that we also look beyond our borders to ensure that some of the lessons we have learnt, and some of the good practices that we have been able to achieve, are appreciated by our good neighbours.

Mr. Deputy Speaker, Sir, this Motion is also in recognition of the efforts that have actually been made by our own country. I recall the work of Gen. Lazaro Sumbeiyu, who was the mediator for peace during the conflict in Southern Sudan. I also want to applaud the efforts of His Excellency the Vice-President, hon. Kalonzo Musyoka, who at that time was the Minister for Foreign Affairs, for getting all the parties to work together. His Excellency Retired President Daniel arap Moi has continued to play the role of ensuring that there is peace in Southern Sudan.

This House owes gratitude to these persons in their individual capacities as well as in their official capacities. This work must be appreciated, and it needs to continue. As Amani Forum, we actually sent a delegation to the Sudan as early as the year 2000, led by hon. Gitobu Imanyara, and whose membership included hon. Paul Muite. The delegation was also looking into the issue of peace in Southern Sudan.

Mr. Deputy Speaker, Sir, therefore, this is work which this House has been supporting for a long time. You will also recall that in December 2009, this House took a mission for the second time to Somaliland, where we found an economy which is working, and a semblance of order. It is within the same context that this Motion has been brought to the House.

It is, therefore, important that as a country we ensure that the issues surrounding the referendum are sorted out. A total of 3.2 million Southern Sudanese have registered for the referendum. The Comprehensive Peace Agreement Protocol on the Referendum states clearly that after six years of staying together, the people of Southern Sudan could choose to either remain as part of the Sudan or to secede.

Mr. Deputy Speaker, Sir, it is not for us to decide for the people of Southern Sudan. That decision is theirs. We appreciate the official position of the Government of Kenya on this issue, which is to let the people of Southern Sudan to make that decision. It is not for us to decide for them. It is up to them to do so. I want to emphasise that point for purposes of avoiding doubt. We have sent two delegations from this House to Southern Sudan to just encourage and support them, and to tell them that it is really their business to determine which way they want to go.

However, we are aware of people who already want to scuttle the process. We fear that if the referendum is not held on the agreed date, the situation in Southern Sudan may not be good, and that will have serious security implications for this region. As of now we are dealing with the issue of disarmament. The insecurity being experienced in this country, particularly in northern Kenya, is the result of our porous borders. It is in our interest that our borders with Uganda and Ethiopia are secured, and that Southern Sudan has a legitimate government to protect its interests.

That is the only way in which the disarmament programme that the Government of Kenya has embarked on, which is promising to assure the security of our people, will be completed properly. If we only disarm people on our side of the border, we will always get incursions from our neighbours. We will always get guns flowing into the country from all directions. It is, therefore, in our own interest, as a nation, to ensure peace in Southern Sudan is realised.

Mr. Deputy Speaker, Sir, another consideration in moving this Motion is that there are 70,000 Kenyans who are working and living in Southern Sudan. Those people are making a lot of cash remittances back to this country. It is in our interest to ensure that this kind of employment opportunities for our people are not only secure, but are also

increased once the Southern Sudanese vote reflects the will of the people of Southern Sudan.

As a country, we are already planning to create a second corridor. A road and a railway line from Lamu to Isiolo, Lodwar, Lokichoggio and Juba will be constructed. We believe that once the issue of the Southern Sudan vote is sorted out, this arrangement, which is going to open up northern Kenya in particular, and also Southern Sudan generally, will be a major contribution to the well being of not only Kenya but also that of Southern Sudan and the larger Sudan generally. It is these kinds of considerations that informed this Motion. There is opportunity for reconstruction in Southern Sudan, but our own business people have to go there via Uganda. They currently cross three borders to Southern Sudan when they could cross only one border at Lokichoggio.

Mr. Deputy Speaker, Sir, I believe that a peaceful Sudan is not only good for the people of the Sudan but it is also good for Kenya.

With those remarks, knowing that Parliament has a bigger agenda, I---

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I find this Motion very unfortunate. As the former Chair of the Amani Forum, I believe that this very honourable House of the Republic of Kenya has no right to discuss issues of another nation. I do not see the role that Kenya will be playing. Apart from supporting a peaceful referendum in Southern Sudan, I do not see any other reason as to why the Parliament of the Republic of Kenya should be prompting the outcome of another country's referendum.

I seek your direction on this Motion because I do not think it is necessary.

The Assistant Minister for Livestock Development (Mr. Duale): On a point of order, Mr. Deputy Speaker, Sir. In concurrence with Maj-Gen. Nkaisserry, it is very unfortunate that today the Tenth Parliament is discussing a referendum that is taking place in another nation. The position of the Kenya Government is well stipulated within the CPA agreement and again within the auspices of the IGAD nations. The House urges the Government of Kenya to do all in its power--- What are these powers that this House will give the Government of Kenya to make sure that there is a peaceful referendum in Sudan? I think this motion is misplaced.

Ms. A. Abdalla: Mr. Deputy Speaker, Sir, in joining my colleagues in pointing out the misplacement of this Motion, I wish to state that if this Motion was to pass, what we are going to lose as a country is the impartiality that we have been holding and that has helped us to be able to negotiate the Comprehensive Peace agreement. By discussing this Motion, we are trying to sanitize the actions of an Assistant Minister of this House who went to Southern Sudan to do some things. I was a regional member of the Amani Forum and the process that the current Chair of the Amani Forum is using is not in line with what Amani stands for. Amani does not direct member states and member Parliaments to take any sides. Kenya has been an impartial negotiator and this Motion is going to make Kenya lose that impartiality.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, during the formation of the African Union and its transformation from the Organization of African Unity (OAU) to the African Union (AU), one of the core reasons for that move was to allow African states not to take a back seat on issues in countries that are neighbouring them because regional peace can be interfered with. It would really be naive of us to be sitting here and not see that Kenya has really a lot to gain or lose as a result of the referendum process in

Southern Sudan and in Sudan in general. So I support that we continue with this Motion because it is placed in the right place, where Members of Parliament can debate it.

Mr. Njuguna: Mr. Deputy Speaker, Sir, I also intend to give a reflection on this issue that is before the House. My very personal view is that Kenya has not been made a supervisor by IGAD to supervise the incoming referendum in Sudan. That is tantamount to interfering with an independent state. Our country, Kenya, must maintain a neutral position in this situation. Our image must be maintained for now and posterity.

Mr. C. Kilonzo: On a point of order Mr. Deputy Speaker, Sir. This Motion was indeed approved by the Speaker and the House Business Committee. So the Members who are objecting to it are actually questioning your decision. They are also putting forward very good cases of argument which they can use to shoot it down. So this Motion has been approved by the Speaker and the Speaker has a lot of wisdom which clearly most of us do not have. Members who are against it have the opportunity to shoot it down and that opportunity is now and not tomorrow.

The Minister of State for Defence (Mr. Y. Haji): On a point of order, Mr. Deputy Speaker, Sir. I think the House should not assume the responsibility of the Executive. The Executive has the foreign policy and it knows what to do. I think it will be misplaced for the House to determine what the Executive is supposed to do. I think this is out of order.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Deputy Speaker, Sir, I really want to disagree with hon. C. Kilonzo because a precedent has been set in this House not so long ago, just about two or three weeks ago, whereby the Speaker approved a Motion and when it was being debated, it was ruled to be unconstitutional. So it is not wrong that this Motion was approved by the Speaker but with the concern of the Members, it can again be ruled otherwise. I remember very well that the Motion on the criteria for allocating CDF money was approved by the Speaker but when it came to the Floor of the House, the same Speaker ruled it was unconstitutional.

Mr. Deputy Speaker: Order! To the extent of the role of the Speaker in the House Business Committee, the Speaker is an *ex-officio* Member of the HBC. He is not a member of the HBC. He or she just observes what they would have laid there. Under the circumstances, the Speaker can only rule on the admissibility or inadmissibility of a Motion either at the time when notice is being given or when it is being debated. That is the practice of this House.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Mr. Deputy Speaker, Sir, when you will be ruling on whether this Motion should continue or not, I would like you to consider that this Motion is properly before the House and the sentiments expressed by Members vary as they think they might be. They should know that Kenya is a unique state in this process in the sense that on 9th January, 2010, when Southern Sudan goes to the referendum vote, the voting will actually take place in some parts of Kenya. There are polling stations in Kenya. If that is the case, it is only fair that we demonstrate our solidarity as the representatives of our people and urge the people who are surrounding the polling stations to support the process so that polling can be free and safe in the country. I do not see what is agitating them.

(Mr. Githae stood up in his place)

Mr. Deputy Speaker: Order, Dr. Khalwale! Members do not get agitated. They debate.

Proceed, Mr. Minister for Nairobi Metropolitan Development!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. One of the fundamental principles of this House is that this House does not act in futility. This Motion is calling on parties to respect or to hold a referendum on 9th January, 2010. Suppose they do not hold that referendum on 9th January, 2010, what do we do? Do we have any powers to enforce it? We have no powers to enforce it. Therefore, it will be pointless---. So we have no powers to enforce that call that the referendum must be held on 9th January, 2010. It will be an exercise in futility. The Motion is calling on all parties to respect the outcome of the referendum, suppose they do not respect the outcome of the referendum.

What do you do suppose they do not respect the outcome of the referendum? Do you ask Kofi Annan to go there again? This House should not act in futility. Therefore, this Motion is unconstitutional.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. While I appreciate the efforts of Mr. Ethuro, Sudan is an independent country and whether it is true or not, occasionally, Kenya has been accused in the *Wikileaks* of one thing or the other. As a country, the larger interest of this country is more important than what could be considered sectional interest. Therefore, as it has always been, we need to maintain our neutrality. As much as we could wish Sudan the very best, we need to contain our emotions which by this Motion seem not to be controlled. As the Minister for Nairobi Metropolitan Development has said, we are even going further into the outcome of the referendum and making some prior judgement by saying that they must respect the outcome of the referendum. Who said that they will not respect it in the first place? I think this is completely misplaced and we seek direction from the Chair.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. So, that I can be able to contribute meaningfully to this debate, I would like to know where we are. Are we at the point where we are debating? Is there a Motion to withdraw? I am confused.

Mr. Deputy Speaker: Just wait and listen until you get out of your confusion. Hon. Members are rising on a point of order and it is perfectly in order and the Chair is allowing them to ventilate before the Chair can give a ruling on the same.

I will take the last point of order from Mr. M.M. Ali, before the Chair can give a ruling on the same.

The Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali): On a point of order, Mr. Deputy Speaker, Sir. I also agree with the hon. Members who have said that we are interfering with matters of another nation and it is not right. Dr. Khalwale has just said that the Sudanese in some parts of Kenya will vote. Indeed, the Sudanese will vote wherever they are. Even those in the United States of America (USA) will vote. Those countries are not interfering with the referendum. Let us not act like a big brother of some sort to our neighbours. Indeed, if other people dictate to us, it is irritating and we have cases which we will debate in this House. This is a case where Parliament is over-stepping its boundaries and we must not encourage that.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I thought I should clarify a few things before you make your ruling because these have not been points of order but arguments which can be entertained. The President of the USA, Mr. Barack Obama made a statement yesterday about the outcome of the International Criminal Court (ICC). Is he interfering?

Hon. Members: Yes!

Mr. Ethuro: Mr. Deputy Speaker, Sir, this House brought a Motion on Migingo Island, we debated it and determined it. Did we interfere with Uganda? This House has debated AU resolutions and even visited Somaliland. Are we interfering?

Hon. Members: No!

Mr. Deputy Speaker: I think we have had enough points of orders. Mr. Nanok, I will give you a chance given that you come from the proximity.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): On a point of order, Mr. Deputy Speaker, Sir. I believe this Motion is before the House in an orderly manner basically because the Government of Kenya---

Mr. Deputy Speaker: Mr. Nanok, you really do not have to bend and belabour. Just stand straight and the microphone will capture what you say.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Deputy Speaker, Sir. I want to be loud enough.

The Government of Kenya has been supporting the Sudan peace process. This is a country that has been in conflict for 38 years. The international community has come out to declare and urge the parties to the peace agreement to respect the referendum as part of the six protocols that were signed in Naivasha. So, I do not see any reason why this Parliament cannot continue to urge our Government and the parties to the comprehensive peace agreement to be able to accelerate their efforts towards the attainment of that referendum on 9th January, 2011. So, this Motion is orderly before the House and it should be debated so that the whole world can know what Kenyan Parliamentarians' stand is on the referendum of Southern Sudan.

Mr. Deputy Speaker: Order, Mr. Nanok! You have made your point.

Hon. Members, in a democracy there are three arms of Government which are independent from one another and inter-independent at the same time. There is always an effort to try to break the wall and shift the boundaries. The Chair does understand that this is a role which in all democracies, is the preserve of the Executive. Nonetheless, the Chair can only rule in accordance with the provisions of the Standing Orders. It is, indeed, a fact that needs to be understood. If the Government feels that Parliament is interfering in an area that is exclusively for the Government which is determining our foreign policy and the way we relate to other countries both in the region and outside the region, why did the Members of the House Business Committee (HBC) majority of whom are from the Government not oppose this Motion at the time when it was being passed? The Government has the majority in the House Business Committee.

That said, the Chair can now rule in accordance with our Standing Orders. Standing Order No.79(1) states:-

“Neither the personal conduct of the President, nor the conduct of the Speaker, or any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any

friendly country shall be referred to adversely, except upon a specific Substantive Motion of which at least three day's notice has been given.”

We are going to discuss another country and there is no doubt about that. However, to the extent in which we are not going to mention that country or leadership adversely, the Motion is properly before the House.

Proceed!

Mr. Ethuro: Mr. Deputy Speaker, Sir, I think there are hon. Members who still think that this Parliament is an appendage of the Executive. Your ruling has affirmed the supremacy of parliamentary democracy and I think some of us are thoroughly committed to it.

Mr. Deputy Speaker, Sir, I was very careful even in the wording of this Motion for the purposes of the Standing Order that you have read. I am talking about the Comprehensive Peace Agreement. That is an agreement that already been done and it is being implemented. It is now reaching a very critical stage and the Tenth Parliament seems to have lost its memory. Just in 2008, we had chaos. You know what it means to go through an election. All we are saying is to appreciate and applaud the efforts by the Executive. It took our President, Mr. Kibaki, because Al Bashir could not come here because of the ICC to go to Ethiopia and convene an IGAD Committee on the peaceful resolution of the Southern Sudan referendum. If Members read a bit and understood what is happening, they would not have raised those objections.

The root causes of conflict in Southern Sudan are based on resources, power sharing, the role of religion in the state, ethnicity and self determination. It is not for Kenya or this Parliament - and I will belabour that point - for us to tell them which way to go.

We want our country as the Chair of IGAD, to do all in its power, including talking to the other Member States, to make sure there is a peaceful referendum in Sudan. I am aware that the Minister of State for Provincial Administration and Internal Security and the Acting Minister for Foreign Affairs, Prof. Saitoti, has been moving around the partner countries to ensure that a peaceful referendum takes place. What is wrong with this House urging the Executive to do its job thoroughly? It is in order and we want to support.

Mr. Deputy Speaker, Sir, since I was concluding before I was rudely interrupted by my good friends, which is the nature of democracy, I beg to move and ask hon. C. Kilonzo to second me. I hope Members will read the Motion properly and not impute improper motives. Everything is according to the words of the Motion.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I wish to second this Motion. I want to remind hon. Members that the Kenyan Government is a regional power, which should not just sit back and watch the neighbours having trouble and use the old policy of the Organization of African Unity (OAU), which said that even if your neighbours are killing each other, you should not interfere. Times have changed. This is a global village. Only the other day, the President of Sudan, Al Bashir was here. Some of us said that he had come, but we were not going to listen to too many outsiders telling us to arrest him. We stood and said that we are a regional power and have an interest in the Sudan, both in Juba and Khartoum. A few diplomats organized demonstrations against Al Bashir. Should this country be run by a few diplomats? Kenya has an interest to ensure that the referendum which is supposed to take place in Southern Sudan is peaceful because we

know the consequences. Kenya has hosted very many refugees from the neighbouring countries, including Sudan and Somalia. So, we cannot purport that when things are going wrong, we should sit back and not interfere. Those were polices of the OAU and now we have the African Union (AU).

When we had trouble here in Kenya, who came to our rescue? The Tanzanians, Ugandans, South Africans and Americans were here. So, if they decide to remain united, it is says here that all the parties must respect the outcome of the referendum. If they decide to separate, all the parties must respect that. We are not going outside their decision. We are encouraging what the Ministry of Foreign Affairs is doing. This Motion is doing nothing else, but to tell the Sudanese that they have the backing of this House and they should continue with the referendum.

With those few remarks, I support.

(Question proposed)

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I stand here to support this Motion. I share the sentiments that the Government does all in its power to ensure there is peaceful referendum on the future of the Southern Sudan and further urges the referendum scheduled for 9th January, 2011 to continue as planned.

It is fairly clear that Kenya has always stood for peace in the Sudan. Historically, for more than 30 years, Kenya has played a neutral role to ensure that warring parties come together and agree to live in peace. More importantly, when it comes to the Comprehensive Peace Agreement that brought peace to the Sudan five years ago, Kenya played a very major role. Indeed, it was one of the key players in fighting for the peace which then resulted into the Comprehensive Peace Agreement. For that reason, Kenya is one of the few countries that are guarantor of the Comprehensive Peace Agreement. Even much importantly, it is, indeed, true that Kenya is the Chair of the IGAD on the Sudan, a position delegated by the AU.

As a matter of fact, about two and a half weeks ago, a Summit meeting of the IGAD was called by His Excellency the President in his capacity as the Chairman in Addis Ababa to work on these matters. In my capacity as the Acting Minister for Foreign Affairs, I was dispatched to Khartoum, Juba and Addis Ababa, to request on behalf of His Excellency the President, the Heads of States to attend that meeting and they all did. It was the best Summit of the IGAD on Sudan that was well attended. Our position was unveiled to the Summit that we want the two parties to remain on track in accordance with the stipulation of the Comprehensive Peace Agreement, namely, that the referendum must be held. The people of Sothern Sudan must be given the opportunity to express their wish one way or the other in an extremely transparent and democratic manner. Kenya also urged that the days of using violence to solve problems should be over. Therefore, they must respect that.

I want to inform this House that both the Presidents of the Sudan and the Vice-President Salva Kirr, stated clearly and gave the assurance that they will ensure that, indeed, the referendum will be held on 9th January. They gave this assurance although by that time, there were a few remaining issues such as the day and issues of citizenship. They stated clearly that they are going to respect the outcome of that referendum.

(Applause)

Mr. Deputy Speaker, Sir, I would also like to state here that I have just come from Lusaka to attend the Summit Meeting of the Great Lakes Region on behalf of the President, which also deals with matters of peace and reconciliation. I had a meeting with the Minister of Foreign Affairs from Sudan. He told me categorically and, in fact, he even informed the other Ministers of Foreign Affairs that the referendum in Southern Sudan on 9th January, 2011 is on Schedule. A number of issues that were outstanding have been sorted out. Of course, there are a few matters which will be outstanding and they will be dealt with within six months after the referendum. Definitely, there is one contentious issue on Abbey. This is a place which is very rich in oil. There was also an issue on who participates in voting. There was a little bit of a problem because of some pastoralists from the North and the Dinka who live there. I have to say that some understanding has been arrived on this matter. However, the final division of assets will be done now as part of the post referendum agenda.

There is another issue which is very important. This concerns the division of assets and debts. Again, that has been agreed upon, based on the fact that it can be finalized after the referendum. Much more important was the issue of the boundary. About 80 per cent of that has been finalized and there is not much time to sort out the remaining 20 per cent. However, that will be done.

Mr. Deputy Speaker, Sir, I just want to assure this House that Kenya, as a guarantor of the Comprehensive Peace Agreement (CPA) is very much satisfied with the assurance we have got from the two parties that the referendum is on track and this will be very important. It will be a major achievement for our region here. It will even demonstrate that Africa can be able to solve her own problems.

(Applause)

Mr. Deputy Speaker, Sir, I beg to support this Motion.

Mr. Imanyara: Mr. Deputy Speaker, Sir, I too rise to support this very important Motion. I wish to congratulate Mr. Ethuro for finding time and the wording that captures the mood that is summarized in the CPA that was signed in Kenya and which places a positive obligation on the part of the Kenyan Government to guarantee that there is an environment in which the people of Sudan are able to take part in the referendum and vote one way or the other.

Mr. Deputy Speaker, Sir, as the founding Chair of the AMANI Forum, you will recall that you travelled with me to Sudan and we had the opportunity to travel all over the Southern Sudan, including Khartoum. The will of the people at the time – and it remains the will of the people of Sudan – is that the people of Southern Sudan ought to be given an opportunity to make a decision whether or not to be part of Sudan. We, as a country, played a critical role – and it is one of those roles that we have to acknowledge that was played by the former President of this Republic and Lt. Gen. Sumbeiywo – to get the CPA signed under the circumstances where the world did not believe that the people of Sudan would agree even on the mechanisms of holding a referendum.

So, this Motion is an expression of the solidarity of the people of Kenya with the people of Sudan to enable them know that whatever the outcome of the referendum, we should respect it as a guarantor to the CPA. There are many of us, of course, who express our personal views that the people of Southern Sudan ought to be independent. We recognize that Southern Sudan has tremendous links with the people of Kenya. I, for one, expressing my own view, do support the decision of the people of Southern Sudan to an independent state. That does not mean that if I do, I am in any way suggesting that Kenya should take a partisan position as a country and as a sovereign nation.

Mr. Deputy Speaker, Sir, we need to do what is envisaged in the CPA, which we had a privilege to undertake, guarantee and ensure that conditions prevail upon which the people of Sudan, and particularly the people of Southern Sudan, are able to tell the world that they are an independent state.

I support this Motion.

Mr. Deputy Speaker: Order! Order, hon. Imanyara! To the extent in which some sentiments are made that gives a presumption of how that will result in, I think we are bound by the Standing Orders, which are very clear. The body of the Motion is what is supposed to be supported. If you go outside that, the Chair will have no option but to bring your attention to Standing Order 79.

Yes, Mr. Githae!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. I also rise to support this Motion.

(Applause)

This Motion urges the parties to the CPA to make sure that the referendum is held on the 9th of January, 2011. I have no quarrel with that. In fact, it is important that this is held. My fear was us being drawn into partisan politics. We saw what happened when Members of Parliament attended campaign rallies for the Government of Southern Sudan, and they were drawn into partisan politics to the extent that the Ministry of Foreign Affairs was forced to issue a statement saying that, as of now, there is only one Government of Sudan. That was my fear. But since we have agreed that we will not enter into partisan politics, I support the Motion.

Mr. Deputy Speaker, Sir, it is important that Southern Sudan holds a peaceful referendum. However, my request to the parties is that they must respect the outcome of the referendum. That has been the curse of Africa. We hold elections; one party disputes the elections and says that the election was stolen. From there on, things take a life of their own. Political disputes will always be there. It is the way they are resolved that matters. Even in America, they had a political dispute between Bush and Al Gore. They were there! However, no parties said that they did not accept the results. They submitted themselves to the Supreme Court. This is what I would urge leaders in Africa to emulate. This is where we are failing. We participate in elections, like now in Ivory Coast, but when the results come out – if they are not what you expected, then you dispute the elections – and you refuse to submit yourselves to the institutions that are supposed to resolve political disputes. To that extent, I support this Motion.

Mr. Deputy Speaker, Sir, Kenya has not benefitted from the CPA that we spent a lot of money and resources on. Why? This is because of the bad road connection between

Kenya and Southern Sudan. All the trade goes to Uganda because of the good road connection. I think this was a strategic error on our part. We need to improve our road network with our neighboring countries. Take Somalia, for example. We have no road connection between Kenya and Mogadishu. That is also a strategic error. That is why we cannot even be able to influence the peace negotiations in Somalia. We have no road connection with Ethiopia. We are losing on trade. As we urge the parties to respect the CPA, we must also try to take advantage. We spent a lot of money and resources, but we are gaining nothing! The gain is going to Uganda.

Mr. Deputy Speaker, Sir, lastly, it is very clear that the decision made by the former Minister for Foreign Affairs, Mr. Moses Wetangula, to invite the President of the Sudan, Mr. Al Bashir, here to come and witness the promulgation of our Constitution was right. It was right in the sense that you cannot afford to ignore one party. Therefore, I look forward to him resuming his duties. We read the newspapers yesterday which stated that he has been cleared by the KACC. We look forward to his joining us when he comes back.

Mr. Deputy Speaker, Sir, lastly, let me end by what I said. Let us respect the outcomes of referenda. Let us respect the outcomes of elections, and let us submit ourselves to the institutions that are supposed to resolve any dispute.

Thank you, Mr. Deputy Speaker, Sir.

Ms. A. Abdalla: Thank you, Mr. Deputy Speaker, Sir. I am unable to support this Motion, because passing this Motion is making this House act in futility. Kenya is a guarantor to the CPA. So, this Motion is telling Kenya to do all within its powers. All that Kenya can do is to work within the CPA to ensure that the referendum takes place. When you bring a Motion to the House you are urging somebody who is reluctant to do something to do it. Why do you have to have a rhetorical Motion? In my opinion, this Motion is rhetorical because Kenya is doing its best in this matter.

Mr. Deputy Speaker, Sir, the issue that we need to focus on is that it is in our interests, as Kenyans, for the Sudan to remain peaceful. We can only benefit from our investment in the CPA if the Sudan, either divided or one, is peaceful. It is only when it is peaceful that our products will get a market.

So, we should not mix up the fact that a peaceful Sudan is important for Kenya's economic prosperity with trying to interfere with what is happening in a country. The result of a Sudan that is not peaceful is Kenya having to host refugees and spent its money on another CPA. So, we want to remain an impartial negotiator in this matter. Our Government has already said, through the Minister of Foreign Affairs, that we are committed to ensuring that the CPA succeeds. I am a business person. I want a peaceful Sudan, whether one or divided. But we cannot do what Members of this House did two weeks ago in Southern Sudan. It is important for us to have fact finding missions, be impartial and understand political scenarios in other people's countries. It is wrong to go to a referendum campaign and present your personal views in a partisan manner. It is not in our interest as a country to present a partisan position.

We want a peaceful Sudan. If there is any problem with the referendum we, as a country, should remain an impartial negotiator, so that neither side can say it does not trust us. What we are trying to do is to make one side not to trust us. I would not want to support a Motion in this House, such as this one, that propagates a partisan position on Southern Sudan. I would like to see a peaceful referendum; this is in my interest, as a

Kenyan, and it will economically benefit my country. It will not economically benefit my country to take a partisan position that will then make it impossible for us to bring the south and the north Sudan together, if there is a dispute.

Mr. Deputy Speaker, Sir, having said that, I think we need to be very careful on the conduct of persons who represent us as diplomats. The Acting Minister for Foreign Affairs has said that he was dispatched to different capitals. The Acting Minister for Foreign Affairs did not say that it is the Government of Kenya's position for a member of the Executive to participate in a campaign for the referendum in South Sudan. That cannot be Kenya's position. I stand in this House to say that if a member of the Executive repeats what happened two weeks ago in Sudan, disciplinary action should be taken against him.

With those few remarks, I beg to oppose.

Mrs. Odhiambo-Mabona: Thank you, Mr. Deputy Speaker, Sir. I beg to support the Motion. In supporting the Motion, I want to adopt the reasoning of Ms. Amina Abdalla; I actually find her reasoning very solid except that we arrive at different conclusions. Ms. Abdalla has said that as much as possible, as a country, we should not take a partisan position. I agree with her on that. When I read this Motion, it is encouraging us to ensure that the referendum is peaceful, we seek towards peace, and that persons respect the outcome of an open and democratic referendum.

Mr. Deputy Speaker, Sir, I see no problem with that. When Kenya as a country had a problem, it was our neighbours who came to our aid. If I remember very well, we did not even want interference from far abroad. We had more confidence in our neighbouring countries. We had more confidence in Tanzania, South Africa and other countries. When we have our neighbouring country having a need, we must help them in ensuring that they have peace.

I would also want to say that we have a lot of Kenyans living in Southern Sudan. We also have a lot of Kenyans living in Kenya who have invested in Southern Sudan. Due to that, Kenya has a lot of interest in Southern Sudan; this is in addition to the need for peace in that part of the Sudan country; we also have interest in our own nationals living there.

When our neighbours do not have peace this has an effect on Kenya. Therefore, it is in our interests, as a country, to ensure, as much as we can, that all our neighbours are peaceful.

Mr. Deputy Speaker, Sir, in concluding I want to say that I very painfully watched the Tusker Project Fame that ended recently. In that Tusker Project Fame there were two contestants, K-Deng and Paleki from Southern Sudan. In their faces I saw hope for renewal in that country. Paleki, a very beautiful girl with an amazing voice, signified the hope of the people of Southern Sudan. Let us support peace, not just in Sudan but also in Kenya and elsewhere abroad.

I support.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this very important Motion. Sometimes, it seems that we ignore the fact that this country has suffered from the instability that occurs in our neighbouring countries. We are already victims of serious challenges in our neighbouring State, Somalia, not just because of small arms that cross the border but also due to piracy in the Indian Ocean.

Therefore, Mr. Ethuro requires every support and congratulations for thinking of this Motion, and urging that we support a peaceful referendum in the Southern Sudan and ensure that the result is accepted.

Mr. Deputy Speaker, Sir, the second reason that I have for advancing support to this Motion is our own national experience. You will recall that we have held two referenda, one in 2005 and another in 2010. In both situations we ended up holding peaceful referendums. Therefore, we have useful experience to advance to our brothers and sisters in the entire Sudan. Regardless of the outcome of the referendum, that country will remain our bordering State. I wish Southern Sudan could ask us to send the Committee of Experts to go there and spend a week---

An hon. Member: They are there!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I am told that, in fact, they are already there. I wish they could allow us to send hon. Izaak who is the Chair of the Interim Independent Electoral Commission (IIEC) so that he can give them lesson on how to organize a referendum. I wish they could also “import” me as the Minister for Justice to show them how to facilitate peaceful referenda.

Mr. Deputy Speaker, Sir, I beg to support.

Ms. Karua: Mr. Deputy Speaker, Sir, I rise in support of this Motion. The Motion is encouraging our neighbour and friend, Sudan. The Motion is non-partisan. It is just calling upon the people and the Government of Sudan to not only proceed to have a peaceful referendum, but also to respect the outcome. We are peripheral stakeholders in what happens in Sudan. Being neighbours, we must remain engaged and interested.

Mr. Deputy Speaker, Sir, we know very well that when Sudan was in turmoil Kenya was the nation that most of the Sudanese people sought refuge in. Some of them have not even returned. It is a great thing that one of the Members of Parliament – the Mover of this Motion – thought of bringing the Motion to enable Parliament to express solidarity with the people of Sudan and encourage them. It is wrong for us to wait until matters are out of hand to mourn with our neighbours. It is better we encourage them to walk on the right path so that we can have peaceful neighbours. Apart from the investments in the peace process and by Kenyans in the Sudan, we have a greater long-term investment. A peaceful neighbour means prosperity for both nations.

Mr. Deputy Speaker, Sir, I long for the day that we will have a similar Motion or a Motion crafted in similar terms, bringing peace to Somalia. We must become proactive. Africans must help fellow Africans. Even though colleagues from Parliament went and involved themselves in the referendum campaigns, they went as individuals and not as Parliament. Kenya upholds the liberties of association and expression. Right now, one of the principals is out in Uganda in the campaign. He is exercising his freedom of expression and association. Several Members of Parliament have been there and I know that there are some who have agreements with fellow Members of Parliament that “next time you are campaigning, I am coming to support you.” When you go as an individual, you are not binding the country. You are just expressing your freedom as an individual. So, these Members did not bind Parliament. They expressed themselves. I cannot condemn them for exercising their freedom, even if I differ with them. Even if I differ with you, I will uphold your freedoms under the Constitution.

Mr. Deputy Speaker, Sir, I think we want our brothers and sisters in Sudan to know that we support them, stand with them and encourage them to have a peaceful referendum and respect the outcome. We have shown them the way in our recent referendum, where all have respected the outcome. This is the way to go for a peaceful and prosperous Africa.

Mr. Deputy Speaker, Sir, I beg to strongly support and congratulate the Motion.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. It looks like the contributions are now repetitive. Will I, therefore, be in order to call upon the Mover to reply?

Mr. Deputy Speaker: The Motion is, indeed, a timed Motion. Until such a time that the Chair sees exhaustion or that Members do not want to contribute, it continues.

Proceed, Dr. Nuh!

Dr. Nuh: Mr. Deputy Speaker, Sir, in the interest of time, I think I will conclude in very few minutes.

Mr. Deputy Speaker, Sir, I support the Motion because the Chairman of the AMANI Forum, hon. Ethuro, happens also to be my chairman in many other quarters. I know that his intentions are well meant for the people of the greater Sudan and Southern Sudan.

Mr. Deputy Speaker, Sir, however, in supporting the Motion, we need to see as a country how far we can go. This country has invested so much in peace in Sudan. It has been an arbitrator between the North and South and we cannot allow anything that jeopardizes the standing of this nation in trying to bring peace in the whole of Africa. I have heard contributions that there are Members of Parliament who went to Sudan on their own volition. I have sought a Ministerial Statement in that regard and to date, we do not even know whether these Members of Parliament went there on their own volition as Members expressing their own interests or it was even a Government delegation. This is because what I understand is that the delegation was even led by the Assistant Minister for Foreign Affairs. This even looks like an Executive excursion. So, I think there are issues we cannot take for granted. The foreign policy of this country has to be safeguarded. Anything that suggests otherwise; that this country is leaning towards one entity, will jeopardize the standing of this country.

Mr. Deputy Speaker, Sir, we wish the people of Southern Sudan well, but it is up to them to decide whether they want to secede or they want a united Sudan. It is not for us to go and advise them to go either way, because we do not want them to blame us in later years - ten or 20 years down the line - that they were advised to go this or that way by Kenya. That is a sovereign nation and it is up to the people of Sudan to decide what they want to do. We would only urge them to conduct a peaceful referendum, whether they want to go "No" for a secession or "Yes", that is their business. It is not the business of this nation, the Members of this Parliament, Executive and Ministers to go and campaign in Southern Sudan; to ask the people of Sudan to either vote a "Yes" or "No" in the referendum. It is purely their business. I think the foreign policy of this nation has to be safeguarded and more so, by those who are entrusted to lead the foreign policy of this nation.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Deputy Speaker, Sir, the matter of Sudan which has been presented by the able Chairman and a

friend of mine and colleague, hon. Ethuro, is, indeed, a weighty matter. At a personal level, I would like to, first of all, say that I support this Motion. I adopt the beautiful words that have been brought forth by my Acting Minister, Prof. Saitoti, who has ably put the Government position on what we feel about the Comprehensive Peace Agreement (CPA).

Mr. Deputy Speaker, Sir, I would like to make just a few clarifications as I try to make my emphasis as to what the situation in North and South Sudan is all about. First, Kenya is the one that mothered the CPA. Kenya is the country that brought the peace in Sudan. Kenya, indeed, is the country that must maintain neutrality. But the issue of Sudan is a moral issue and not a religious or any other issue. The people of South Sudan have been given the mandate to make a choice. Yes, indeed, we went to Southern Sudan, but in our private capacities. We never went to Southern Sudan as Government officers. I never went there as the Assistant Minister for Foreign Affairs.

Number two, the Kenyan Government never spent a penny to take any of the MPs to Southern Sudan. We never spent any money on air tickets or per diem or anything else.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House when he was seen on television saying that he would urge Mr. Raila and the President, Mr. Kibaki, to give them a chopper to attend the inauguration ceremony? He was doing that in his capacity as the Assistant Minister.

The Assistant Minister for Livestock Development (Mr. Duale): On a point of order, Mr. Deputy Speaker, Sir. Now that the Assistant Minister for Foreign Affairs has confirmed that the Kenyan Government did not foot the bill, could he, under the Public Officer Ethics Act, tell the House how much each Member was paid, who paid the air ticket and who footed the bill?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Deputy Speaker, Sir, you know very well that the hon. Member needs to bring a substantive Motion to discuss the details concerning those matters. I want to say that when Al Bashir landed in Nairobi, I defended his coming to this country because the policy was correct. When we went to Southern Sudan, we found Muslims there who told us that they will take the position. They urged us to make sure that they are defended so that they can have free and fair elections. We were just celebrating a very beautiful occasion. In fact, when I said that I would invite the President---

(Mr. Onyonka spoke while leaning on the Table)

Mr. Deputy Speaker: Order, hon. Onyonka! You do not have to bend and go down on your knees. Just stand and the microphone will capture your voice. Maintain your gait.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Thank you, Mr. Deputy Speaker, Sir. Sometimes, I forget.

The Assistant Minister for Livestock Development (Mr. Duale): On a point of order, Mr. Deputy Speaker, Sir. Under the new Constitution, Chapter 6 is on leadership and integrity. This House must be told, in no uncertain terms, who footed the bills of the 34 hon. Members who went to Southern Sudan. I do not need to bring a Motion for that.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Deputy Speaker, Sir, I need your protection here. As far as I am concerned, I thank my colleagues

who went to Southern Sudan. The referendum should be free and fair. Let us accept the results, whichever side wins.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaissery): Thank you, Mr. Deputy Speaker, Sir. I stand to support this Motion. Initially, I did not want this Motion to go on because I was of the view that it may degenerate into a circus. However, I am one of the Parliamentarians who went to the Southern Sudan. I went there as a friend of Southern Sudan. I participated in the peace process of Sudan as a military general. I was an advisor to the peace process for two and a half years. The aim of our country is to bring peace to Sudan. That is why we are the custodians of the CPA. That is why we agreed with the Chairman of AMANI Forum - whom I actually handed over to--- We agreed that one of the major issues of the region which AMANI Forum should be undertaking is the issue of peace. I congratulate him. We went to Southern Sudan, not as representatives of the Government of Kenya, but as individuals and friends of Southern Sudan. We participated in their rallies and advised them on how to conduct them peacefully.

(Applause)

For this reason, we think, as a country, that this Motion is very important. We need to urge the Sudanese people, both the Northerners and the Southerners, to conduct the referendum in peace. This country is impartial. We are neutral as far as we are concerned. I think this Motion is trying to pass the message of neutrality.

With those few remarks, I beg to support.

The Assistant Minister for Environment and Natural Resources (Mr. Kajembe): Mr. Deputy Speaker, Sir, I rise to support this Motion. I have heard previous speakers say that they are friends of Southern Sudan. I would like to be a friend of Southern Sudan, provided that I am told how to go about it. For me to go to Nakuru, I know that I have to pay bus fair. If I want to go to Southern Sudan, the Assistant Minister said that I have to pay from my own pocket. That is very interesting. So, what I am trying to put across is this: Those who are friends with Southern Sudan, since they are our brothers and sisters, I am also a friend to the Southern Sudan. Again, Southern Sudan is a neighbour to Kenya and we share the same border. We should now, as a country, start a friendship with Somalia. Somalia is one country which has suffered a lot. There is under-development, poor democracy, bad governance and we need to bring peace between Kenya and Somalia. Those who went to Southern Sudan using money from their own pockets should tell teach us on how best we can use money from our pockets to go to Somalia.

So, Mr. Deputy Speaker, Sir, I am happy. However, as a country, let us not take sides in the referendum. We must be very neutral. We must not bring tribal ethics in what is happening in Sudan. We should not also apply religion or any denominational differences. We should support them.

Finally, I heard Maj-Gen. Nkaisserry say that he really advocated for peace there. I am now asking him to start a peace process in Somalia.

Thank you.

Mr. M.H. Ali: Thank you, Mr. Deputy Speaker, Sir. I wish to support this Motion. Kenya has invested heavily in the peace that is prevailing in Southern Sudan.

The peace that is prevailing in Southern Sudan is also good for the greater Sudan and other countries neighbouring Sudan. The investments that we have made there should not go to waste. Now that Southern Sudan is asking for a separation and a referendum is coming up very soon, we should be thinking in such a way that the peace that we want in Southern Sudan should also prevail in the North. Without peace in the two areas, there will be no business for us. Why we want peace and friendship with Southern Sudan is because they are our immediate neighbours. We want to do business with them. We have heard about the proposal to put up a port in Lamu. There will also be roads and a railway line going all the way. However, we have to be very careful. We have been complaining about big nations interfering with our systems. Now, we seem to be the big boss in East Africa. We should be careful so that when we have other people interfering with our issues, we do not interfere with Southern Sudan. If you want to be a friend to Southern Sudan, you should also be a friend to Northern Sudan. Let us go there and advise the northern people the way we have advised the people of Southern Sudan.

I beg to support.

Mr. Kigen: Thank you, Mr. Deputy Speaker, Sir, for noticing and giving me a chance to contribute to this important Motion. I want to start by thanking the Mover of this Motion, hon. Ethuro. This is a very important Motion because it touches on our neighbours.

We are concerned about the welfare of our neighbours. When anything goes wrong with them, we are not also secure. Looking at how the Southern Sudan people have lived for a long time here in Kenya during their trying moments and how they have come together as a result of the agreement which was signed five years ago, we feel that we have not finished business with them. We will be doing a lot of service to ourselves and to our neighbours by playing that additional role of advising them at this time of need to conduct that very important exercise in unity, agreement and, more specifically, to accept the results of the referendum. A stable Sudan in general contributes immensely to the economic growth of our country. For that reason, I think it is so important that we, as a neighbour, demonstrate our support at this time when they make this very important decision.

If we sit back and just say that we will be interfering with the affairs of Sudan, surely, when they were in trouble--- Look at our neighbour, Somalia, when they were in trouble, they ran to us. We have an obligation to ensure that they are also enjoying peace. The amount of time that Kenya committed to the peace process should not be allowed to go to waste. We should encourage them. It will go a long way to even give them a better Sudan. I want to thank, again, the AMANI Forum for going to Southern Sudan individually to stand with their brothers. That is what they have said here. This is something that should not just end up with Southern Sudan as such. It should be extended to other countries. I think somebody has said that we are operating in a global village and for that reason, we cannot say for sure that we cannot get involved in the affairs of other people, even at a personal level.

So, this is a very important Motion. It is specific and it is talking about encouraging. It is not saying anything more than that. It is encouraging them to conduct that very important exercise in a peaceful atmosphere and to ensure that they respect the outcome. We, as Kenyans, have passed through that kind of exercise and I think we are better placed to talk to a brother who is attempting to do that. When somebody is about to

wed, he gets hold of those who have already wedded before, so that they can get a bit of experience from what it means to wed. At this point in time, I think we are better placed as a nation to advise our brothers and be on their side at a time like this, when they are undergoing this very important exercise.

With those few remarks, I wish to support.

Mr. Olago: Mr. Deputy Speaker, Sir, I rise to support this Motion and, in supporting it, first, I wish to respond to the opposing voice of Ms. A. Abdalla, who said that this Motion is a waste of time and mere rhetoric. If you look at the wording of this Motion, it is particularly carefully worded; very cautious and very impartial. The idea is to emphasize the stand of our Government on the referendum in the Sudan. It is a Motion that seeks to encourage people of good will from Southern and Northern Sudan to participate in the referendum. It is a Motion that is very clear. It is not influencing the outcome of the referendum. It is encouraging the Sudanese from both the North and the South to participate. Kenya has spent time and resources on this and you have heard Maj-Gen. Nkaisserry talk about it. Kenya is a guarantor to the CPA that was signed in Nakuru. Kenya has got an interest in ensuring that the referendum on 9th January, 2011 is conducted peacefully and that all Sudanese participate in the same.

Kenya being a member of Inter-Governmental Authority on Development (IGAD), and this Parliament having confirmed in a Motion that AMANI Forum is a part of this House, we have a responsibility to ensure that there is an effective system of political dispute resolution not just in the Sudan, but all over the world. This is the point that we must emphasize so that when the Sudanese exercise their universal adult suffrage on 9th January, 2011, they do so understanding clearly that the outcome of the referendum must be to their interest. The outcome should be accepted by parties who oppose and who accept. In this Motion, we have encouraged the Electoral Commission of Sudan to move with haste and ensure that the referendum is conducted peacefully. The working of the Electoral Commission of Sudan, as was clearly indicated in this Motion, is to ensure impartiality and participation of everybody in Sudan.

Mr. Deputy Speaker, Sir, I think the outstanding issues that were mentioned by the Acting Minister for Foreign Affairs, Prof. Saitoti, are very emotive to the people of Sudan. They need to be encouraged that those outstanding issues, particularly the issue touching on the Abyei Province, must be addressed effectively after the referendum. The Sudanese from South need to be assured that the outstanding issues will be addressed even after the referendum. That way, if they decide to go as one country - the North and the South - they do so with proper information on what needs to follow. If the referendum in Sudan does not end peacefully, then the problem that we are going to have as a country is another influx of refugees. We know the problem that has been posed to our economy and to our security by the refugees from Somalia. We cannot have another one! It is, therefore, in the interest of Kenya not just as a power in this region, but also as a leader in this region, to ensure that the referendum in the Sudan goes smoothly, and that the outcome is accepted by everybody in Sudan.

With those few remarks, I hereby support the Motion.

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of order, Mr. Mr. Deputy Speaker, Sir. Arising from the mood of the House---

Mr. Deputy Speaker: Order, Mr. Waititu! It is the Chair who gauges the mood of the House.

The Minister for Immigration and Registration of Persons (Mr. Kajwang): Mr. Deputy Speaker, Sir, when I recently saw photographs of citizens of Sudan being registered somewhere in Kitale and praying for their country, I was encouraged. When we talk about the CPA, we actually want that peace to be comprehensive. We want that agreement to be respected. The only way we can determine whether that peace is comprehensive and that agreement has been accepted is by encouraging our brothers and sisters in Sudan to vote peacefully during the referendum.

I want to thank my brother, the Chairman of the AMANI Forum for bringing this Motion to this House. For a while, we thought that we should not be discussing the Sudan issues within Kenya because we might be seen as interfering. But again, our brothers and sisters in this region look upon us. They look upon this Parliament and the people of Kenya to encourage them to go the path that Kenya has taken. In fact, Kenya is now doing what we call parliamentary democracy and diplomacy. We can go out of our borders and encourage our brothers and sisters and even share with them what we have.

Mr. Deputy Speaker, Sir, Kenya is the only country in the whole of the East African region that has changed its Constitution in peace time. We did so, when there was no war. I think people admire us and want to learn from us. This Parliament should go out and share what we have. Only recently, Members of Parliament were in Tanzania during their elections. I have been monitoring elections many times in Germany which is a developed country. I think we learn a lot when we interact in this way. When this is settled, Sudan as a whole will look at us with respect as friendly neighbours and we will do good business. I think we should go out and spread this good news that things can be bad like they were bad in Kenya. Things can also be good like they were during the referendum only recently. We can move together as proud people of Africa seeking peace everywhere.

I hope that the resolution in the House will be read in all capitals of Africa. Kenya supports peaceful election, referenda and management of public affairs. That is the direction we want to go. That is the direction we encourage everybody else to go.

With those few remarks, I beg to support.

Mr. Deputy Speaker: I call upon the Mover to reply.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I want to thank every Member who has contributed to this Motion, including those Members who raised serious concerns.

Mr. Deputy Speaker, Sir, I want to confirm that the intention of this Motion is not to give Sudan as a country the choices. The choices are theirs. They are the ones to make that decision. I made it very clear. I am particularly happy with two Members, hon. Githae and hon Maj-Gen. Nkaisserry, who reached their Damascus and saw the light and supported the Motion from the point where they had opposed.

Mr. Deputy Speaker, Sir, Members who have spoken in support of this Motion, have raised one fundamental issue and emphasized respecting the outcome of elections. This Motion was inspired by the fact that Africa, this particular year, was almost celebrating 50th anniversary. In fact, almost 50 countries in Africa were holding their election.

Mr. Deputy Speaker, Sir, you know even after holding a good referendum or election, if the parties to that contest do not appreciate the outcome, we are in trouble. We have our own experience. Fortunately, we have resolved it. These are the kind of experiences we would like to share. We do not want to wait until things have gone bad

for us to rush to Sudan. It is good to anticipate. Already there is a framework; the framework of the CPA where Kenya is the Chair of IGAD. We just wanted to make sure there is transparency and accountability and elections are held on time. That is where usually you get problems. The Kenyan position is very clear. We are neutral to the situation of Southern Sudan. It is up to the people of Sudan to agree and decide on where they want to go. In fact, in one party to allay the fears of our Muslim brothers, in our meeting, the Muslim brother in Southern Sudan came out strongly to say, “we are going to take a position as people of Southern Sudan. So, religion is not an issue here”.

Mr. Deputy Speaker, Sir, this is the first time I have disagreement with hon. Amina, which is healthy and fair. I just want to mention to her and I owe it to her as a former Member of the Executive Committee of AMANI, that the regional AMANI Forum had a meeting in Nairobi last year and mandated the Kenya Chapter the leadership both in Southern Sudan and in Somalia. On Somaliland, as Members have requested, as a forum, we have already written to the Ministry of Foreign Affairs to start taking action on those areas. This just confirms one thing, that this Parliament is a different Parliament. This country has registered tremendous trends in terms of Parliamentary democracy. We walk tall in the region. We walk tall in Africa. We want to be the leader in Parliamentary democracy.

With those few remarks, I beg to move and urge every Member to support.

(Question put and agreed to)

REPEAL OF INTERNATIONAL CRIMES ACT

Mr. Ruto: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, aware that Kenya promulgated a new Constitution on 27th August, 2010 which has had fundamental changes in circumstances upon which several statutes had been enacted in the past including the international Crimes Act which domesticates the Rome Statute, this House resolves that the Government takes immediate action to have the International Crimes Act repealed so that Kenya be immediately released from any obligation to implement the Rome Statute and further that any criminal investigations or prosecutions arising out of the post election violence of 2007/2008 be undertaken under the framework of the new Constitution and that the Government suspends any links, cooperation and assistance to International Criminal Court forthwith.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I rise on a point that this Motion that has just been read to the House is contrary to the Constitution. It is unconstitutional and we cannot--

Mr. Deputy Speaker: Order! The Motion has to be proposed. Could you, please, allow the hon. Member to move the Motion and be seconded before you stand on your point of order?

Mr. Ruto: Mr. Deputy Speaker, Sir, I want to proceed. You will recall that in April 2008, a Bill entitled; “International Crimes Bill” was published and subsequently passed. This was meant to make the Rome Statute to have effect in a manner, in my view,

that elevates the ICC above the Kenyan Judiciary and compromises the sovereignty of the Republic of Kenya.

We are, indeed, aware of the circumstances that may have obtained around that time. However, under the Rome Statute, Article 17--- What is indicated in the Preamble, I think, Paragraph 10 recognizes that it is complementary to national criminal jurisdiction. Article 17 presupposes that matters that would be referred to the ICC would be basically in countries whose judicial systems have partially or totally collapsed. The same Article 17 presupposes that the Government is unable to apprehend any of the people it intends to prosecute and that it is in fact, unable even to question them or bring them to justice. Such a presumption does not obtain in Kenya as we are now. In fact, there were false fears that Kenya was sliding beyond what it was. Fortunately, Kenya is back on course. We have a new Constitution and it is possible to proceed. Article 3 and 4 of the same statute actually subordinates Kenya to the ICC process and gives the prosecutor roles that even subordinate the Attorney-General of the Republic of Kenya. In my view, this is unacceptable.

The Kenya Constitution in Chapter One, Article 1, recognizes the sovereignty of the people of Kenya and they may exercise that sovereignty either directly or through elected representatives. As we are gathered here today, we are exercising that delegated responsibility of ensuring that the sovereignty of our people and our Republic is safeguarded.

The African Union (AU) of which Kenya is a member, has advised and, in fact, recognized--- I want to quote President Kagame of Rwanda who in one of the recent meetings questioned the fairness of the ICC and said that it targets Africa and other developing countries. He said that it does not dispense justice equitably on a global basis. In fact, on 16th May, 2002, the Bush Administration notified the then UN Secretary-General, Dr. Kofi Annan, that the USA was withdrawing from the ICC. It is interesting to note the reasons the Americans advanced. Strangely, they are similar to the ones that are obtaining in our situation. The USA withdrew. I want to advise the young men in the USA now to listen to the older generation of American leaders. In making the decision to withdraw from the ICC, the USA did not want to subject its servicemen and officials to a court that is not accountable to the people of America and has no obligation to respect the constitutional rights of its citizens.

(Mr. Kenyatta was applauded as he entered the Chamber)

Mr. Deputy Speaker, Sir, I want to bring to the attention of the House that the USA regards as illegitimate any attempt by the ICC or State parties to the treaty to assert ICC jurisdictions over Americans. If, indeed, this is true, how come they have been pontificating to us that we must respect the ICC. They themselves understand that it is a useless outfit. In fact, in one of their statements, they say that there is lack of checks and balances on the powers of the ICC prosecutors who are bound to be drunk with power as happened yesterday. They also feared that its prosecution could be politicized. It is also a dilution of the UN Security Council authority over prosecutions of this nature.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): On a point of order, Mr. Deputy Speaker, Sir. Mine is a small matter. I would have loved that the hon. Member quotes to us whatever the Americans are saying, but at

the same time gives us the authority from where he is quoting. He needs to tell us that he read that in some books or seminar.

Mr. Ruto: Mr. Deputy Speaker, Sir, this formed part of the speech by the USA Under Secretary for Political Affairs a Mr. Marc Grossman. He was addressing the United Nations. I will refer you to further authorities on that. I will give the Minister copies and I am sure he will be very enlightened once he gets my documents.

Mr. Deputy Speaker, Sir, Mr. Grossman warned that the USA was withdrawing because the arrangement of the ICC would actually lead to controversy, political prosecution and confusion. These are the views of the Americans and not us. The treaty threatens the sovereignty of the USA and, therefore, it is doing the same to Kenya. The most important statement from Mr. Grossman is that when a society transits from oppression to democracy, their new government must face their collective past. The State should be allowed to choose the method.

The Government should decide whether to prosecute or seek national reconciliation. This decision should not be made by the ICC. This happened in South Africa. I want to emphasize that South African chose national reconciliation. Kenya may have in its wisdom, two years ago, opted to join the ICC process. However, in the recent past, there has been serious evidence in the public domain that the way the prosecutor at ICC goes about his business is not the normal judicial process that we are accustomed to. In fact, they go about prosecuting innocent people without an opportunity of hearing in a Press conference and detain all the things without the right of reply.

This process is against the norms that we are aware of. I propose that Kenya can now have a judicial process under the new Constitution that can take care of all these fears. At the time we passed the Rome Statute, we had not passed the new Constitution and the judges were not necessarily independent. We have a new Constitution and a new Republic. I propose that all the issues that are pending can be adequately addressed through our judicial process. I do not support a local tribunal. I am simply saying that I have faith in a judicial process that recognizes that we are a sovereign country and that visitors can continue to visit this country without fear of arrest.

Recently, the Head of State of Sudan and others or to be more clear, Kenya had to relocate to Ethiopia to hold the IGAD meeting simply because the Heads of State around the region no longer trust coming to Kenya. Our President can no longer invite his friends at will. We want to be sure that the President of the Republic of Kenya exercises his sovereignty on our behalf. This Parliament should rise to assert that sovereignty.

Mr. Deputy Speaker, Sir, since I want to allow hon. Members to contribute to the Motion, I beg to move and request hon. Kioni to second.

Mr. Kioni: Mr. Deputy Speaker, Sir, I rise to second this Motion for the reasons that have been adduced by the Mover.

In addition, while we were enacting the new Constitution, one of the reasons that were very compelling was that we were coming from a past from which we had difficulties – when we encountered many issues we were not able to resolve them under the old Constitution. However, we now have a Constitution which has the necessary safeguards, and which received overwhelming support from Kenyans. We are now in a position to have the necessary legal framework. The Judiciary is going to be independent. The Judiciary will be able to handle many of the issues which have continued to affect our past.

Mr. Deputy Speaker, Sir, it is important to note some issues. For instance, an ambassador of the United States of America (USA) pointed out some of the difficulties that the statute has. He said: "The ICC statute claims to limit jurisdiction over persons to the most serious crimes of international concern". He observed: "There are not sufficient safeguards in place to prevent purely political persecutions".

Mr. Deputy Speaker, Sir, Marc Grossman actually said: "It is a statute out of a result of a fraudulent outcome built on fraudulent foundation". Most worrying is when they said, at that time, that all the ratifying countries, except for the populous Nigeria, German and the United Kingdom (UK), were "Lilliputian mice seeking to bell the USA and her citizens". I had difficulties getting the meaning of the word "Lilliputian", but the Oxford Dictionary defines it as "extremely small, diminutive, and tinny person from the land of Lilliput, where the people are only 15 centimetres high".

The Collins Dictionary defines a "Lilliputian mice" as "tiny person or being tiny or very small; petty or trivial; imaginary country of tiny inhabitants". Those are the words describing those who are said to have ratified the ICC statute, according to these individuals.

Mr. Deputy Speaker, Sir, I think it is important to note that while we have respect for the people who have continued to help this process to be in place, it is important to note that the USA has had a huge impact on it, but what is telling is that immediately after the USA withdrew from the treaty, they moved ahead to try and get members to sign a bilateral immunity agreement. That agreement was meant to guarantee the USA immunity from ICC prosecution, and the USA would grant the same to those who agreed to the bilateral immunity agreements, and in turn punish those who had to sign it.

This treaty may have been useful, but it is a big brother/small brother issue. The current President of the USA, Mr. Barack Obama, when he was a senator during the run up to the elections in 2007 was asked: "Should the United States ratify the Rome Statute on the International Criminal Act?", to which he answered: "The United States should cooperate in the ICC investigations in a way that reflects American sovereignty and promotes our national security interests". Senator McCain said: "I want us in the ICC, but I am not satisfied that there are enough safeguards". Hillary Clinton, the current US Secretary of State, said: "Fourth, Europe must acknowledge that the United States has global responsibility that creates unique circumstances. For example, we are more vulnerable to the misuse of International Criminal Court because of the international role we play and the resentments that flow from that uniqueness around the world". The ICC was meant to be a court for everybody but as it is now, as President Kagame of Rwanda said, it is clear that it targets African developing countries, and does not dispense justice equitably on a global basis.

I come from Ndaragua Constituency, where we have integrated Internally Displaced Persons (IDPs) and IDPs who are within camps in their thousands. I have said before that if you want me to show you a grave, I will show you a grave of a son who was killed during the tribal clashes. The biggest percentage of the IDPs in Ndaragua is people who were involved in the movement for the freedom of this country.

Mr. Deputy Speaker, Sir, one of the reasons as to why we fought for Independence was to avoid a foreigner, using a foreign podium from giving instructions to this country while all of us, including our President, are listening. We have had our difficulties. We have had tribal clashes, mismanagement of our economy, poor

governance, name it, but we fought for Independence because those who were there then believed that we had the ability to resolve our issues amicably.

So, even when we have that anger in ourselves, we should be able to sit and resolve our issues. The moment we allow ourselves to take instructions from foreign podiums, we should remember that, that is exactly what took our forefathers to the forest. We have opened the door for people to do whatever it is that they want to do with us. We are opening ourselves to the scheme of things that are in the global arena. It is important for us as a nation, and as leaders, to appreciate that fact. We have a populace that is very happy to elect us and, at times, they are also very happy to hate us.

Mr. Deputy Speaker, Sir, we now have a Constitution which curtails the excesses that even us as leaders have had in the past. This Constitution guarantees an independent Judiciary. It guarantees that the police will not use excessive force when they have issues they need to sort out for us. We have constitutional mechanisms by which to sort out our issues. Where we are now is not where we were at the beginning of year and two, three or four years ago.

When Mr. Ocampo was reading out the names of suspects yesterday, he said that it was not going to be helpful even if we withdrew from the ICC because we need one year, and that within one year, he would have finished with us. I wish him well. If the six will have been hanged by then, so be it, but we have a responsibility to ensure that our sons do not go through this kind of humiliation in the future.

Mr. Deputy Speaker, Sir, we have no business being leaders in this House if we cannot stand for this nation. Withdrawing from the ICC arrangement has no aspect of cowardice. It is the issue of being sovereign and standing as a people. We are not going to be respected when we go round begging people to come and help us, when we do not even need their help. This is a process which many people before have described as being prone to political abuse. It is a process we initially thought would be free and fair, but what we have seen in the recent days, and what we can also read from those who had seen it before us, is that it is not bound to get us anywhere close to what we were looking for.

The standards in our Constitution are much higher than what we have seen. People all over the world are treating us with a lot of ridicule. We can see many things that hon. Members would want to say.

With those few remarks, I beg to second.

(Question proposed)

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I rise on a point of order to seek your direction and guidance that this Motion before the House is unconstitutional. It breaches the provisions of the Constitution that we have sworn ourselves to uphold and we took the oath as a Parliament to uphold. I would want you to rule that this Motion is unconstitutional and, therefore, we cannot debate it until you give us further directions.

Mr. Deputy Speaker, Sir, the first point I would like to draw to the attention of the House in my submission is Section 2 of the Constitution that deals with the supremacy of this Constitution. I will go straight to subsection (5). It says that the general rules of international law shall form part of the law of Kenya. That is to say that in the hierarchy

of all the laws that we shall be passing and doing, whatever it is that we shall be doing in this country, the Constitution is saying that the general rules of international law will be part of the Constitution. What are these general rules of international law? Any customary international law principle is part of the general international law that this country must be part of.

Let me now turn to customary international law. What is customary international law? This is the law that is binding internationally to states irrespective of whether they have signed treaties or not. These are laws that customarily will bind every state because of the very nature of those kind of laws.

Mr. Deputy Speaker, Sir, I want to quote one Mr. Okono. In his book, he states “customary law is dependent not upon the unanimity of states but only upon the generality of will, and the dissenting minority of states are as much bound by the formulated rules as those who actively participated in its creation. The source of their obligation, those states residing in the moral necessity, which underlines the observance of all laws”. Very few customary international laws have reached the stage where you can call it a customary law of international acceptance. Any person who has read international law will have come across Henry Stinner and Philip Alston in their book entitled “International Human Rights in Context”. In the second edition page 178, they say that the list of these customary international law is not complete because it keeps evolving. But things like genocide, slavery, torture and systematic racial discrimination form part of the international customary law. So I stand to state here that it is wrong for us to try and withdraw from the ICC on these because we are bound under Section 2(5) of the Constitution and therefore we cannot debate this Motion.

Mr. Deputy Speaker, Sir, secondly, subsection---

(Loud consultations)

Mr. Deputy Speaker: Order! Hon. Mungatana is on a point of order.

Mr. Mungatana: Secondly, Mr. Deputy Speaker---

(Loud Consultations)

Mr. Deputy Speaker: Proceed, hon. Mungatana!

Mr. Mungatana: Secondly, Section 2(6) of the Constitution again says that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution, effectively meaning that the day we promulgated our Constitution, all the treaties that we had signed including the Rome Statute formed part and parcel of our Constitution.

Mr. Deputy Speaker, Sir, in view of the fact that the Rome Statute is part of our Constitution, how can we withdraw from substantive law through a Motion in this House? We cannot amend this Constitution through a Motion. We cannot amend the law of this land through a Motion of this nature irrespective of the merits. We must follow the proper procedure for amending the Constitution or withdraws these statutes from Kenya. What is the proper procedure? It is very well provided for under our own law here. I want to quote the International Crimes Law that we passed here. It states in Article 127 that, and I would like to read so that those who are listening can follow:-

“A state party like Kenya may, by written notification addressed to the Secretary-General of the United Nations, withdraw from the statutes. The withdrawal shall take effect one year after the date of receipt of the notification...”

(Mr. Keter consulted loudly)

Mr. Deputy Speaker: Order! Order, hon. Members! Hon. Keter, if you are passionate about this debate and you clearly want to be heard, you are not doing yourself any service because the next time I hear those loud consultations, I will send you out of the House. The only person who can control the hon. Member who is contributing is the Chair. You cannot arrogate yourself the role of the Chair. Proceed, hon. Mungatana!

Mr. Mungatana: I want to state further that unless the notification specifies a later date, subsection (2) says: “a state shall not be discharged by reason of its withdrawal from the obligations arising from this statute while it was a party to the statutes including any financial obligations which may have accrued, its withdrawal shall not effect any co-operation with the court in connection with criminal investigations and proceedings in relation to which the withdrawing state has a duty to co-operate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the court prior to the date on which the withdrawal became effective.

Mr. Deputy Speaker, Sir, there is a law---

(Loud consultations)

Mr. Deputy Speaker: Order! Order!

Mr. Mungatana: Mr. Deputy Speaker, Sir, there is a law in this country; there is a Constitution in this country. We are all of us aware about the rules that we must follow to amend the Constitution. We are all aware about the rules under which we must follow to amend the Constitution. We are all aware about the rules under which we must follow to amend any law that we have signed. I invite you to find that this is, first of, all the wrong procedure. It is contrary to the Constitution and the House cannot be allowed to debate or engage in a debate that is contrary to the Constitution that we swore to uphold.

Mr. Deputy Speaker, Sir, I beg that you rule that this Motion is unconstitutional.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Once more I want to appeal to the Chair. It appears there is a tendency by hon. Members that once a Motion is brought, they want to bring up certain issues. The procedure before is that you raise the matter directly with the Speaker but you do not ambush the Chair. I am concerned with the issue of procedure because it appears that this is now a practice. When a Motion is put in the Order Paper, rather than objecting in writing to the Speaker, we ambush the Chair and then you are forced to defer the Motion. I do not like this Motion but I am interested in the issue of procedure. It is wrong to ambush the Chair. This was done a while ago and it is being done again. I wish to invite the Chair to rule that, in future, if you have an objection on the constitutionality of a Motion, you write to the Speaker in advance so that we do not waste the time of this House. That will enable the Speaker to have time to look at those arguments. On the case which has been put forward, as genuine as it might

appear, the Chair will not be able to make that decision now. You will be forced to defer this Motion.

Mr. Deputy Speaker: Order! Parliament is an outside judicial institution. Indeed, an hon. Member is at liberty at any stage of the Motion to rise up and indicate that the Motion is unconstitutional and it breaches the Standing Orders of the House.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I could not agree with Mr. Mungatana more. I want to beg the Chair to rule that this debate should not proceed for two reasons. The first one is on the question of procedure. If you read the body of this Motion, you will find that it attempts to amend the Constitution of Kenya. Procedurally, if they wanted to amend the Constitution of Kenya, they should have brought a Constitutional (Amendment) Bill using the procedure provided. The second reason is that this Constitution of Kenya was brought and given by the Republic of Kenya, by the people of Kenya and the guiding principle was the doctrine of self determination. That principle of self determination, after we got Independence was stolen away from the people of Kenya when the Independence Constitution was adulterated. That correction has been made and Kenyans have now been given an opportunity for self determination through this book. Now, this Parliament wants to proceed and go against Article 2, Sub-section 1 which provides that no person or state organ can refuse to be bound by this Constitution. The House is a state organ. This Motion wants to ask Parliament to act unlike other state organs. Article 2, Sub-section 3 of the Constitution states that no state organ, Parliament included, are allowed to challenge the validity of this Constitution. Validly this Constitution says that general principles of basic international law are part of our laws. So, to attempt to challenge that is contravening the Constitution of Kenya. Unless we are a Parliament of a state like the one Mr. Kioni has talked about that was quoted by some Americans, whose Curriculum Vitae (CV) he did not bother to tell us, we do not want to be accused by our children that will come, and we have some, that we are dimwits. We would like the proper thing to be done and the proper procedure to be used. The Minister for Justice, National Cohesion and Constitutional Affairs should come here with the Constitutional (Amendment) Bill. The Constitution of Kenya should not be adulterated by a few special people who want to determine things on behalf of the rest of Kenyans.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I want to request from the outset that this matter be handled very carefully. Allow me to ask Mr. Mungatana to give you the International Crimes Act, because you do not seem to have it, so that you can look at it as I make the point that I want to make. If you look at that Act and go all the way to the end, you will find that there is a very unusual situation on page 541. The Rome Statute is the first schedule of the International Crimes Act. Therefore, when in Kenya you refer to the Rome Statute, you are not referring to a document in The Hague. It is the First schedule and it has been made so by Section 2 of the International Crimes Act. That is the first point.

The other point is, and the reason I seek forbearance of the House to approach this matter very carefully, is to refer to Section 3 of our new Constitution. Section 3 of the Sixth Schedule of our Constitution is on page 193. Sections in Schedule Six are referred to as Articles in the main body of the Constitution so that the distinction is clear. Section 3(2) says:

“Sections 30 to 40, 43 to 46, and 48 to 58 of the former Constitution, concerning the Executive and the National Accord and Reconciliation Act, Act No.4 of 2008 shall continue to operate until the first general election held under this Constitution by the provisions of this Constitution concerning the system of election, eligibility for elections and the electoral process shall apply to that election.”

Mr. Deputy Speaker, Sir, with your permission, allow me to refer to the sections that have been extended for us about the powers that this House has. Section 30 of the old Constitution which has been extended by Section 3 of the Sixth Schedule says that the legislative power of the Republic of Kenya shall vest in the Parliament of Kenya and shall consist of the President and the National Assembly.

(Applause)

I am glad because hon. Members are ululating that because it is a fundamental provision. I want hon. Members to keep in mind the observation that the Rome Statute is a schedule to the International Crimes Act. Section 46 says;

“Subject to this Constitution, the legislative power of Parliament shall be exercisable by Bills passed by the National Assembly.”

Mr. Deputy Speaker, Sir, Mr. Mungatana could not be more right that you cannot attempt to address the International Crimes Act by way of a notice of Motion. Above all, you cannot approach it by way of a Motion in which you are colliding and collapsing it into the Rome Statute. This is a shame.

Having said that, allow me now to look at Article 2 so that I can demonstrate the point that I wish to make. I am making this very soberly so that the country can understand what it is. I understand the reasons behind this Motion. I understand the emotions, the fears and the doubts but I have been in this House with you Mr. Deputy Speaker when we asked this country to accept a local judicial mechanism and we were denied.

In fact, the Mover of this Motion was one of the hottest opponents of that process. Therefore, two wrongs do not make a right. Article 2 is on page 13 of the Constitution. I would request the Clerks-at-the-Table to make it available to you. I will merely demonstrate this and then give you some facts, so that you can decide whether I am in order in suggesting that even for stronger reasons, hon. Mungatana, is right.

Mr. Deputy Speaker, Sir, Article 2(6) says:-

“Any Treaty or convention ratified by Kenya, except the Rome Statute, shall form part of the law of Kenya under this Constitution”.

Mr. Deputy Speaker, Sir, in order for this Motion to even attempt to see the daylight, we must find a method of excepting the Rome Statute to Article 2(6), so that we know that Kenya is saying that the Rome Statute is one Treaty that does not apply to the Constitution we gave our country.

Allow me to go back to page 13. If you look at the heading of Article 2, and I want to salute hon. Mungatana, it is “Supremacy of this Constitution”. Let me take you to page 164, so that you can make this decision. It is a very important decision. This is because, for the first time, last night for me was a dark day in my career as a lawyer. I never expected to see Kenyans being subjected to a judicial process outside our boundaries. However, that does not mean that as a lawyer, I must also retreat into

emotions and start challenging a law that is our own law. I want to refer you to page 164, Article 255. I refuse to act in fear. As a Member of Parliament, I refuse to act merely out of emotions. I want to be guided by principles that have brought this country to the greatness, it is. Article 2 is Supremacy of the Constitution. It says that:-

“A proposed amendment to this Constitution shall be enacted in accordance with Articles 256 and 257 and approved in accordance with Clause 2 by a referendum if the amendment relates to any of the following matters:- (a) the supremacy of this Constitution”.

The Rome Statute was placed on the table of the international community on 17th July, 1998. That is when it was placed after negotiations, including by the United States. If you do not rule my order to be out of order, you will give me a chance to contribute at that time and I will talk about America. But for the time being, allow me to tell you that following the laying on the table, Kenya, on 11th August, 1999, signed the Rome Statute. That was during President Moi’s time.

Hon. Members: We can unsign!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, of course, you can unsign. I welcome you to do so and I will show you how to do it correctly, so that you do not drag this country on the ground. This is an important country. It should not be dragged on the soil like a rug. We have quality people. We have quality lawyers and parliamentarians, who can amend this law.

Therefore, following the signing on 11th August, 1999, His Excellency President Kibaki, in his forthrightness in reform, because President Moi’s regime did not ratify this Treaty, on 15th March, 2005, President Kibaki caused this Treaty to be ratified. It was ratified with the signature of hon. Mwakwere, a current Minister in the Government.

May I then give you these statistics and listen to me carefully. By 12th December, on our Jamhuri Day, this Treaty had been signed by 139 countries, including Kenya. Out of the 139 countries, 114 have ratified it.

Hon. Members: So what?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I do not want editorial. You can always answer yourself if you ask, so what? I am afraid, this Motion should never, and I am not criticizing it, have seen your approval because it violates the Constitution.

I so move.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. For reasons other than those articulated by both hon. Mungatana and hon. M. Kilonzo, this Motion is not in order to be before the House, for the simple reason that the matter is currently before the ICC, which is recognized by this House. By virtue of Standing Order No.80, we cannot debate this Motion.

The Minister for Nairobi Metropolitan Development (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. As I sit here, I am shocked that hon. Members can try to mislead this House. This Parliament is supreme. It has powers to make and unmake laws. This Motion is not amending any law. It is a Motion urging the Government to proceed and withdraw from the Rome Statute. This is provided for in Section 127. Let me read it so that it is very clear. It reads that:-

“A State party may, by a written notification addressed to the Secretary-General of the United Nations (UN), withdraw from this Statute”.

The purpose of this Motion is to urge the Government to do exactly that. After we have passed this Motion, the Government, following the resolution of Parliament, will then write to the Secretary-General to withdraw. We have a new Constitution. We have institutions that are capable of sorting out our issues. Why do we want Kenya to be embarrassed? We are not a banana republic. We are not a failed State. We have a new dispensation. We have institutions that are capable of sorting out our issues here.

It is true that two attempts were made to have a local tribunal to sort out these issues. At that time, we thought that Mr. Ocampo is a fair man. We thought that this international court is reasonable, impartial and cannot be politicized. To our regret, we have discovered that the International Criminal Court is more of a kangaroo court than a court in the bush!

(Applause)

(Several hon. Members stood up in their places)

I am on a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order!

The Minister for Nairobi Metropolitan Development (Mr. Githae): So, Mr. Deputy Speaker, Sir, we want to pass this Motion so that the Government can take the necessary action and the Minister concerned in this case is the Minister of State for Provincial Administration and Internal Security. This is what the statute says.

Lastly, when we say that international law is part of our law; it does not mean that it is part of the Constitution. It is an ordinary law like customary law or any other statute. So, let us not be misled that when you say that it is part of international law, it is part of the Constitution. It is not part of our new Constitution.

Mr. Deputy Speaker, Sir, again, if you look at the new Constitution---

Mr. Deputy Speaker: Order! Conclude!

The Minister for Nairobi Metropolitan Development (Mr. Githae): I want to conclude, Mr. Deputy Speaker, Sir. If you look at Article 2 of the new Constitution, you will find that it says:-

“The general rules of international law shall form part of the law of Kenya.”

They may form part of the law of Kenya, but Parliament is supreme. We make and unmake the law. So, this Motion is properly before us. Let us not be misled. Let us look at the merits of the Motion and then we move from there.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Gabbow: On a point of order, Mr. Deputy Speaker, Sir. I am not a lawyer but at least, I can read some chapters from the law books. First, I want to quote the UN Charter 103 that says:-

“Any comprehensive interpretation of international law must take into account the interests and wellbeing of the people of that state.”

(Applause)

Mr. Deputy Speaker, Sir, I also want to read the Vienna Convention of Law of Treaties that says:-

“A party to a treaty may be released from its obligations if there are supervening circumstances that make it impractical for it to implement those obligations.”

(Applause)

Hon. Members: Are you sure that you are not a lawyer?

Mr. Gabbow: Mr. Deputy Speaker, Sir, I can confirm that I am not a lawyer.

Mr. Deputy Speaker, Sir, this is also supported by the ICC Statute, Article 53 (1) (c) that makes it clear that in deciding whether to proceed with an investigation, the prosecutor must consider the interests of the victims and determine whether taking into account the investigations shall serve the interest of justice of those who are supposed to be convicted.

So, I can confirm that it is not in the interest of Kenyan citizens for us to continue being part of that.

Thank you, Mr. Deputy Speaker, Sir.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I will say like my colleague, that I am not a lawyer, but I do understand the spirit of the law.

When we were in this House and clearly said, “Let us not be vague; let us go to The Hague,” with almost a majority, we thought and believed that the ICC will be the voice of the voiceless. Until we have put in a mechanism that will be the voice of the voiceless, we still have not ensured that the ICC is the voice of the voiceless.

(Applause)

The spirit of the law tells me that the reason we are here is because we represent a people and a nation. The people and the nation that you are speaking about, as an hon. Member, I want to speak about and say that they want justice. The system of justice that we decided in this House, as hon. Members--- If we want to set up another system or if we want to withdraw –as the Minister for Justice, National Cohesion and Constitutional Affairs has said in this House – procedures must be followed, if we do not want to raise temperatures and unnecessary emotions. If the hon. Member who has brought this Motion is committed to what he is doing, then the clear procedure is there on how we can withdraw from the ICC. However, we must set up a local mechanism that still gives justice to the people of this country.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I want to clarify to hon. Members who may be having doubt, that it is a Motion which I have brought before the House. If it was in the past, I would even have sought leave of the House to bring a Bill. It is very clear that it is not a Bill which may ensue later on from any one of the 210 hon. Members. Or the Government may choose to take administrative action and withdraw in the same way the American Government did.

Mr. Deputy Speaker, Sir, I have a copy of a letter from the former Secretary-General of the UN, Dr. Kofi Annan acknowledging that he had received the American letter and that he had accepted the withdrawal of the Americans. I would like to read this

letter for the benefit of Mr. M. Kilonzo. I will read the letter from Mr. John Bolton, the American. It says:-

“Dear, Mr. Secretary-General. This is to inform you that, in connection to the Rome Statute of the International Criminal Court adopted on 17th July,1998, the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligation arising from its signature on December, 31st 2000. The United States requests that its intentions not to become a party, as expressed in this letter be reflected in the depository status list relating to the Treaty.”

The letter is signed by Mr. John Bolton.

Mr. Deputy Speaker, Sir, I was just reading and no one has been asked to table the rest. Mine is just to read.

I also want to make it clear that the intention of my Motion is to deal with the International Crimes Act which was passed by this House, and there was an annex to the schedule of the Rome Statute. It had the effect of domesticating that Statute.

Mr. Deputy Speaker, Sir, this House definitely has the power to repeal its Act. I do not understand why lawyers who understand these things want to become wordy and confuse the House and Kenyans in general by referring to some sections of this Constitution.

(Applause)

This is the case and yet even the same thing they are referring to talks about the general rules of international law becoming just ordinary law. It does not become part of the Constitution.

We are not asking for an amendment to the Constitution. It also talks about laws that have been ratified. This means that they can still be unratified – if I have to use that word. The intention of my Motion is simply to state the mood of this House and, by extension, the mood of the country. The Motion is only meant to generate activity within the Government. They may choose to take action or not. However, mine is just a Motion, and we may decide to take further action through a Bill. I beg the hon. Members who are very learned in the procedures of the House not to continue with the confusion. I urge them to come back to light and understand that even the Rome Statute itself under the same Article that has been read, and I do not want to repeat it, allows the withdrawal. I do not understand what the hullabaloo is all about. Let us debate the Motion.

Mr. Bahari: Mr. Deputy Speaker, Sir, I will be very brief because many hon. Members have already covered this issue.

Like Mr. Ruto has said, it appears as if our lawyers keep on taking us back and forth as usual. However, in making that decision, I would like to bring one issue to your attention. That is exactly what Mr. Mungatana quoted about the general rules of the international law as it is prescribed in our Constitution. The same law about the Rome Statute gives a provision for a country to withdraw.

(Applause)

So, the statement that has been made is quite in support of the intentions of the Motion of Mr. Ruto. The intention is to withdraw from the Rome Statute, and this has been provided for in the same Statute.

At the same time, the issue about the security of the country, which has also been raised by Mr. Gabbow, is also a matter for consideration by this Parliament.

With those few remarks, I want to say thank you.

Ms. Karua: Mr. Deputy Speaker, Sir, I want to agree with the Minister for Justice, National Cohesion and Constitutional Affairs that until the Constitution is amended this Motion should not be entertained. I rely on Article 6 of the Constitution. I do not have to contribute on the basis of the popularity of what I say. I contribute from the conviction that I carry. Article 2(6) states:-

“Any treaty or convention ratified by Kenya shall form part of the laws of Kenya under this Constitution”. This means that that convention, or law, that is ratified acquires the force of the Constitution. This is very much the same way the National Accord, which was just a Bill that we passed here, acquired the force of the Constitution; we passed a Constitutional Act here. We make and unmake them. We can unmake this law. The procedure is to seek an amendment of Article 2(5) and (6) of this Constitution, and then we can get to the conclusion we want. Let us be people who can follow the rules that we make. If we want to unmake this law, and that is the mood of the House, let us go through the right procedure.

I want to remind the House that if, indeed, the Hague is seen as a misfortune, we are the authors of our own misfortune. I shouted myself hoarse at the Dispatch Box before this House, pleading that we agree to form a local tribunal. The House was not only hostile to the debate, but the Benches were left empty. I was left saying we are paid to sit in the House, not to walk out, so, that even where you disagree you disagree while seated in the House. Let us remember that. Remember we asked for the Hague, believing it was a dream but it is here.

Mr. Deputy Speaker, Sir, one other thing I want to say is about the due process. The due process is not a process of condemnation. It has two sides. Instead of living with a cloud of an allegation against you, when you are innocent, the due process clears you, and the world knows that you did not do what is alleged. But if you are guilty, you are most likely convicted. Let us respect due process. Even if we withdrew from the Rome Statute, and we can if that is our wish as a nation, we would still have courts of law, unless we are saying that any day one of us is charged in court we then abolish the judicial system. If I am charged in the High Court, we now pass a Bill abolishing the High Court. If I am charged in a magistrate’s court, we abolish the magistrate’s court. We are called upon to act responsibly as members of this House, remembering that we carry the nation today and tomorrow. The foundation we lay today is the foundation that will stand us in good stead tomorrow.

I want to say that even after the ICC does its job, we will have a greater responsibility in this country. We should be starting immediately on the reform of our Judiciary.

Mr. Deputy Speaker: Order, Ms. Karua!

Ms. Karua: I am embellishing the point. May I wrap up?

Mr. Deputy Speaker: Yes, wrap it up.

Ms. Karua: I just want to say that, yes it is unfortunate that we have to open ourselves to the International Criminal Court because, as Parliament and a leadership, we failed to carry out our duties.

In winding up that I want to say that we move with speed to reform our criminal justice system, the Judiciary, the police and the prosecution. We have many other victims who will not be served by the ICC. This time should be utilized reforming those institutions, so that victims can get justice and we, too, when we annoy each other, we are able to get justice.

Mr. Deputy Speaker, Sir, I beg to oppose.

The Minister for Public Health and Sanitation (Mrs. Mugo): On a point of order, Mr. Deputy Speaker, Sir. I just want to comment on what has been said again and again. This House is not abolishing the Rome Statute today. It is an expression of the feeling of this House. It is a Motion and we ask you to rule in favour that this House cannot be intimidated not to express its feelings and ask the Government to do what it takes. This is what America and other governments have done, because they found that the Rome Statute was oppressive to its people. That is all we want to express. We expect our Government to take the responsibility to free the people of Kenya from this oppression. We chose the International Criminal Court (ICC) because we wanted justice and now we have found that it is not where you will find justice. It is something that is used by whoever wants to remove you. They can run to the ICC and cause harm to you. That is why we are asking now for justice.

Mr. Deputy Speaker, Sir, could you, please, make a ruling on this matter?

(Loud consultations)

Mr. Lessonet: On a point of order, Mr. Deputy Speaker, Sir. I stand here shocked about some hon. Members who are imagining that this House, by moving this Motion, is not following the due process.

Mr. Deputy Speaker, Sir, if you read from the fourth line of the Motion, it only says: "This House resolves that the Government takes immediate action to have the International Crimes Act repealed." That is still within the mandate of this House. It is an expression from us to the Executive. We are doing that knowing very well that when Mr. Ocampo made various visits to this country, he did not do any investigations. We are shocked that he can parade six Kenyans, including purporting that even some Kenyans ordered rape.

Mr. Deputy Speaker, Sir, I beg that you rule that we go ahead to debate this Motion and give the direction of this House.

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! Hon. Members, the Chair recognizes that there are weighty issues that have been raised in this Motion. The Chair would want to give a Communication on the same at the earliest possible time. In the event that the Chair is able to put together the Communication adequately, then it would give that Communication today in the afternoon. But in the event that the House Business

Committee in its own wisdom, because I do understand that the House Business Committee is going to have a session today during lunch time, should they decide that---

Hon. Members: No recess! No recess!

Mr. Deputy Speaker: Order! Order! In the event that the House Business Committee decides to sit tomorrow, then the Chair will willfully give the Communication tomorrow, whether in the morning or afternoon. At the earliest opportunity, the Chair would want to dispose of this matter.

For the time being, the Motion is deferred.

(Motion deferred)

ADJOURNMENT

Mr. Deputy Speaker: Order! Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until this afternoon, at 2.30 p.m.

The House rose at 12.30 p.m.