

NATIONAL ASSEMBLY

OFFICIAL REPORT

SPECIAL SITTING

Thursday, 5th September 2013

The House met at 2.30 p.m.

[Hon. Speaker (Mr. Muturi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

INDUCTION WORKSHOP FOR HON. MEMBERS

Hon. Speaker: Hon. Members, this communication is with regard to the upcoming induction workshop for hon. Members of the National Assembly from 8th September 2013 to 12th September 2013.

Hon. Members, following the communication delivered to you on Tuesday, 6th August 2013, just before you proceeded on recess, I wish to confirm that the travel and accommodation arrangements have been made for hon. Members travelling to Diani. The dates for the retreat are effective from 9th to 12th, September 2013. The venue for the retreat has now been confirmed to be at the Leisure Lodge Hotel in Diani Beach, Kwale County, South Coast. The bulk of hon. Members will travel on Sunday, 8th September 2013. All hon. Members are encouraged to stay within the timings proposed in the tickets.

Hon. Members, you will agree with me that because of the numbers, it is not possible to accommodate all your specific requests to travel at particular times. Hon. Members will be accommodated at the Leisure Lodge Hotel, Swahili Beach, Diani Reef Beach and Leopard Beach hotels. The information as to where each of you is accommodated is available at the Main Reception.

Hon. Members, the retreat will be officially opened by His Excellency the President, Hon. Uhuru Kenyatta, CGH, on Monday, 9th September 2013. The retreat participants will include two speakers from other parliaments in the region, Cabinet Secretaries from various ministries, senior Government officials plus various local and international resource persons.

Hon. Members, the workshop will allow participants to, among other things:

(a) audit the progress made since the inauguration of the 11th Parliament;

(b) deliberate on various aspects of the constitutional role of the National Assembly *vis-a-vis* a devolved system of Government, within the context of bicameralism and learn from the experiences of other parliaments;

(c) productively engage with members of the executive branch of Government; and

(d) determine the way forward on the role of the National Assembly with regard to the implementation of the Constitution.

Thank you.

MOTION

WITHDRAWAL FROM ROME STATUTE AND INTERNATIONAL CRIMINAL COURT

Hon. Speaker: The Floor is yours, Leader of Majority Party.

Hon. A.B. Duale: Thank you, hon. Speaker. Under Standing Order 21(1), today we have a Special Sitting of the House to discuss this Motion.

Hon. Speaker, Sir, I beg to move the following Motion:

THAT, aware that the Republic of Kenya promulgated a new Constitution on 27th August 2010 which has fundamental changes in the circumstances relating to the governance of the Republic; aware that the Republic conducted its general election on 4th March 2013, at which the President and Deputy President were lawfully elected in accordance with the Constitution of Kenya; further aware of a resolution of the National Assembly in the Tenth Parliament to repeal the International Crimes Act, and suspend any links, cooperation and assistance to the International Criminal Court, this House resolves to introduce a Bill within the next 30 days to repeal the International Crimes Act (No 16 of 2008), and that the Government urgently undertakes measures to immediately withdraw from the Rome Statute and the International Criminal Court, as adopted by the United Nations Diplomatic Conference of Plenipotentiaries on 17th July 1998.

Hon. Speaker, Sir, if this House agrees with me, with or without amendments, or agrees with my Motion, I believe I am setting a stage to redeem the image of the Republic of Kenya.

(Applause)

I am setting a stage for the defence of the Constitution of Kenya 2010; this will set the stage for the end to the culture of impunity both at home and abroad, because the culture of impunity transcends boundaries. Institutions and organizations outside this country will, and at times can, introduce the culture of impunity. I want the House to listen to me as I give between six and seven good reasons why Kenya---

Hon. Speaker: Hon. Wamalwa, you have an intervention?

Hon. Wakhungu: Thank you, hon. Speaker, Sir. I rise to seek your guidance in line with Standing Order No.29 regarding the Motion which the Leader of the Majority Party is trying to move in this Special Sitting.

Standing Order No.29(1) gives guidance on the special sittings of the House; it states:

“(1) Whenever during a Session the House stands adjourned, whether or not a day has been appointed for the next meeting, the Speaker may, on the request of the Leader of the Majority Party or the Leader of the Minority Party, appoint a day for a special sitting of the House.

(2) The Speaker may allow a request under paragraph (1) if the Speaker is satisfied that the business proposed to be transacted relates to the matters specified under Standing Order 61 (*Definition of Special Motion*) or other urgent and exceptional business as the Speaker may allow”.

When you go to Standing Order No.61--- As you have always said this is a House of rules. The definition of “special Motion” is one-

(a) “that seeks a resolution of the House to approve an appointment or re-appointment in accordance with Part XI (*Approval of Public Appointments*); or

(b) moved pursuant to any of the following Articles of the Constitution-

(i) Article 58 (*extension of state of emergency*);

(ii) Article 102 (*extension of the term of Parliament when Kenya is at war*);

(iii) Article 111 (*amending or veto of a Special Bill passed by the Senate*);

(iv) Article 132 (*declaration of war*);

(v) Article 144 (*removal of President on grounds of incapacity*).

(vi) Article 145 (*impeachment of the President*); and,

(xvii) Article 261 (*enactment of consequential legislation*).”

The Motion at hand has nothing whatsoever to do with all these provisions; so, we need your guidance to understand Standing Order under which this sitting was called. Thank you, hon. Speaker, Sir.

(Applause)

Hon. Speaker: Hon. Kajwang’ you may take the Floor.

Hon. Kajwang: Thank you hon. Speaker, Sir. I wish to salute you, although we have cut short the holiday which I was certainly enjoying with my people in Ruaraka. Just allow me to ventilate more on this and put some flesh on what the hon. Member, hon. Wamalwa, has just said.

There are two issues that are attached to this Motion that will be good for the nation and for Members, if they are made clear. This is the National Assembly; bringing delegates of the nation together means that there is something of national importance that the House and the country are focused upon. This being a debating Chamber and a House of rules, it would be good if in our minds we were clear that the action that we are about to take is constitutional. We should be within our own rules that we have set.

The Speaker is presiding over this Special Sitting today, but looking at the notice that convened this National Assembly, I see that it is signed by the Hon. Deputy Speaker. With tremendous respect, allow me just to look at the law and ask if, therefore, this sitting is constitutional.

Under Article 106, the Speaker is defined by the Constitution of this country and two offices are, therefore, created for the Hon. Speaker and the Deputy Speaker. These offices are complementary but are distinct from each other; the Constitution itself has established those offices. The powers of the two offices are in Article 107. Under other articles, of course, the Speaker presides over the House but in the absence of the Speaker the Deputy Speaker presides.

The Standing Order that my colleague hon. Wamalwa has cited - Standing Order 29 - has a special use by the Speaker in paragraphs (1) and (2). So, it is very clear that the prerogative, the powers and the functions in Standing Order 29(1) are exclusive to the Speaker; it says the Speaker may, on the request of the Leader of the Majority Party or the Leader of the Minority Party call for a special sitting. Standing Order 29(2) says: "The Speaker may allow a request under paragraph (1) if the Speaker is satisfied that the business proposed to be transacted relates to the matters specified under Standing Order 61". Standing Order 29(3) says: "The Speaker shall, by notice in the *Gazette*, notify the Members of the place, date and time appointed for the special sitting of the House".

Seeing that the Deputy Speaker, and not the Speaker, signed the *Gazette Notice* that convened this National Assembly, in my respectful submission, I find that there are articles of the Constitution which do not empower the Deputy Speaker to do that which she sought to do.

These powers are exclusive and are not transferable; they are not delegable. One would suppose that under Standing Order 29(2) "other urgent and exceptional business" is business that the Speaker will allow. Yes, it could be urgent and special but the Speaker must allow it.

(Applause)

Lastly, even granted that the Speaker allowed this, I am thinking about the content of the Motion that my colleague, hon. A.B. Duale is about to present. The content of that Motion must be such as to be in the realm of urgent issues of national importance, which is comparable to issues you see in Standing Order No.33; these are urgent issues of national importance; again, these require the Speaker's concurrence. If we debate this Motion, the question will be what happens to it? In my respectful submission under Standing Order No.33, this is one of those Motions which the House will process without the Question being put.

We would want guidance if this special convening--- I see that there is no precedent. The Motion before us is also not constitutional and I wonder if we, as National Assembly, have any power even to discuss it or anticipate a vote on it as such.

I beg to support my friend, hon. Chris Wamalwa and stress the fact that the Deputy Speaker convened this House apparently without looking at Articles 106 and 107, and hon. Speaker should find that this convening is actually unconstitutional.

I thank you so much.

(Applause)

Hon. Speaker: Hon. Members, I think this is--- Can I allow hon. Members who are walking in to take their seats? I direct that we avoid any excitement. I will allow Members who are walking in to take their seats and not to pick water.

(Laughter)

Hon. Members, I do not think we need to debate this issue. The procedure for the election of the Speaker and the Deputy Speaker is provided for in Article 106 of the Constitution. The threshold for those elections is similar. Therefore, without the slightest doubt it must be clear to all of us, lawyers and non-lawyers, what powers are bestowed on Deputy Speakers.

The Standing Orders, as you all know, have their anchor in the same Constitution. We are, therefore, within the orderly conduct of business in the House. It is in these same Standing Orders where provision is made for special sittings – Standing Order No.29. Indeed, hon. Kajwang almost made a point against his own point. They talk in popular language out in the pitch about scoring against yourself. This is because the business specified in Standing Order No.61, includes “or either urgent and exceptional business as the Speaker may allow.” I emphasize “urgent and exceptional business”. It is not open for the Speaker to consult any other person; rather, it is for the Speaker to allow or disallow. Since I believe that must be very clear and manifest, let me clear the issue about the Deputy Speaker.

In the Standing Orders, the last of the definition sections, which is shown as “(2)”, and, for the avoidance of doubt, in order to settle this matter, in the second last paragraph (c) the convening of this special sitting is provided for. Therefore, we cannot go outside these Standing Orders to look for anything else for guidance. That paragraph states thus: “Reference to the Speaker includes the Deputy Speaker or any other member when presiding over the Assembly pursuant to Article 107 of the Constitution.”

(Applause)

Presiding includes when making the decision whether or not to allow an application either by the Leader of the Majority Party or the Leader of the Minority Party for reconvening the House on a date such as today. It, therefore, means that the Deputy Speaker is, and was in order to make the decision that she made and, indeed, to sign the *Gazette Notice* recalling the House. We cannot, therefore, begin to discuss the question as to the validity or otherwise of the decision made by the Deputy Speaker to recall the House. Let us all spend time and ventilate on the Motion. Let us make our points and in the usual way make a decision.

Let me also make it clear that this is not a special Motion. This is an ordinary Motion. It is a sitting which is special in terms of our own Standing Orders. I, therefore, rule that it is in order that the Leader of the Majority Party prosecutes the Motion and

then the House will debate it and make a decision one way or the other in the normal way decisions are made regarding any question that is before the House.

Thank you.

Hon. Midiwo: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Not anything that purports to seek any clarification from me. I am not going to make any clarification.

Hon. Midiwo: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Hon. Midiwo!

Hon. Midiwo: Thank you, hon. Speaker. We have not seen you for so long. We want to plead with you to relax. This is because this is a momentous occasion. It has never, probably, happened in the history of this country and particularly under this new Constitution.

Hon. Speaker, I agree with you that the Standing Orders allow all that you have pronounced. However, for the purpose of record I would like to hear if this sitting satisfies you as an exceptional or urgent sitting. I am talking about the contents of this Motion. We want to know that for the purpose of record.

Hon. Speaker: Hon. Midiwo, the decision as to whether it was urgent and exceptional was made by the Deputy Speaker. It, therefore, would not be open to me to reopen--- She considered the request presented to her by the Leader of the Majority Party in terms of Standing Order No.29. Therefore, that has already been settled; that is, the reconvening.

Hon. Onyonka: Hon. Speaker, I would like for the sake of clarity for some of us who may not be lawyers, and without debating the matter that the Leader of the Majority Party would want to table before the House--- It is important that you help some of us and, indeed, Kenyans understand what we are doing here today.

If you look at Chapter One of the Constitution, it discusses the sovereignty of the people of Kenya and the Constitution of this country. Without discussing the sovereignty of the people of Kenya, which is clear in the Constitution, Article 2(5) discusses the general rules of international law which shall form part of the law of Kenya. Under Article 2(6) the Constitution states that Kenya shall adopt all the treaties and conventions which have been ratified, and which shall form part of this Constitution.

The matter we are discussing is about the ICC, whose statute we have ratified and domesticated. The question I am asking is this: Are we discussing this matter without necessarily looking at its constitutionality, or are we discussing it because it is irrelevant for us to link it to the fact that all the international treaties that the Kenya Government has signed before are part and parcel of the new Constitution?

Hon. Speaker, Sir, finally, I would want you to give advice as to whether this House has a right to debate this matter and vote on it or whether, indeed, this matter is one that we can tackle as friends, as many of us in this House would wish.

Hon. Speaker: Hon. Members, the matter is simple: The Motion is before the House, having been approved for debate. The matter about Article 2(5)(6) and the others, indeed, is not before us. More importantly, and for avoidance of doubt, let us remind ourselves of Article 1 of the Constitution about sovereignty and how the people of Kenya exercise that sovereignty. That way then you will understand the place of the National Assembly with regard to the exercise of sovereignty by the people of Kenya as amplified

by Article 95(1). Indeed, sovereignty is with the people and it is exercised directly when they democratically elect their representatives at the national level to the Senate and the National Assembly; more importantly, they give the National Assembly and the Senate, at the national level, the authority to do all that is within the Constitution, including making law. Law making includes repealing of laws. It is does not just mean that this House only sits here to make laws; it can even unmake laws. I am sure hon. Onyonka is alive to the fact that there are many laws that have been unmade or repealed by this House, not least, of course, the very exciting *Gazette Notice* that was purported to have been made by the Salaries and Remuneration Commission (SRC) in March 2013. You unmade it as a House. Therefore, you are exercising that delegated authority by the people and also doing it as per Article 95(1) of the Constitution, representing the people in the constituencies and in other special interests. Therefore, for the time being, let us deal with the Motion and let everybody express themselves. I would only want to urge that we do not become emotional. Hon. Midiwo said that we should not be emotional and I agree that we should not be emotional. Let us address the Motion as framed. Those who are for and against it are, indeed, exercising their democratic rights.

Hon. A.B. Duale: Hon. Speaker, Sir, in my contribution I will tell the country and this House why this Motion is urgent, why it was important to recall the House and why hon. Members should leave their constituencies and other matters that they have been dealing with to come and discuss this Motion.

If you allow me, on 17th July 1998 diplomats from across the world assembled in Rome and this was the genesis of the Rome Statute. Kenya was very ably represented by the Senator of Busia who was the leader of the delegation. Kenya signed the Rome Statute and ratified it in 2005. In the minutes of that meeting of the Kenyan delegation, a man I want to mention today, the former Permanent Secretary for Foreign Affairs, Mr. Thuita Mwangi, many years before in that meeting raised the red flag. He said: "I am a junior officer working at the Kenya office at the UN Headquarters in New York, but I foresee a problem in us signing this treaty." That is now water under the bridge. It is upon this House under Article 1 of the Constitution that hon. Onyonka, my good friend, has cited that the sovereign power under this Constitution is delegated to the following State organs---

(Hon. Linturi stood up in his place)

Hon. Speaker: Hon. Linturi, I know this is a Special Sitting, but let me allow---

Hon. A.B. Duale: Hon. Speaker, Sir, he is saying that he has no card but he can use the Dispatch Box.

Hon. Linturi: On a point of order, hon. Speaker, Sir. Thank you for giving me this opportunity to raise a point of order. I will seek your indulgence and the forgiveness of the House because I came late, just in case I am taking the House back to a matter that was concluded in my absence. I have heard the Leader of the Majority Party try to give us a chronology of how this matter was domesticated by the country. The issue I want clarified is whether the Motion has properly been moved so that the Leader of the Majority Party can get into it and make us understand what is before us. I came late.

Hon. Speaker: He is the Mover; he is moving the Motion.

Hon. Linturi: Okay.

Hon. A.B. Duale: Hon. Speaker, Sir, I am a seasoned Member of this House and I know the procedures. I am moving the Motion.

So, Article 1 of the Constitution gives this House and the leadership the mandate, functions of delegation and the sovereign power. That again forms the basis of my Motion; the matter before us is of great national importance; it touches on the sovereignty of our nation. When the framers of the Rome Statute met in Rome, they created the Rome Statute, and even put in the article under which when a nation is not happy with the Statute they can pull out.

One of the reasons why I feel that the Motion before the House is important is because the sovereignty of Kenya - it has a functional Judiciary and a vibrant democracy - is one of the best emerging democracies in Africa. The framers of the Rome Statute foresaw the scenario under which the International Criminal Court (ICC) can come in. I want to ask a question: Kenya is not a failed state. If the solution of 2007/2008 post-election problem is what the framers of the Rome Statute anticipated, is the Constitution of Kenya 2010 in vain? Is the preamble of the Constitution in vain? We, the people of Kenya, must say "no" to any infringement of our Constitution.

Hon. Bosire: On a point of order, hon. Deputy Speaker.

Hon. Speaker: What is it, hon. Bosire?

Hon. Bosire: Hon. Speaker, Kenya, being an integral part of the global community, and given the way the Motion is worded, can we get a clarification from the Leader of the Majority Party on the motive of this Special Sitting and the Motion?

Hon. Speaker: Hon. Bosire, that is not a point of order. Please, sit down. If you do not agree with what he is saying, you will be at liberty to say so at an appropriate time. Let us give the Mover the opportunity to initiate debate on the matter.

Hon. A.B. Duale: Hon. Speaker, what is before the House is a Motion. Once a Motion is moved, seconded and the Question is proposed, it is for hon. Members to debate its merits and demerits and wait for the Question to be put. The question that the hon. Member has asked is well provided for in the Constitution. The Constitution of Kenya, 2010, is supreme to anything else.

Hon. Speaker, I have asked a number of questions. Is Kenya a failed state? Is the Kenyan situation of 2007/2008 what the Rome Statute anticipated? Was the promulgation of the Constitution of Kenya, 2010 in vain? Is the rallying call of Kenyans, as captured in the preamble of the Constitution, in vain? We must say "no" to real or imagined infringement of the rights of the citizens of Kenya, as enshrined in the Bill of Rights.

Kenya is among the 122 signatories to the Rome Statute. There were great nations which signed the Rome Statute, but which barely a year later withdrew their membership. The respective governments of those countries gave very good reasons for doing so. There are nations which are not signatories to the Rome Statute. Those nations have not ratified the Rome Statute for some good reasons. I want to pick on very few countries. Eighty per cent of the world's population does not subscribe to the ICC and the Rome Statute. Great and populous nations like the United States of America (USA), China, Russia, India, Pakistan, Indonesia, Israel and Japan are not members of the ICC.

So, we would be better off withdrawing from the ICC and joining more stable and developed democracies. We will be at par with the USA. We will join three of the key

members of the United Nations Security Council. Today, I want to take the route that former USA President Clinton and George Bush Junior took in defence of the American citizens. As a Member of Parliament and leader of a coalition, I would be morally right if I guided Kenyan citizens' rights through that route. The USA ambassador to the United Nations addressed the UN Security Council to explain why George Bush Junior decided to withdraw from the Rome Statute.

Hon. Speaker, with your permission, I would like to read out parts of that speech because the matter we are discussing is of great national importance. For the first time in the history of the world, a president and a deputy president, who were elected in a free, fair and transparent election---

(Loud consultations)

Hon. A.B. Duale: Hon. Speaker, protect me. Everybody will have his say.

Hon. Speaker: Order! Order!

Hon. A.B. Duale: Hon. Speaker, for the first time in the history of the world, a president and deputy president who were elected in a free, fair and transparent election, and whose election was subsequently upheld by the Supreme Court of the land, following a petition---

(Several hon. Members stood up in their places)

Hon. Speaker: Order! Order! Hon. Members, do not pretend to be rising on points of order if only you feel aggrieved by a statement made by somebody contributing from the Floor. I will not allow such a thing to happen, so that everybody can have a chance to speak. You will have an opportunity. I want us to even make a decision as to how long each contributor should speak, so that we can have as many of you as possible expressing themselves. So, simply because you feel "knifed" by some statement is no reason to claim that you are rising on a point of order.

Proceed, hon. A.B. Duale.

Hon. A.B. Duale: Hon. Speaker, our resolve, as a Parliament, to start the process of withdrawing from the Rome Statute is based on the two Kenyan cases that are before the ICC. I will go back to my statement.

For the first time since the world started – I do not know when the world started – a president and a deputy president who were elected in a free, fair and transparent election, and whose election was subsequently upheld by the Supreme Court of the land--

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(Loud consultations)

Hon. Speaker: Order! Order, hon. Members! Hon. Midiwo, can you sit down! Hon. Nyokabi, can you sit down, please?

Hon. Midiwo, obviously, you are an experienced Member of this House. It does not show you in good light before the county and our children, including yours, for you to be seen shouting when you know the rules of the House. I want to make it clear that

shouting across the isles is not part of the rules of this House. It is disorderly conduct. I am going to enforce order!

(Loud consultations)

Order! Order! Hon. Members, you cannot engage in a shouting match in this House. This is a House of order. Therefore, if you feel that you are not interested in listening to what another hon. Member is saying, you are at liberty to withdraw from the Chamber, so that the person speaking can have a chance to be heard in silence. We must, really, get out of this conduct. It is part of the reason as to why we are going to conduct an induction workshop for you. I know that you have sufficiently interacted with the Standing Orders of this House by now. Even those who may have forgotten the rules can have a chance to refresh their minds. So, let us be calm. I will give a chance to as many of you as possible to say what you wish to say regarding the Motion. Please, let us have decorum.

Hon. A.B. Duale: Hon. Speaker, I will rephrase my statement and say that for the first in the history of the world, a president and a deputy president of an emerging democracy with a new constitution are being arraigned in court in a foreign land. This matter is so grave that the nation must address it.

Hon. Speaker, it took me time to study the ICC and the Rome Statute. It took me time to find out why some countries refused to join the ICC as others joined. The Americans had a very good reason. That is the reason as to why I feel that Kenya must follow suit. If you allow me, I would like to read out part of what a former USA ambassador to the UN Security Council said about the ICC. The Americans were very contradictory, but today they are ardent supporters of the Rome Statute. He said the following:

“The President of the United States of America is determined to protect our citizens – soldiers and civilians, peacekeepers and officials – from the ICC. Should the ICC eventually seek to detain any American, the United States of America could regard this as illegitimate and it could have serious consequences. No nation should underestimate our commitment to protect our citizens. We will not permit Americans to be jailed because judges of the ICC are chosen without the participation of those over whom they claim jurisdiction.”

Hon. Speaker, George Bush Junior is the man who saved the American people. As a country, we should also protect our people. We will protect our defence forces and we will protect our business. I want to speak from the Floor of the House, the way this ambassador spoke at the United Nations; no nation in the world can go through what our two leaders are going through. I want to tell the whole nation that tomorrow it can be me or hon. Jakoyo Midiwo because we have a long history in politics. It is not about impunity; it is about coaching witnesses. It is a court that has been politically motivated.

To finish on that, former President Bill Clinton, a man who did a lot for Africa when he was the USA president, signed the Rome Statute in 2000. In 2002, George Bush (Junior) came to power. Bill Clinton wrote an advisory in his handing over notes to George Bush. He wrote his opinion on the status of the US membership of the ICC. Bill Clinton told Bush to withdraw America from the Rome Statute and he gave five reasons. One fundamental reason was that the court can be manipulated politically. This court is

not free from political interference. I want to stand here to say that the Kenyan cases are a classical example of the fear Bill Clinton had on behalf of his people. What we are doing now might save the whole of Africa and the world. We might end up having a more reformed international criminal court.

What the Chinese, Indian and Russian foreign ministers said is in the website. When the Americans withdrew from the Rome Statute, they went further and formed the American Service Members' Protection Act. Look at what is happening; on 17th July 1998 those who clamoured for the formation of the court were mainly from the civil society. They were international non-governmental organizations led by Oxfam and United Nations International Children's Emergency Fund (UNICEF). Today, the Kenyan cases are interfered with by international and local civil societies. Why do I say so? This case was created to block particular leaders from ascending to power in the 2013 General Election. That is why the same civil society went to court on the integrity question and Kenyan courts said William Ruto and Uhuru Kenyatta were free to vie. The same civil society went on and campaigned against the Jubilee leadership. The same civil society was there to fight the validity of the election of our leaders. I want to confirm that after losing in the Kenyan judicial system, they won in the ICC.

What we have is a war between civil society, which is not a signatory to the Rome Statute, and a country called Kenya, which is a signatory. The Kenya Attorney General has no voice at the ICC. The foreign Affairs Minister has no voice at the ICC though he is signatory to the Rome Statute, but a civil society funded by the ICC has their way in deciding whether the case should come to this.

Hon. Speaker, Sir, the African Heads of State and Government in their 21st General Assembly at Addis Ababa – 50 countries with diverse cultural and political ideologies - agreed in principle that the ICC framework is faulty, and the ICC jurisdiction is faulty. They said that the Kenyan case is a classical example. In the morning we woke up and read in the newspapers that an innocent Kenyan in the Netherlands is crying because he is being forced to testify falsely that he was at the Deputy President's residence when he was not. Kenyan cases have local project owners. The owners are in the streets. They are in the leadership. The ICC Kenyan cases have a political angle. The genesis of this was the Waki Report. The Waki Report was---

Hon. Shimbwa: On a point of information, hon. Speaker, Sir.

Hon. Speaker: You are claiming to rise on a point of order?

Hon. Shimbwa: Hon. Speaker, Sir, I have actually followed hon. A.B. Duale's contribution. I want to know whether it is in order for our "ambassador" in the United Nations to table our statement on the ICC, just as the President of America did.

Hon. Speaker: The Member for Jomvu, you have made your point.

Hon. Shimbwa: Is it in order for our "ambassador" in the United Nations to remove Kenya from ICC on the Floor, just as Bush did?

Hon. A.B. Duale: I am not aspiring to become a diplomat. I do not want to go to the UN. I am performing my duty. The work of a diplomat is cut out and the work for Members of Parliament is cut out.

Hon. Speaker, Sir, at the height of the post-election violence, the Waki Commission was formed. Section 7 of the Commissions of Inquiry Act says that the report of any commission must be handed over to the president of the country. In 2008,

Justice Waki, a man I have a lot of respect for, a judge with credentials, decided to bypass President Mwai Kibaki, and my good old mentor, the then Right Hon. Prime Minister, a man I respect a lot. That report was based on Kenyan facts. A petition must be brought to this House at a later date to compel President Uhuru Kenyatta to receive that report plus the envelope. We must get the envelope. The envelope had 12 or 20 names. Justice Waki used taxpayers' money. The Kenyan people must get value for their money. That Commission's outcome went to one Kofi Annan. The envelope went to a man who has no constitutional jurisdiction. He took the envelope, looked at it and balanced it. He removed his friends' names and of all those he wanted to be leaders. He said---

Hon. Onyonka: On a point of order, hon. Speaker, Sir.

Hon. Speaker: What is out of order now, hon. Onyonka?

Hon. Onyonka: Hon. Speaker, Sir, if hon. A.B. Duale is aware, the Coalition Government was formed after an agreed arrangement which was legally binding and was brought to this House. So, it will be unfair---

Hon. Speaker: Hon. Onyonka, you are giving information which is within the public domain.

Hon. Onyonka: Exactly! So, the point I am making is that the argument my friend, hon. A.B. Duale is making that the report could have been doctored or whatever it was, was overtaken by events.

(Loud consultations)

Hon. A.B. Duale: Hon. Speaker, I want to remind my very good friend, the former Deputy Minister that today, before this House, is the Truth, Justice and Reconciliation Commission (TJRC) Report. So, there is no crime in the history of Kenya that this House cannot be seized of. I want to assure this House that the petition compelling President Uhuru Kenyatta to do that will come to this House because Kenyans want to know the value of their money. We must know what was contained in the famous envelope. Kofi Annan had no constitutional jurisdiction! In my opinion, what Kofi Annan did was a constitutional coup. He usurped the powers of the then President and the Prime Minister in the Grand Coalition.

Hon. Speaker, Sir, I can speak more, but finally, I want to say to the nation that the founders of the International Criminal Court--- I looked at the budget of the ICC in 2010 and 2011 and it had 97 million Euros. Only three European countries financed 75 per cent of that budget and that is; United Kingdom, Germany and France.

Hon. Speaker, Sir, look at the cases that have been determined since the Rome Statute was established. Look at the cases which have come before it, all of them are African cases.

Hon. Members: Yes!

Hon. A.B. Duale: Talk of Congo DRC, Congo Brazzaville and the case of Ali Bashir. Finally, I want to ask: What is the role of the Africa Centre for Open Governance (AFRICOG) in the ICC case? The NGO board submitted their accounts to the National Assembly. The ICC funds AFRICOG. Gladys Otieno appears before the ICC judges; who does she represent? The Kenyan Case---

In conclusion, I want to ask this House to develop a bi-partisan approach and rise to the occasion the way Bill Clinton and George Bush rose to the occasion to protect their citizen. Let us protect our citizens and our leaders. Let us defend the sovereignty of the nation of Kenya. Let us defend the Constitution. We will pray and support morally our two leaders and there will be no vacuum.

I beg to move and ask the very eloquent hon. Member, Kabando wa Kabando to second my Motion.

Hon. wa Kabando: Thank you, hon. Speaker, Sir. I rise to second this Motion which comes at a very momentous time when we are all required, irrespective of our positioning in politics and despite the political divide that exists in this country as a result of 2013 elections, to capture a responsibility that will put us an indelible mark as a House that debates an agenda, not for them and not even for those that we may assume have supremacy on any side of the political divide.

Hon. Speaker, Sir, this is a necessary step for us to take as Africans and Kenyans; the legal details about the inefficiencies of ICC; the details about the isolation of Africa by the ICC; the facts and truths about those countries that insist daily that Kenya must comply with ICC, but are very loudly stating that their own citizen are exempt from ICC jurisdiction.

Hon. Speaker, Sir, we as the 11th Parliament must be seized of the fact of the situation of 2008. One evening the House assembled here, during the 10th Parliament, and agreed to unanimously resolve the problem that was national. Across the political spectrum people were embraced with the national crisis and that brought about reconciliation, resolution on disputes and despite what we may say, irrespective of our historical analysis, the fact remains we brought the country together.

Hon. Speaker, in fact, over 18 years after Nelson Mandela was released from prison, the nation that claims to be the home of democracy, that now crosses every border with its global supposed repetition of a super power had “Retain Nelson Mandela on the Terrorist List.” The whole leadership of the African National Congress (ANC) led by the 1993 Winner of the Nobel Peace Prize; Nelson Mandela remained on the USA State Department as terrorists. It took a very embarrassing and humiliating submission in humility by the then USA Secretary of State, Madam Rice to say: “This is undeserved”. That was in 2008.

Hon. Speaker, Sir, Kenya is a very young nation. We are only celebrating our jubilee. About 60 years ago, one Macharia from a village in Gatundu was bribed by the colonialists in order to fabricate evidence against a leader of the African people, once claimed to be the second god of Kenya by the late Oginga Odinga. That was Jomo Kenyatta. Only this year, the United Kingdom, Britain, is now downgrading our own liberation struggle, symbolized by the *Mau Mau*, from their banned groups and they are purporting to compensate the *Mau Mau* veterans.

Hon. Speaker, in 2013, perhaps, because of our political positioning and our own prejudices, we want to deny the truth. We want to feign that we do not know what we know. That America, China and even that very great democracy that is not so well celebrated, although there is a greater celebration than the European nations; that is India, have not subjected themselves to what we are subjecting ourselves to. We accept as a nation that the concessions we made because of the Post Election Violence (PEV) were

necessary that time and everybody was looking for an escape route to bring the nation together. It does not befit anybody to stand and claim that we do not recognize that there is a Leader of Minority Party, and that he was elected democratically through his party machinery.

Therefore, we are saying that it does not help anybody to claim that His Excellency Uhuru Kenyatta and his Deputy William Ruto were not elected transparently, openly, democratically and Kenya is emerging---

Hon. Member: He was not!

Hon. wa Kabando: Hon. Speaker, if we do so, then we are also saying that we do not respect our Constitution because it is the same Constitution that created the Supreme Court.

Hon. Speaker, from 25th May 2013 to 27th May 2013 the African Union, an institution that we respect and, indeed, we even have an institution through this Parliament called the Pan African Parliament which is connected to the African Union, passed a very noble resolution and they regretted. They said that they were stressed and they expressed deep concern about the matter of ICC trial facing President Uhuru Kenyatta and his Deputy.

We have agreed that we want to be a very important bloc in East Africa. As a matter of fact, it is His Excellency Yoweri Kaguta Museveni who submitted that Motion and the resolution was adopted unanimously. Unless we are telling people that the *wazungus* are very important and we are not--- When Jomo Kenyatta said that this country shall not--- If we are saying that an African Union resolution does not befit---

Hon. Member: It is not about the *wazungus*!

Hon. Speaker: Those of you making comments out there, beware of the fact that now I will consider it gross misconduct. You will have your chance. That is the way the House operates.

Hon. wa Kabando: Hon. Speaker, I do not want to go the direction of saying that one of the people heckling me admitted on national television on a Sunday evening that senior USA Senators said that the ICC is a transgression. It is a trespassing body to the USA sovereignty. You will get the expression to the effect that if a matter is not approved or congressionally authorized then that matter is not legitimate to the American mandate.

Therefore, we sit as a House and we seek to redeem the Kenyan image. We seek to reiterate that which was done in 2010, 2011 and 2012. A Motion was finally brought by one hon. Isaac Rutto which was passed by the House seeking Kenya to withdraw from the Rome Statute and now hon. Aden Duale, the Leader of the Majority Party is bringing a similar Motion because a flaw was caused and because the institution that had the responsibility to actually escalate and enhance that matter for resolution did not act. We are, therefore, only doing that which the 10th Parliament initiated. Our responsibility is to pursue that matter to conclusion.

The national interests, Americans say, are neither preserved nor advanced by becoming a state party to the Rome Statute on the International Criminal Court. That is what the senate says. It also sought to tell Obama that he should declare that the USA does not intend to ratify the Rome Statute and that the USA does not presently consider itself to be a signatory of the treaty whatsoever. It is very emphatic that they do not and they do not intend. What should we say in this country?

Just like the senators in America are commending President Bush for a very commendable act of the advisory that he gave to Clinton, what we are doing here is to give advice and seek legislation in order to affirm this matter and seek resolution.

If you read the Kenya Constitution, the parameters and standards set for the Court of Appeal, the Supreme Court, the High Court and even the process that is ongoing in various courts on election petitions, it is agreeable that the Kenyan Judiciary is being reinvented, fortified and renewed. If the Kenyan Judiciary does not rely on anonymous evidence by the prosecution of any case, but the ICC is relying on anonymous evidence, what does that mean? It means that the ICC's jurisdiction and its own status are subliminal and lower than the standards that we have set for our own Judiciary. We cannot be doing something wrong by saying that Kenyan Africans are more brilliant, innovative, creative and courageous than those minority whites that sat somewhere to concoct the ICC.

I think it is time that now that we talk of national rebirth and African renaissance we also talk of the African pride. That is why we are members of the Pan African Parliament. I think we should have courage. In 2008, I received a letter from one Ranneberger saying that I shall not step on the land of the USA where I had lived for three years. I publicly came out at the outskirts of Parliament here---

Hon. Members: Now we know. Now we understand!

Hon. wa Kabando: The people who were heckling somewhere in Kisii were hired. In fact, he said that he was apologizing on their behalf.

(Laughter)

(Hon. Onyonka stood up in his place)

I have not mentioned any name, hon. Speaker.

Hon. Speaker: You are out of order, hon. Onyonka. Resume your seat. There is no point of order.

Proceed, hon. Kabando!

Hon. wa Kabando: Hon. Speaker, I have not mentioned anybody, but the guilty are afraid.

If you go through the deliberations in the USA Senate with the concurrence of the Congress which is the House of Representatives and in this 11th Parliament, the National Assembly is the House of Representatives; you will get terminologies and reference to---

(Loud consultations)

Hon. Speaker, the booing can continue from the same corner and which can depict the integrity of whomever.

Hon. Speaker, I rose to speak here at Parliament and I dismissed Maj.Gen. Nkaissery, on the other side of the divide. I can remember that because I discussed the same issue with him that same evening. When I rose to dismiss Ranneberger, I can tell you nothing happened. Within 11 days my own passport was stamped with a visa to go to my former university, the State University of New York, to receive that which I deserved.

And I can tell you that today and tomorrow, you Africans, you Members of the 11th Parliament must remember this: Do not be captives of emotion, prejudice, bias, or suffer from any defeat. Seize the moment and this is your time. Forget about the political differences---

Hon. Speaker, as I finish, with the new judiciary and a new police service and realizing that a lot of information that has been taken to the ICC is through individuals that we know very well, that is, the busybodies in town which have absolutely zero mandate on representation and legislation, these hon. Members assembled here today, on this special session, are people democratically elected and fairly nominated to represent the sovereign will of the Republic of Kenya. However, AFRICOG which campaigned against the current presidency and which went to court to petition against the current presidency and which had gone before elections to try to prevent the current presidency from seeking office, are a symbolization of the great shame that ICC represents in this country.

I tell you my colleagues that AFRICOG is not financed through the sweat and labour of the Kenyan people. It is an extraction of donor/European money, not Indian or Chinese. It is from neocolonial legacies that want to continue dominating and controlling you. It is incumbent upon all of us to say that for once on this special evening, I want to dance to the tune of patriotic African songs through supporting the Motion by hon. Duale, A.B. not because you belong to the side of the coalition but because this is the most sovereign thing to do.

Hon. Speaker, Sir, they jailed Jomo Kenyatta. They jailed Nelson Mandela. I am reluctant but my conscience pushes me to say that even under 20 and newlywed lady, former First Lady Mama Ngina Kenyatta was put at the Kamiti Maximum Prison. In the 21st Century, in 2013, 23 seek to tell the *wazungus* that when Kenyatta said: “*Hatutalamba matako ya wazungu,*” he was not wrong.

(Laughter)

When we rise to speak this evening, we must ask ourselves whether at over 60 years of age, Jomo Kenyatta was subjected to colonial prison. Nelson Mandela whom we celebrate as an icon of African pride was jailed in Robben Island and subjected to hard labour. Whatever happened to individuals, this time I am talking about heads of state and heads of government. I think it will be very wrong---

Hon. Speaker: Your time is up!

Hon. wa Kabando: I beseech my colleagues to rise to the occasion; seize the moment to humiliate neocolonialists and call to the cesspool of history, the brouhaha and shame of European domination.

With those remarks, I beg to second.

(Question proposed)

Hon. Speaker: Hon. Members, I know some of you do not like hearing this but look at your own Standing Orders in terms of recognition, it is the Leader of the Minority

Party having expressed the desire to speak. The rest of you know you are his subjects. He takes precedence over all of you to the left of hon. Speaker.

(Laughter)

Hon. Nyenze: Tell them, hon. Speaker, Sir! Thank you very much. I just want to take this opportunity to say that we, as Kenyans, none of us and more so the Members of the National Assembly would wish any Kenyan to suffer in the hands or in a judicial system which is far away from home. For those who have cases there, the three leaders, we really feel it, as hon. Members. Politics aside, we feel for them but what I am about to say is let us not contemplate or even think about moving away from the Rome Statute.

(Applause)

The reasons I want to give for this are: We would be the first country in the world to pull out of the Rome Statute.

Hon. Members: America!

Hon. Nyenze: I will explain that!

Hon. Speaker, Sir, there are six countries that never ratified the Rome Statute - the USA, China, India, Pakistan, Israel and Russia – out of 130 countries of the world who have ratified and signed this Rome Statute. All these six countries have a unique history for not signing the Rome Statute. The first one is that the USA is the only superpower in the world. It runs a lot of military activities all over the world and they have a good judicial system where they try their people who commit crimes. If you look at the other countries, one by one, they have a unique history. Kenya would be the first developing poor country to pull out of the Rome Statute.

I would want to say and with due respect to my colleagues from the Jubilee side who want us to pull out of the---

Hon. Ichung'wah: On a point of order, hon. Speaker, Sir. I just want to enquire whether the Leader of the Minority Party, a man I have tremendous respect for, is in order to mislead the House that the USA never commits crime? Those were his words! Is he not insinuating that then we, as a nation, have committed crimes and that is why we seek to leave the Rome Statute? He further said that the USA is the only superpower in the world and I dare tell him that if the USA is a superpower in the world, Kenya is a superpower in Africa.

Hon. Speaker: The Leader of the Minority Party, you are at liberty to hold whatever views regarding America and yourselves.

Hon. Nyenze: Hon. Speaker, Sir, since I respect the Member, I will ignore answering him. I just want us to be sober when we are dealing with this issue because we will be seen in bad light in the international community. I thought about this very seriously and one thing is that the cases that are ongoing will not be affected by the decision that the National Assembly takes today. So, if this is the case, these cases are just about to start, what impression or message are we sending to the ICC court at this point when our cases are about to start? Even when we want to help, the timing was poor to bring this Motion. That is why I oppose it because it will bring bad consequences. If

we pursue it, we will be seen by the international community in bad light and even by the court. Our leaders have competent lawyers and the best thing is to fight it in court but it is not good for the country to be seen to be hostile to the court. Otherwise, my take on this is, let us not try, even at this time to contemplate moving away from the Rome Statute because it will not be good for Kenya. We signed and agreed. This ICC court's main objective is to fight impunity and to fight for the rights of all people irrespective of their status.

The other thing is that all of us signed without being pushed into it. I have said again and again that the timing of this Motion is bad and it will be seen like we are withdrawing because we are annoyed because they are trying our leaders. So that was the first mistake. When the Deputy Speaker recalled the House, I thought the most pressing issue was the VAT and insecurity in the country. We agreed to zero-rate or remove VAT on most of the basic commodities that are used by Kenyans only to realise later that the ordinary Kenyans cannot survive any longer. Having been called to this Special Sitting - and a ruling has been made that this has been done in the right way - I just want to remind Kenyans that CORD leaders travelled all over the world and pleaded with world leaders to bring the ICC cases back to Kenya for our people to be tried locally. It is on record that the former Prime Minister and the immediate former President had to call upon the international community to give us time to agree to set up a local mechanism of trying the suspects locally. However, the 10th Parliament, in which many hon. Members sat, failed this country. The rallying call of the majority of hon. Members then was "Let us not be vague, let us go to The Hague." That is why we are now in this quagmire.

As we all know, the ICC only takes up a matter when the criminal and judicial systems of a country have failed. Kenya's justice and judicial systems have not failed. The problem is that we did not act at the right time. That is why the ICC came in. It is good to consult widely, as you plan, to void shooting yourself in the foot. Instead of this Motion achieving the desired objective of the Mover and the other people who conceived the idea, it will worsen matters. Kenya will be seen as a pariah state. We will be seen as people who are reactionary and people who want to have their way. I have sat in this House for quite some time. So, let me share with hon. Members some little experience.

We do not want the Jubilee Coalition to take the CORD Coalition for granted on the bases of tyranny of numbers. We have asked that when you plan something, you consult us. Had you engaged us on this matter, we could have discussed and come up with a better solution. You want us to support the idea and go your way despite the fact that you never consulted us as you planned.

Hon. Speaker, it may not be pleasant to say so but it is a fact that the last general election results show that this country is divided right in the middle. Jubilee and CORD have equal strengths. Jubilee may have more Members of Parliament, but CORD has more county governments, and specifically 24 out of 47 county governments. It is a fact that, in terms of geographical spread, we are the majority. In terms of Members of Parliament, Jubilee has the majority. So, it is like we are at par. We have equal strengths. So, we want to be treated with respect. This country is ours. Even though Jubilee is the ruling coalition, we all need this country. We do not want Kenya to become a failed state. We do not want Kenya to go down the drain because our children live here. This is where

our investments are. It is our country, and we love it. That is why we accepted the ruling of the Supreme Court on the presidential election petition, though with a lot of pain.

My advice to Jubilee is that, in future, they should make sure that they engage us in planning on matters like the one before us because we are equal partners. We are not junior partners to them. They should consult us, so that this country does not go down the drain. It can very easily tip over and go the Syrian or Egyptian way. We do not want such a thing to happen.

(Loud consultations)

I am telling you the truth. It is very easy for this country to tip over because of careless pronouncements and actions like moving a Motion like the one before us.

Hon. Speaker, I just want to say this---

Hon. Speaker: Hon. Nyenze, you have less than a minute to say what you want to say.

Hon. Nyenze: Thank you, hon. Speaker.

In Marsabit and Moyale, there are serious insecurity problems. There are many other areas facing similar problems, including the border area of Kisii and Trans Mara. In Tana River, there is a similar problem. In Sotik and other areas, the situation is the same. That is an issue which affects this country generally. It is more serious than the issue that has brought us here today. There is the issue of the cost of living. I spoke to a driver this morning, who said to me: “*Mheshimiwa*, I will be cooking *ugali* in the morning, using maize flour from maize sold at the local market because I cannot afford the maize flour that is sold in supermarkets. I will be taking my *ugali* with water. I feel very annoyed that the National Assembly passed the VAT Bill.” I told him: “I am sorry; I did not know that it would turn this way.”

Hon. Speaker, you know that I respect you very much. I want hon. Members to understand that Kenyans have reached a point where they can hardly survive. They cannot afford to educate or feed their families. They cannot afford to do anything for themselves. They cannot even afford transport. They walk to look for jobs. There is so much poverty in the country. So, that is a matter which should have brought us together. We should have reconvened here to talk about the cost of living and the suffering that Kenyans are going through. Implementation of the VAT Act should be stopped forthwith because it has caused untold suffering amongst Kenyans. Apart from the few well-paid Kenyans, the rest are suffering. We can tax the capital gains, especially those who own big properties. We should not tax the poor man anymore because he has reached the tip of the cliff. Taxing him further will cause him to tip off. If he tips off, we will be in trouble.

With those few remarks, I beg to oppose.

Hon. Speaker: Hon. Members, before we could proceed, I decided to give chance to the Leader of the Minority Party because of his position. We now need to make a decision as to how long each of the rest of those who will be contributing to the Motion should take. If we go the usual ten-minute way, very few of you will speak. I want to get a sense of unanimity. If you organise your thoughts properly, you can deliver in five minutes’ time. This is a decision which is well within your powers. You are the people

who make laws. I told you a while ago that you can even unmake laws. So, do not just lament. Remember that you have the power to unmake laws as well. So, can we agree on this one?

If you speak for 10 minutes, less than 20 of you will speak. The Leader of Minority Party is not at the same level as you. You have no capacity to even shout the way you are doing. You could very well find yourself out there. Let us give each of you five minutes so that we can have as many of you express themselves. Hon. Midiwo is Deputy Leader. Deputy Leader is not even recognized in the Constitution; please read it. Those are positions in the Standing Orders, not in the Constitution. The Leader of Majority Party and Leader of Minority Party are recognized in the Constitution. He stands on a higher pedestal than you. Each Member will take five minutes.

Hon. Wario: Asante Mhe. Spika. Nachukua fursa hii kumshukuru Mwenyezi Mungu aliyeleta Ronald Ngala kutoka Pwani, akaleta Jomo Kenyatta kutoka Gatundu na akaleta Jaramogi Odinga kutoka Nyanza ili watunasuwe kutoka kwa nyororo ya ukoloni. Namwomba Mungu huyo aweze kutuleta pamoja ili tujinasuwe kutokana na nyororo ya ukoloni mambo leo.

Mhe. Spika, Katiba ya nchi, kifungu cha kwanza, kipengele cha pili kinanipa uwezo na mamlaka ya kuzungumza juu ya sheria yoyote katika nchi ya Kenya. Mimi ni mwakilishi wa wananchi. Kifungu cha nne cha Katiba ya Kenya kinasema kwamba Kenya ni taifa huru. Mtoto wa darasa la nane atajiuliza, ikiwa Kenya ni taifa huru, itakuwaje Rais wa taifa na makamu wake watapelekwa katika taifa lingine kushtakiwa? Je, watoto wetu watafahamu uhuru ni kitu gani? Nina sababu ya kuunga mkono Hoja hii. Sababu ya kwanza ni kwamba, ili ICC ije itekeleze wajibu wake lazima taifa liiruhusu. Katika kesi ya Kenya, ICC ilialikwa na Kofi Annan.

Mhe. Spika, nimesoma katiba ya nchi, kipengele cha kwanza hadi 264. Sikuona kifungu hata kimoja kinasema Rais akifanya makosa, ashtakiwe nje. Nitatoa changamoto kwa mwanasheria yeyote aniambie kutoka kipengele cha kwanza hadi 264 ni wapi sheria ya Kenya imesema Rais ashtakiwe nje. Ninavyoonelea, hivi ni vita vya kiuchumi. Hii ni kwa sababu Serikali ya Jubilee ina ndoto ya kuboresha uchumi. Leo wataondoa Rais and naibu wake ili uchumi wa Kenya usambaratike. Ninaona hivi ni vita ya kijamii kwa sababu baada ya vita vya 2007, watu wa Mkoa wa Kati na Bonde la Ufa walishirikiana na kuunda serikali. Wazungu wanasema *choices have consequences*. Tuliambiwa hivyo na wale watu wanataka kuharibu jamii yetu. Hivi ni vita vya kisiasa. Rais aliyechagulia kidemokrasia hafai kufanywa hivyo. Sasa kina Kofi Annan na wenzake, hii ni fursa yao kuleta rais wanaemtaka ili watawale nchi ya Kenya.

Mhe. Spika, tukiwa viongozi wa nchi hii, hatutakubali dhuluma inayoendelea. Katika kesi ya Lubanga, tuliambiwa kwamba Lubanga hana hatia aende nyumbani. Baadaye kidogo, tukaambiwa Lubanga ana hatia na angefaa afungwe. Je, hii ni kesi ya sheria ama ni ya siasa? Juzi tuliambiwa Mhe. Ruto ahudhurie kesi wiki mbili na atawale wiki mbili. Baada ya majadiliano kidogo, tukasikia Ruto hafai kwenda nyumbani. Sioni sheria hapa. Kama ICC ingekuwa na sheria, mauaji yanayoendelea Syria leo hayangekuwepo. Watu wanauawa kwa maelefu. Fatou Bensouda angekuwa huko. Kama ICC inatekeleza sheria ulimwenguni, ile dhuluma iliyotokea Libya, Fatou Bensouda angekuwa huko. Leo Obama anatuambia Kenya---

Hon. Bosire: Mhe. Spika, ninasimama kujibu sehemu moja, ninataka kuuliza kama---

(Laughter)

Hon. Speaker, Sir, I rise to---

Hon. Speaker: I have sympathy with what hon. Bosire is saying because induction workshop is just next week.

Hon. Bosire: Kiswahili ni Kigumu saa ingine.

Hon. Speaker: If you start speaking in English, you must continue.

Hon. Bosire: I get it hon. Speaker, sorry for that.

Hon. Speaker: Do not just mix.

Hon. Bosire: Hon. Speaker, my brother whom I respect so much has made a very serious statement that in the Constitution, nowhere is it stated that a head of state can be committed to a court outside this country. I want to make reference to two areas.

Hon. Speaker: Remember you have not come to prosecute---

Hon. Bosire: He said that if any Member of Parliament can show him where in the Constitution---

Hon. Speaker: You will be given a chance to contribute and show him in the process.

Hon. Bosire: If you can allow me to put it across, I can be glad. Is he in order to mislead the House and yet---

Hon. Speaker: Next speaker. Resume your seat, hon. Bosire. Conclude, hon. Wario.

Hon. Wario: Mhe. Spika, kabla sijavurugwa nilikuwa ninasema Obama ametoa amri kwamba lazima Kenya ishirikiane na ICC. Kabla hujaongoza Kenya, kwanza jisajili kama mwanachama wa ICC ndiyo tuheshimu ICC.

Mwisho, Fatou Bensouda alipokuja Kenya alibahatika kwenda kwa kambi ya IDPs. Huko aliulizwa swali moja: Nyumba zetu zimechomwa na tumepoteza mali, je mashahidi wako ni nani na sisi tuko hapa? Hili ni thibitisho kwamba mashahidi wa ICC wamepikwa, wakaiva na wakapelekwa kule. Ili Kenya isidhulumiwe zaidi ya hapa, ningomba tupitisha hii Hoja, tujiondoe kwa ICC.

Ahsante, mhe. Spika.

Hon. Kajwang: Thank you hon. Speaker, Sir. I rise to contribute and oppose the Motion which is before the National Assembly. Just as my colleague hon. Kabando wa Kabando has said, it is good that we should approach this matter as National Assembly, in a bi-partisan manner and contribute as though we are delegates of the whole National Assembly today to discuss an issue that is so important.

Hon. Speaker, Sir, statements have come, of course from the Leader of Majority Party. But I know that he has a knack of sparking polarized debates. I refuse to get into a debate that will be polarized. I want to take just the five minutes that are available to me to make issues that I think citizens of this nation want to be addressed.

Hon. Speaker, Sir, looking at the structure of this Motion, you can see where the issue is leading. When we have said that we are aware that we promulgated a new Constitution and that we conducted a general election in which the President and Deputy President were elected and that there was a resolution to repeal the International Crimes

Act (No 16 of 2008), this Motion in itself does not prepare a principled objective ground within which we are, therefore, persuaded to withdraw from the Rome Statute. You can tell that the issue is that the President and Deputy President were elected in accordance with the Constitution. It means that the whole of this Motion is because of President Uhuru and his Deputy William Ruto.

Hon. Speaker, Sir, I participated in campaigning for this Constitution. I voted in the referendum for this Constitution and I am very proud that this Constitution was promulgated. Those who have been in the trenches in the reform movement know that why we love the new Constitution is because we knew we would come to the country that will not matter who is the President of Kenya or the Deputy President so long as everybody in all our 42 tribes has a share of the cake or a legitimate expectation that can land him in that share of the cake. Now it is clear that because two people are subject of inquiry at the ICC, then now it becomes a national issue. That because of those two people, this country should rid itself of every protection so that issues of human rights can now be discussed only in the context of two people who are in the court of international jurisdiction.

Hon. Speaker, human rights have nothing to do with being a Kenyan or an African; it is universal concept. If you are a Singaporean or if you are from Tonga Islands, or from any part of this world, when you are faced with issues of crimes against humanity, human rights are a universal issue. Today we may be very excited to say that let us withdraw from the Rome Statute of the International Criminal Court and three years, 10 or 50 years down the line, a despot who will annihilate everybody who dares to say anything that can be said comes along. That House will be thinking of how it was that this august House withdrew the protection that Kenyans have painstakingly found themselves to be the buffer that weighs upon the human rights. Let us not discuss politics, let us come to facts and bring issues that will last for the century.

Hon. Speaker, Sir, Chapter One of the Constitution which deals with the sovereignty of the people and supremacy of the Constitution gives us the pride that we should have systems that will---

Hon. Waweru: Thank you, hon. Speaker. I am rising on a point of order and I would like to have your guidance. Is it in order for the hon. Member for Ruaraka to put it that we are talking about two people and continually keep saying “two people”, whereas we are talking about the institution of presidency of this country that is affected by this ICC? Are we able to disassociate His Excellency Uhuru Kenyatta from his Deputy William Ruto?

Hon. Speaker: Proceed, hon. Kajwang.

Hon. Kajwang: Thank you, hon. Speaker. One thing I know is that I am nobody's sycophant. As far as I can remember, these two people were charged before this court before they became President and Deputy President. It might be so easy to catcall, boo and support, but I will be very much willing to discuss with those men and women who are ready to talk about facts, the law, the Constitution and things that this country wants to be addressed.

Hon. Speaker, Sir, I want to conclude because I want to give time for others to contribute. Why are we being asked, for example, to pass this Motion and then bring a Bill to repeal the International Crimes Act (No 16 of 2008), why not just bring that Bill?

Is it not true that a political ground is being prepared for things that have been disclosed in this House? If the International Crimes Act (No 16 of 2008) is against the laws or the Constitution---

Hon. Member: Thank you hon. Speaker for this opportunity.

Hon. Speaker: No. No! You have not been recognized. The Clerk was working on something and the person recognized is hon. (Ms.) Kanyua, in her capacity as the Vice-Chair of the Committee on Justice and Legal Affairs and the Minister in charge.

Hon. (Ms.) Kanyua: Thank you hon. Speaker for this opportunity. The Committee on Justice and Legal Affairs met on Tuesday to discuss the matter around the JSC and the oversight of the JSC. But it came to our attention that there was a discussion on the ICC. The Committee on Justice and Legal Affairs decided to meet today to discuss and give more weight to the question of the ICC.

Hon. Speaker, Sir, the Justice and Legal Affairs Committee takes the view that this is both political and a legal process. We are alive to both the politics and the legal aspect of it. But the Committee on Justice and Legal Affairs in discussing the matter of the ICC did choose to be guided by three prongs; one is around the presidency and many concerns about the immunities available in law around the presidency and subjecting a sitting President to trial. But the Committee resolved or decided to seek an amendment which I think will be coming later on, on the matter of the trial.

The Committee is concerned that the President and the Deputy President should not be out of this country at the same time. The trial calendar should be set in a way that there is no vacuum in leadership and that is the matter we think the case should be able to take care of. The Committee also looked at the question of why the ICC is here. One of those questions is the fight against impunity. So, the Committee, like the Committee before it in the 10th Parliament proposes the creation of a special division of the High Court with a special prosecutor and a special investigation department so that the cases that need to be tried are actually tried here in Kenya.

Lastly, the Committee looked at the question of victims and proposed that there be a quick and urgent liberation and reconciliation mechanism for victims. That this National Assembly, in the Supplementary Budget is going to set aside Kshs1 billion for that purpose. That three religious leaders be appointed, one from the mainstream religion, one from the evangelical and one from the Islam to lead this process. We think in those ways, we do not then need the ICC. So, the Committee supports the move to localize these matters, but to look at victims, impunity and to ensure that the President and the Deputy President are not out of the country on trial at the same time.

Thank you, hon. Speaker.

Hon. Speaker: There is an hon. Member who has a burning issue. The hon. Member for Mvita Constituency, you have the Floor.

Hon. Nassir: Hon. Speaker, Sir, I think the Leader of Majority Party moved a Motion and my brother, hon. Kabando wa Kabando seconded it. What is most pressing and this is the question Kenyans out there shall be asking today and in the very near future because eventually the truth shall come out is why this House has been called urgently.

Everything that has been said is basically preaching to ducks and asking them to love water. There is without doubt our party's stand and we wish this to be on record as

well. Our party principals had indeed moved and gone around the world and crisscrossed this country to ensure that we do not follow the way of The Hague. We have local mechanisms and if it is an issue that has been raised by my brothers and sisters from the Jubilee side, Kenya is a stable country and it has mechanisms. These are issues that we realized long before they did. Kenya is a state that is stable and should be held accountable on its own. These are issues that we were able to raise way before.

I would wish to add to what hon. Nyenze our leader had rightfully expressed. We were of the hope and opinion that we were going to be called in as a matter of urgency into this House because Kenyans' lives are at stake due to external and internal forces and that can be classified as an emergency. When you say that our roads have been killing Kenyans at rates that are higher than most in other parts of the world, that can be classified as an emergency.

Hon. Speaker: You mean, it must be relevant?

Hon. Nassir: It must, hon. Speaker Sir.

Hon. Speaker: Now, you are not discussing the Motion, you are questioning the reason for the Motion. Be relevant please.

Hon. Nassir: Hon. Speaker, to be able to discuss the reasoning---

Hon. Speaker: You can disagree, that is your right.

Hon. Nassir: Hon. Speaker, to be able to disagree or agree on the reasons for this Motion, it is valuable in each and every debate and in each and every person that shall be able to come up here and speak--- We wish to be told and be given clarification as to why this issue has been made into a national emergency at this particular time. Why could this particular issue not wait until 17th September 2013 when Parliament resumes? When we are discussing this issue and probably the Leader of the Majority Party was able to read the lines prior to---

Hon. Speaker: Hon. ole Kenta.

Hon. ole Kenta: Thank you, hon. Speaker Sir for giving me the opportunity to also express my views on these matters.

Hon. Speaker: I am sorry, Member for Mvita. That is the way it happens. You have not spoken in my presence. That is the way it has been happening to everybody. Five minutes each.

(Laughter)

Hon. ole Kenta: Hon. Speaker, Sir, it is my humble submission that I wish to support the Motion and I believe that Kenyans should actually appreciate the fact that they are a sovereign state. They should appreciate that they can do their own things without the interference of other parties.

I believe that we have already suffered enough as a country and we are in the path of reconciliation and peace and that the warring communities are the ones that are not together in this Government. I believe if the parties themselves have agreed to be together and to work together, who else can tell them not to? We are subjecting ourselves to other forces that will not be of any benefit to us. You have heard of the warring communities and we are always people who tragically go back to where we have come from. If America itself can say that their citizens cannot be taken to other legal jurisdictions, why

should we accept it ourselves? We are not saying that we have only two people, as one of the Members has said. We are saying we have got three Kenyans - do not forget Mr. Sang is a Kenyan who is wrongly before a court of law that does not respect the Constitution of this country.

If we look at our Constitution especially under Article 143(1) the President is protected from criminal liability of prosecution, though we were forced to actually include under sub-article (4) that it should not affect him when it involves international treaties. This was a mistake and the 10th Parliament or any organization that did that did wrong.

We should also appreciate the fact that we have got a country that has able institutions like the Judiciary. This issue of Kenyans always relying on NGOs to run its affairs must stop. I believe AFRICOG does not have a bigger jurisdiction or bigger right than the Kenya Government to mind the affairs of our people.

I should actually say that, why should we open wounds that are healing? Let the communities themselves decide. As Africans, we have had ways of doing our things. I believe the issue of telling the international community through the ICC to lock up our leaders or do those other things will just worsen the problem.

As I have already said, we are at peace and I believe if we continue looking at one another as an enemy of the other, we are not getting anywhere. Kenyans must realize one thing, since 1992 we have not had peace in this country. We have not been able to crystallize our needs and aspirations because every time, there is a political upheaval. For example, this issue is being brought up barely six months after we were elected. I believe there is something going on and we Kenyans must examine ourselves and realize that we are one country and not a divided country. Whoever has won the elections must be respected and protected and must be defended by all Kenyans. It is not personal because tomorrow it will be the shoe on the other feet. For the sake of unity, let us get out of this ICC debacle as America has done and all others.

I believe it is our right, and I support hon. Speaker, Sir.

Hon. Speaker: Hon. Midiwo.

Hon. Midiwo: Thank you, hon. Speaker, Sir. I rise to oppose this Motion and in so doing, I want to say how I wish we did not have Kenyans being hauled away to be tried on foreign soil. The Mover of this Motion was on this particular Floor - we were in the Old Chamber- and I can visualize him saying we will never get fair hearings in Kenya. There was noise all over the country; people said, "do not be vague say The Hague". These are the same people who are now castigating ICC. Kenya must live amongst the communities of civilized nations. Kenya cannot be compared with failed states. I agree when somebody says that Kenya is not yet a failed state but it is on a fast lane to becoming a failed state, if this Government keeps behaving this way.

We were told up to last night that this Motion had nothing to do with the current trials. It has everything to do with the current trials. It has everything to do with it. We will not agree. The sitting President of this country faced this nation during the presidential debate and told Kenyans that those were personal matters and he was going to deal with them personally. There is this talk; this thing has turned into us bashing foreign countries. I have lived in America for 13 years. America, by far has a superior judicial system than you will ever get if you follow this route. You must agree with

international best practices. We invited ICC to come here. They never came here on their own. The Mover of this Motion voted to send these cases to the ICC.

Hon. A. B. Duale: On a point of order, hon. Speaker, Sir. My good friend, the Deputy Leader of Minority Party cannot mislead the nation; the HANSARD will bear me out. I voted for a local tribunal and he is aware of it. Let him not play around. Can he tell the nation why Kenya should stick with ICC? The President is facing---

(Loud consultations)

Hon. Speaker: None of you has a responsibility to shout.

Hon. Midiwo: That is why Kenya must stick with ICC.

Hon. Speaker: Allow hon. Midiwo, he is equal to the task. Majority of you, Mr. Arati, came here the other day. You would not know what it takes to deal with that matter.

Hon. Midiwo: I beg you now, you will add me two minutes. The reason why Kenya must stick with ICC is because 10 years down the line when we get a rogue leader who will kill our people, we will not know what to do. What Kabando wa Kabando has said here, it means that that leader will not answer to that impunity. No wonder this Government is so hell-bent on trying Kethi Kilonzo because she was the lawyer for AFRICOG! A government that victimizes its citizens needs a big brother and that big brother is ICC. Hon. Duale should be talking today about the injustices in his area, for example, the Wagalla Massacre. You come from that region. Things are happening in Moyale today. Today is AFRICOG, just a few years ago it was Kenya National Human Rights Commission. When did it change? Why are you using this Floor to try innocent people who cannot defend themselves? We in CORD, and let me put you on notice, shall never be party to this. We will let you do what you want and Kenyans are watching you. If you are saying that Kenya is not a failed state, what is it? A country that, elections after elections, steals elections, robs the citizens of their right and then it says it was a free and fair election, free where? The Judiciary may have been reformed but the occupants of those offices are the same. They are as bad as you. They think like you. They are thieves like you. That is who they are and that is who you are.

Hon. Members: No! No!

Hon. Midiwo: Yes, you are thieves. That is why the country is falling. You are thieves.

Hon. Members: No!No!

Hon. Midiwo: You are thieves! That is why---

Hon. Speaker: Order! Order, Members!

(Hon. Members from CORD withdrew from the Chamber)

Those who wish to withdraw, do so quietly. Let those who want to withdraw, do so. Withdraw in silence. Hon. Sakaja, resume your seat. Serjeant-at-Arms, can you ensure that those that are withdrawing from the Chamber do so quickly and if any of them is resisting, bring it to my attention? Yes, hon. Duale.

Hon. A.B. Duale: On a point of order, hon. Speaker, Sir. I want to confirm to the nation that the owners of ICC have walked out. The owners of the ICC project have walked out. This House has the mandate and a legislative agenda to amend laws, repeal laws and make laws. This confirms the Motion that I brought this morning, that from day one in 2008, the beneficiaries of ICC, first was the Grand Coalition Government. I want to go on the HANSARD saying that the local owners of ICC project have today, 5th September 2013 walked out because they cannot watch a country redeeming its independence. Thank you.

Hon. Speaker: Hon. Midiwo, could you conclude.

Hon. Midiwo: Hon. Speaker, it is unfortunate that we cannot debate amongst ourselves in a civilized manner. As I conclude---

Hon. Cheptumo: On a point of order, Hon. Speaker, Sir.

Hon. Speaker: Hon. Cheptumo, you are claiming to rise on a point of order.

Hon. Cheptumo: Hon. Speaker, Sir, thank you for giving me a chance. Is it in order for hon. Midiwo to continue standing in this Chamber, having coached his Members that once he speaks, the entire CORD moves out? Is he in order to continue behaving as if he is---

Hon. Speaker: Hon. Members, let hon. Midiwo conclude his contribution

Hon. Midiwo: Thank you, hon. Speaker. On a more toned-down note---

Hon. Speaker: Yes, hon. Jamleck Kamau.

Hon. Kamau: Hon. Speaker, Sir, I just want to ask whether it is in order for hon. Jakoyo Midiwo to continue addressing this House after having called Members of this House thieves. Is he in order? Can he withdraw that statement and apologize or substantiate how these Members are thieves?

Hon. Speaker: Hon. Midiwo, on the issue of stolen elections or thieves, none of us is doing judicial work. You know where to address those issues about theft and others. Criminals who steal are handled by the police and so, perhaps, you may wish to withdraw the remark about calling your colleagues thieves.

Hon. Midiwo: Hon. Speaker, Sir, as to hon. Members being thieves, I heard it coming from hon. Members who walked out. As to stolen elections, 70 per cent of this country believes they have been robbed of their elections twice and these are not the people who run elections.

Hon. Speaker: Where did you get that number? With regard to the issue of elections; whether they are stolen or whatever, that is a matter for the courts. Anybody who feels aggrieved has a legitimate right to go to a court of law and prosecute their claims. As to theft, the belief of 70 per cent or 90 per cent are stories we do not want. What is being canvassed is for the---

Hon. Midiwo: Let me come clean because---

Hon. Speaker: No! You must withdraw!

Hon. Midiwo: Withdraw what, hon. Speaker, Sir? Tell me what I must withdraw.

Hon. Speaker: Withdraw calling your colleagues thieves.

Hon. Midiwo: I am not the one who called my colleagues thieves. I said the elections have been stolen twice and I do not know these hon. Members to be the ones responsible for stealing the elections. I have not called them so; I cannot withdraw that.

Hon. Speaker: Hon. Midiwo, since you contest the issue of you having called hon. Members thieves, I will have that counter-checked with the HANSARD. If it is found that you actually uttered the words calling your colleagues thieves---

Hon. Muchai: And judges!

Hon. Speaker: Hon. Muchai, we are dealing with the issue of hon. Midiwo calling hon. Members thieves. Let it be crosschecked in the HANSARD. If it is confirmed because I have given hon. Midiwo the chance to withdraw and apologize and he has contested that issue, if the HANSARD confirms that he actually called hon. Members thieves, the consequences are going to be dire.

Hon. Midiwo: Hon. Speaker, Sir, I am a conscious Kenyan and conscious debater. I said the votes of the public have been stolen twice in a row and I mean it.

(Loud consultations)

Let me conclude by saying this to go on record today, the day we are debating this thing; the day we are infuriating the international community; the ICC, is a day that my colleagues who are standing before me may live to regret because we reached out. Our colleague, hon. Duale, A.B. who is here, is my friend and we even spoke with him last night. We said that this thing requires a bipartisan approach. You may think you have the numbers but your numbers may lead you to hell. Numbers are only good when they are used correctly. Use your numbers correctly. If I was President Uhuru Kenyatta, I would have used these numbers---

(Loud consultations)

Hon. Speaker: Stop bringing the President in this because you cannot be President Kenyatta

Hon. Midiwo: I said if I was, hon. Speaker, Sir.

Hon. Speaker: You are the Deputy Leader of the Minority Party.

Hon. Midiwo: Hon. Speaker, Sir, I am a Luo and schooled very well in English. I said if I was the Government, I would have used these numbers so well but we keep using them wrongly. It is good---

Hon. Members: We do not want your advice!

Hon. Midiwo: Hon. Speaker, Sir, you do not want my advice and that is why you keep doing the wrong things but you need me. If there was any time that this country needed---

Hon. Speaker: Your time is up!

Hon. Midiwo: I oppose!

Hon. Langat: Hon. Speaker, Sir, I think this country has just got a good opportunity to know who are the fathers and mothers of the ICC. At the same time, this country is quite unfortunate to have an Opposition or a Minority Party that we have. They should sit in the House and wait to cast their vote. This matter of the ICC, I think the people behind the ICC should read the signs. The President and Deputy President were voted by Kenyans and what other referendum do they require to know that Kenya desires to move forward? Kenya has moved forward and we do not want to be taken back.

This case should go to the Guinness Book of Records because there is no other sitting president who has been arraigned in court of law, leave alone a foreign one. Therefore, I want to support this Motion and reiterate that Kenya has come a long way in terms of institutions and capacity to prosecute. We have a very good Judiciary but unfortunately for some people, when they lose a case, the Judiciary becomes very bad. When they win, the Judiciary or the IEBC become very good. That is the unfortunate thing! Kenyans should know that the people who have just walked out belong to a party which refused to accept results. They want to pretend that they are fighting impunity. What other impunity is more than refusing results, refusing to go to court and also refusing to debate issues and run away from them? Kenyans should know that CORD, none other than the Vice-President moved around Africa in what was called shuttle diplomacy. He was the owner of shuttle diplomacy and it is unfortunate that now he has told his membership that they should not support the process to bring these issues to Kenya. This is a big shame!

The leader of CORD, while he was campaigning in this country promised Kenyans to bring back the cases, because it was the desire of Kenyans that these cases come here. Now, because he lost an election, he is against it. That is the most untrustworthy people, and I want to warn Kenyans because I have experience with them, they change their minds depending on circumstances. Therefore, I want to encourage this House that we move this Motion because the ICC case is taking Kenya backwards. We want to move forward. Kenyans have reconciled and everybody is moving forward.

I support the Motion but I condemn the move by CORD to walk out of the Chamber.

Hon. Katoo: Hon. Speaker, Sir, I rise to support this Motion and say that as you said earlier in your intervention, it is obvious that the primary role of any Parliament including the Kenya Parliament, which consists of both the Senate and the National Assembly, is to enact legislation.

In the course of performing that role, Parliament can also amend and repeal the existing laws. So, even though the Rome Statute has been domesticated, Parliament has the powers to repeal the Act. Therefore, I can confirm that what we are doing on the Floor of this House this afternoon is within the powers of Parliament. So, for that matter, what we are doing is lawful. We are within the provisions of the Standing Orders of the National Assembly.

Hon. Speaker, I do not want to dwell so much on the justification because many reasons have already been given. However, I want to say that legally, as a state, we can, at any time, withdraw from the ICC. The very nice thing about it is that you do not have to give any justification or any reason for withdrawing. That is what the Rome Statute says. As a state, you can withdraw at will from the ICC. This is evident from the examples that have been given. The USA had ratified the Rome Statute but barely two years later, in May, 2000, the Bush Administration opted out of the Rome Statute. So, as a state, you can withdraw at any time. You do not have to give any justification or any reason for doing so.

Another reason that has been cited here is that the ICC only targets African leaders. The ICC is least known outside Africa. It is a neo-colonialism institution that peddles the western agenda. The western nations seek to control African politics through

ICC investigations. This is a point which has been made by one of my colleagues. I just want to emphasise it. There have been many situations where the Office of the Prosecutor of the ICC received allegations of abuses of human rights in other jurisdictions, including Iraq, Venezuela, Palestine, Columbia and Afghanistan. However, that office decided not to carry out any investigations on those issues. On the contrary, virtually all confrontations that happen in Africa, however small they may be, become subjects of ICC investigation and prosecution.

Hon. Speaker, the ICC also disregards the African Union (AU). It is good to note that in many occasions, the AU had resolved unanimously that some ICC cases involving elected leaders in our continent be referred back to the local countries or they be deferred. However, all such requests have been flatly turned down by the ICC. It is good to tell the ICC that the AU is not an association of Heads of State of Africa. It is a solid legal entity of African states. It is also good to note that the other reason as to why we should withdraw from the ICC is the fact that we need peace and stability in Africa. What we have seen in the recent past is that the ICC is determined to cause chaos and disharmony in Africa. This was very clearly elaborated through examples given by my colleagues. Which other elected president or head of state in the world is facing trial at The Hague, or in respect of whom a warrant of arrest or summon has been issued?

My other reason for supporting this Motion is non-conviction. It is said that the ICC, which was established more than 13 years ago with a lot of funding and with the best judges and, arguably, the best prosecutors---

Hon. Speaker: I am afraid your time is up, hon. ole Metito.

Yes, hon. Olago Aluoch.

Hon. Aluoch: Thank you, hon. Speaker.

Hon. Speaker, in the 10th Parliament, hon. Duale, hon. Mungatana, hon. (Prof.) Kamar, Senator (Dr.) Khalwale and I formed what was then known as “Parliamentary Caucus for Reforms”. Of course, many other hon. Members were Members of that caucus. We acted together to reform some of the things that were bedevilling this country. I am surprised that hon. Duale is now doing the opposite of what we advocated for during that time. Nevertheless, in my career as a lawyer, I have had a chance to work as an Assistant Prosecuting Counsel for the International Criminal Tribunal on Rwanda, which is based in Arusha. For nearly 10 months, I watched how the judges of that tribunal dealt with issues of bond for accused persons. I do not want to go down the trodden path and say that even we if we withdraw from the ICC the cases will not stop, or that we have to give a 12 months’ notice, *et cetera*. I want to talk about the consequences of what this House is doing today.

Having read the mood of the House, I have no doubt at all that this Motion will be passed. However, as we pass it, we should remember that we are demonstrating to the ICC the fact that the Government of Kenya is hostile and uncooperative to the ICC. This Motion is not only ill-timed but it is also ill-advised, particularly given the fact that the trials are starting next week. The issue of bond is at the discretion of the court. If, as a country or Parliament, we demonstrate that we do not want to cooperate with the ICC, when the Kenyan nationals facing charges go there, the prosecutor may apply for a variation of bonds and it may be said that Kenya may not cooperate with the court and,

therefore, the accused persons should be put into custody. Are hon. Members aware that, that is what we are doing? Is that what we want?

Hon. Members:*(off-record)*

Hon. Aluoch: My dear brothers and sisters, you can say that in this House but you will not be able to say it at The Hague. Look at what we are doing now, why are we saying that when the trial starts, as Members of Parliament, we go there and block the court? You may not go to the court when you get there. You are not the counsel. Are you going to say that the numbers that will be present in court will determine the outcome of the case? Please, let us be humble.

Hon. A.B. Duale: On a point of order, hon. Speaker. My good friend's election was upheld by the High Court yesterday. The people who were present in court were his relatives, friends and wives. We are going to The Hague with the Deputy President just like he went to court with his many friends, wives and relatives. We are part of the political class. The Deputy President and the President are part of our coalition. Is he in order to say what he said?

Hon. Aluoch: Hon. Speaker, I do not think that passes the test of what being out of order is. Nevertheless, the High Court in Kisumu is not the ICC at The Hague. The two are different kinds of courts.

Hon. Speaker, before I sit down, I would like to caution my colleagues in the Jubilee Coalition that they will be passing this Motion at their own peril, and that they should be ready to face the consequences.

With those remarks, I beg to oppose the Motion.

Hon. Speaker: Yes, hon. Jimmy Angwenyi. Learn how to use these gadgets.

Hon. Angwenyi: Hon. Speaker, Sir, I thank you for allowing me to contribute to this important Motion. I rise to support this Motion. First, I have been elected to come to this Parliament to represent the views of my electors. The views of the people of Kitutu Chache North, almost 100 per cent, are that our leaders should not be taken to The Hague. First, when clashes happened in 2007 and 2008, we had a different Constitution. We do now have a new Constitution which has been applauded throughout the world. Two, when our leaders were indicted in The Hague, we had not gone through elections. The people of Kenya demonstrated very clearly that they did not believe in charges being raised against our leaders in The Hague. That is why they voted for them overwhelmingly. Which is this ICC which does not want to consider the views, feelings and aspirations of Kenyans? Who are these ICC who have got much more sympathy for our Kenyans than the Kenyans themselves? The ICC was formed to address the issues of banana republics and Kenya is not one. Kenya is not like Sierra Leone at that time, Ivory Coast, DRC or even Somalia. We have never heard anybody from Somalia being taken to The Hague. We must stand up and express ourselves and the views of our people. We must express the feelings our people. We are independent people. This is a sovereign country that must exercise its authority in its own country. The world over, people have said Kenya has established a very effective judicial system. Let us test the integrity of that system by bringing the cases back to Kenya and handling them ourselves. If the ICC and anybody else do not want our courts to handle these cases, let the cases be brought to Kenya so that the victims can witness for themselves how the cases are being handled.

Hon. Speakers, Sir, the prosecutor has never talked to the victims. This is a flawed prosecution. The 16 Kisiis who died in Kisumu and Migori, the six Kisiis who died in Oyugis, were they killed by a Kalenjin or Kikuyu? How come we do not have anybody in The Hague who committed those crimes against humanities in Kisumu, Oyugis and Migori? Were those Kisiis not human beings? They were killed by the police. The police threw them in the lake. We must have a clear and truthful process. We have a list of 20 names and in that list, there are two stakeholders. The people should have made sure that there is peace in this country. The people who vied for the presidency during that period, how come their names are not there? Who are they?

Hon. Speaker: Your time is over! Hon. Sakaja has an amendment.

Hon. Sakaja: Thank you, hon. Speaker. Even as I move the amendment, the tone that has been taken by some of the Members is really disturbing. I request that during the induction workshop that we are going to have, if you can invite Dr. Frank Njenga and other counsellors, it would be good. Some people need closure from that election. We are moving forward as a country and indeed an issue such as this, a matter of the ICC, is not a Jubilee matter. It is a matter affecting the entire country because we are talking about the President and Deputy President. We must always try to cultivate bipartisan approach on these issues. We are here to legislate for this country for now and for posterity. So, we must always remember that instead of grandstanding.

Hon. Speaker, Sir, I would like to mention, even as I move the amendment, that the reason that has precipitated this Motion is the fact that despite the cooperation that those before the ICC have displayed, because they have said time and time again that they are willing to cooperate and they have cooperated, the ICC has not reciprocated with respect. Even the appeals that they have made, which have had merit, have been denied. We know that this case is full of lies, propaganda, media clippings and a whole theatre of theatrics from civil society. That is what founded it and it is a political case. We must also say that we as Jubilee believe in the rule of law. We must believe in the rule of law. Even as these cases go on, we will not do anything to go against the rule of law which His Excellency the President and the deputy swore to uphold when they took oath of office. It is clear that the ICC is a court that is designed to arm-twist African states so that they can dance to the whims of the west because the countries that are actually funding it, for example Japan, are not a signatory. So, what is the interest of those states?

Hon. Speaker, I want to support the Motion but with amendment. Let me say that if we withdraw or repeal the International Crimes Act, we will be contradicting the issue of cooperation because that is the framework through which Kenya as a country institutionally cooperates with the ICC. At this point, I will read the amendment so that members can understand what I am talking about before I go on.

I beg to move that the Motion be amended by deleting the following words appearing in the fifth line “further aware of a resolution of the National Assembly in the Tenth Parliament to repeal the International Crimes Act and to suspend any links, cooperation and assistance to the International Criminal Court”. We need to delete these words because they contradict the fact that the President and Deputy President are already cooperating with this court and that they will continue cooperating. We must make it clear that what our Parliament is doing does not in any way set the stage for non-cooperation or defiance. But we are also saying that the ICC must reciprocate and treat

them with due respect and dignity of a head of state or deputy president. We cannot have the timetable or the calendar of the ICC being that the President and Deputy President are there at the same time. The court does not exist in a vacuum. This is a country that is stable, it is an emerging economy and Kenyans have expressed themselves to the matter of the ICC through the overwhelming support and vote at the ballot on March 4th. That in itself was an expression of the will of the people. If the ICC respects member states of the Rome Statute, it must actually accord them that respect, honour and dignity.

I also want to point out something because I think it has been left out by many Members who have spoken. This Government is seeking justice not just for those before the ICC but also for the victims and IDPs who are out there. In fact, today I know that the Cabinet Secretary for Devolution has laid out measures through which people are going to be resettled and receive money because---

Hon. Speaker: Who is seconding you?

Hon. Sakaja: With that I beg to propose for the first time and, I would like to ask hon. Jamleck Kamau to second.

Hon. Kamau: Thank you hon. Speaker. I rise to second the amendment. As I second the amendment, it is important for hon. Members to understand why this amendment came into being. We do not want to be seen like we are asking for non-cooperation for this country. Without any question, this was a resolution of the 10th Parliament. The 10th Parliament made its own resolution with regard to the issue of International Criminal Court. This is contained in that particular part we want to amend. But what we are saying is that we do not want people to go out there and start thinking that this House passed this Motion today seeking for non-cooperation with the cases at the ICC. That is further from the truth.

In actual fact, if I can speak to the media directly so that they can actually understand where we are coming from, we are not seeking not to cooperate with the ICC; that is totally not the case. It is important for us to make it clear that, as the President and his Deputy have said, they are fully cooperating with the ICC and they will continue doing so.

Secondly, it is important for us to distinguish between the roles of the Executive and the Legislature. Where the President and the Deputy President sit is the Executive; they have no role in making law. Laws are made in this House. When we pass a Motion in this House, it is up to this House to amend it the way it wants. It does not have to get recourse from the Executive.

Hon. Speaker, I think it is also important to understand where we came from. I heard somebody talk about the local tribunal. The Motion came before the House and it did not go through. Majority of hon. Members did not vote for the local tribunal and what was the reason? The reason was simple, at that particular time, all of us including me believed that the ICC was a very clean place, a fair place, a good place where you can get justice. But that was not to be, and that is why Kenyans are clear today on the move they would want to take.

Hon. Speaker, Sir, I would want to ask two questions: What is the role of the civil society in these cases? That is the reason why Kenyans are totally unhappy with the happenings at the ICC. Recently, you heard about the issue of AFRICOG, the case of the Deputy President in point. We all know that the court granted the Deputy President

permission to attend his cases at will. But what happened after instigation by some forces such as AFRICOG and other bureaus? The end result at the end of the day was overturned; meaning that the Deputy President will have to be there. As we speak right now, the ICC has come up with the schedule of when this case is going to be heard for the Deputy President. They are yet to do that for the President. The question is: Why have they not done that? Are they waiting to see the reaction of this country so that they can know how to treat the President after that? These are issues that we must grapple with and get to understand clearly.

Hon. Speaker, when we see these kinds of things happening---

Hon. Speaker: Can you speak on the amendment now.

Hon. Kamau: When we see all these kinds of things happening, that is why I am proposing that we amend this Motion. I have seconded and I am seconding.

Hon. Speaker, Sir, you just allow me only one minute. When we talk about the ICC interest, it is only interested in causing instability. Already there is instability now, but the next question we will ask is: If they are not interested, who wants to use them to cause instability? To me, the answer will be very simple---

I beg to second.

Thank you.

(Question, that the words to be left out be left out, proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question of the Motion as amended proposed)

Hon. Speaker: Now as you contribute to the Motion, it is the Motion as amended, which is the one I have just read out. So, we are clear on that, are we not?

Hon. Members: Yes.

Hon. Speaker: The hon. Odhiambo-Mabona, I can see you are standing.

Hon. (Ms.) Odhiambo-Mabona: Thank you hon. Speaker, Sir for giving me this opportunity. I want to start from the outset and say that I oppose. I want to say that I am feeling extremely honoured and privileged to be in the minority of those who are opposing, just in the same way I was in the minority of opposing going to The Hague. I am feeling extremely vindicated today. I thank my God because I stood by my principles.

Hon. Speaker, Sir, I have said that today, again I am standing by my principles and I am opposing the Motion. I only want to speak about two things and I thank God that I have spoken after the amendment. Despite the fact that we are saying we are not speaking to non-defiance and non-cooperation, everything that we have said here speaks to defiance and non-cooperation. Hon. A.B. Duale, if I was a lawyer in law courts, and he was on the other side, I would love him and I would make minced meat of him as a counsel. I would love you hon. A.B. Duale.

I love hon. A.B. Duale, he makes my case. I would like to---

Hon. Speaker: What is your point of order, Leader of Majority Party?

Hon. A.B. Duale: Hon. Speaker, Sir, you have heard the hon. Member for Suba Constituency saying that she loves me. I want to confirm that, first, we do not belong to the same faith and I have a very beautiful woman who loves me. I do not need her love anymore.

(Laughter)

Hon. (Ms.) Odhiambo-Mabona: Thank you hon. Speaker, Sir. With your permission I can stand.

(Hon. (Ms.) Odhiambo-Mabona did a jig)

I am extremely beautiful; I do not need that kind of laughter from him. Hon. Speaker, I only need love from him.

Hon. Speaker: Hon. Millie Odhiambo, why would you want to come and do a jig in the House? Why would you want to come and do a jig the way you have done on the Floor of the House? We are not in a disco hall, are we?

Hon. (Ms.) Odhiambo-Mabona: Can I respond, hon. Speaker?

Hon. Speaker: That is totally out of order. If you repeat it, you will face the door.

Hon. (Ms.) Odhiambo-Mabona: Yes, hon. Speaker, Sir, I will not repeat it. All that I just wanted to tell my brother is that I love him with Godly love. Even in Islam and Christianity people love. In Islam, people love. In Christianity, people love. I do not need that kind of love from him.

Hon. Speaker, Sir, I said I only had two points. The second point that I would like to say is in relation to the ICC. All I have heard in this House today is that as Kenya and as an African nation, we are telling the ICC--- We are daring the ICC. We are telling the ICC: "Dare joke with us!" I just want to go on record that my understanding is that we are telling and daring the ICC that we have a President and a Deputy President and that they must provide different standards. We are on the process of pulling out. I just want to go on record and, unlike my hon. colleague who is saying that they are speaking to the media, I am speaking to the ICC.

I oppose.

Hon. Njuki: Thank you hon. Speaker, Sir, for giving me the opportunity to contribute to this Motion as amended. I have to commend my colleagues from CORD who are in the House because they decided to be in the House with other Kenyans. When the Rome Statute that created ICC came into force in 2002, it was intended to investigate and prosecute four main crimes. The crime of genocide, crimes against humanity, crimes of war and crimes against aggression as amended when it lastly sat in Uganda. The ICC would prosecute those crimes in states that are either unable or unwilling to prosecute. I believe Kenya is not unable to do that. It is a State that has a judicial system which can do that. The Members who have spoken earlier have faulted the 10th Parliament for coming up with the solution that we go to The Hague and not have the prosecutions done in Kenya. I believe that, that was at that particular time because of the circumstances that were pertaining at that time. But since then, Kenyans have had a change of mind, up to and including this particular moment today. They have changed their minds.

Hon. Speaker, Sir, since there is no law that is cast in stone, if the ICC wanted the cases to be tried in Kenya at that particular moment, why is it that today when Kenyans are willing to prosecute those cases here, they cannot allow it? It is very important to note that in the last few months when the case for the Deputy President was being recommended to be prosecuted in Tanzania or Kenya, nine judges voted for it while four actually voted against it. They could not meet the threshold. It, therefore, means that the ICC is very much unwilling to have the cases prosecuted here because those are not just the cases of justice, but it is more or less a political case.

Hon. Speaker, Sir, when you look at the history of the ICC – and I want to, in particular, look at the history of the USA – when Bill Clinton was in power, he only signed the Rome Statute, but he did not ratify it. When Bush came to power, he actually made it very, very clear to the world that America was not willing to be part of the Rome Statute. But what happened after that? When the Obama Administration came into power, it has assumed a different role. That is because the Obama Administration, despite Bush saying that they do not want to be in the Rome Statute, it has more or less established what we could call a “friendly working relationship” with ICC. They have actually been attending functions and conferences by ICC. As late as in 2010 in Uganda, in the ICC Review Conference, when Uganda was seeking the ICC support in trying the Lord’s Resistance Army culprits, it is important to note that while the Americans actually strike what they call a “friendly relationship” with ICC, they have totally rejected to sign the Rome Statute. I remember very clearly that when the country went to the polls early this year, the American Government through its envoy in Kenya, warned Kenyans that electing certain individuals---

Hon. Speaker: Hon. Abdi Yusuf Hassan, the hon. Member for Kamukunji.

Hon. Abdi: Ahsante Mhe. Spika. Kwanza kabisa, nataka kusema naunga mkono Hoja hii. Napinga Kenya kuwa katika ICC kwa sababu za kiitikadi. Mashujaa wengi walimwaga damu yao ili Kenya ipate Uhuru wake. Uhuru tulionao haukupatikana kwa urahisi. Hatukupata Uhuru kama zawadi kutoka wa wakoloni. Tuliupigania. Kwanza kabisa, nasikitika kukubali ICC nilipokuwa katika Umoja wa Mataifa huko New York. Nasikitika sana kwa sababu naona sisi sio dola huru. Pili, ni kwa sababu ya wale wamepoteza damu yao bure. Kupeleka kesi hii na matatizo yetu kule ICC ni makosa makubwa ambayo tangu mwanzo, nilionelea haifai. Lazima tukatae. Kwa hivyo, nafurahi kwamba nimeweza kupata fursa hii kuzungumza hii leo na kuliangalia swala hili.

Kwanza kabisa, ukiangalia muundo, sera na mkabala wa ICC, ni mahakama ambayo haitafuti haki. Ni mahakama ambayo imeanzishwa kuadhibu wale ambao wanapinga maslahi ya nchi za magharibi. Kwa mfano, mahakama hiyo ilianzishwa na mataifa matajiri tu. Na wote ambao mpaka sasa wamefikishwa mbele ya mahakama hiyo ni kutoka nchi za Kiafrika. Unadhani nchi za magharibi zingekubali ikiwa kuna mahakama ambayo inasikiliza kesi za watu weupe peke yao? Watu kutoka Ulaya na watu kutoka Marekani! Wangesema tu mara moja mahakama hiyo ni ya ubaguzi wa rangi. Lakini sasa hivi ukiangalia, wote wanaopelekwa katika mahakama hiyo ni watu weusi. Huwezi ukajiuliza hiyo kweli mahakama ina haki na usawa?

Halafu, hebu tutazame mwaka wa 2002 wakati mahakama hiyo ilivyoanza kazi yake. Mamilioni ya watu wameuawa. Kule Afghanistan, mamilioni ya watu wamekufa. Kule Iraq, mamilioni ya watu wamefariki. Ukiangalia Chechnya, wamepondwa pondwa.

Kule Palestina, kuna matatizo makubwa ya haki za binadamu. Watu wanauawa kila siku. Lakini kwa nini sasa hivi hiyo mahakama haijajipa wajibu wa kutafuta waharifu na makatili ambao wamewaua maelfu na maelfu ya watu katika nchi ambazo nimezitaja? Hiyo inaonyesha kwamba mahakama hiyo inatafuta watu wanyonge; nchi ambazo hazina uwezo wa kujisimamia.

Angalia kwa mfano Sudan. Kwa miaka mingi, nchi za magharibi zilikuwa zikiangalia ugandamizi uliokuwa ukiendelea kusini mwa Sudan. Lakini mara tu Sudan ilipoanza kuuza mafuta yake kwa nchi ya Uchina, ndiyo wakaanza kufahamu kwamba watu wa Sudan Kusini wana haki. Na Sudan ikaadhibiwa kwa sababu ilikuwa imefanya makosa ya kupeleka mali yake katika nchi nyingine. Kwa hivyo, ni njama za ukoloni mambo leo. Sisi hatutakubali na ni wakati muhimu sisi tujiangalie, si kwa sababu tu viongozi wetu wamepelekwa katika Mahakama ya ICC. Lakini ni kwa sababu sisi tunataka kuusatiti tena Uhuru na utawala wetu na tuwe na Dola linaloheshimika katika dunia hii, ambalo liko na haki sawa ya kuangalia maslahi yake na maslahi ya wananchi wake. Haki za kibinadamu mara nyingi haziangaliwi huku. Ni mahakama ya kisiasa. Ni mahakama ya kisiasa; ni mahakama ambayo inataka kuwaadhibu wale ambao hawapendelewi na kwa hakika sioni sababu yoyote sisi tuwepo katika hali kama hiyo. Nafikiri Hoja hii inatupa fursa ya kunyakua tena uhuru wetu na kujiendeleza kama nchi ambayo ina maslahi yake.

Kwa hayo machache, naunga mkono.

Hon. (Dr.) Pukose: Hon. Speaker, Sir, I stand to support the amendment of the Motion and say that today is a very sad day. I am disappointed with my colleagues who walked away from here and forgot that their main responsibility was to come and legislate. Once this Motion had been brought, they had all the opportunity to make all the amendments that can make our country move forward. This reminds us of the historical cases of the home guards and freedom fighters. When the home guards were busy collaborating with the colonialists, the freedom fighters were in the bush fighting to give us freedom. I know today most of them are turning in their graves and wondering where this country is going.

I know we have commented about the issue of the Value Added Tax (VAT) Bill. What we know is that the VAT Bill as passed by this House did not put VAT on *unga*. That is very clear. If there is any amendment that we can still do on the VAT Bill, I do not think the Jubilee side is insensitive to the wishes and calls of Kenyans. We shall amend the VAT Bill so that we can make sure that the common Kenyan does not suffer.

On this issue, we know that the post-election violence, for most of us who were outside there, was a spontaneous reaction at that time. The people who were contested were the former Prime Minister and the President. The Deputy President was not a candidate of the ODM and today he is carrying a cross for the ODM side. At that time, maybe the Constitution said that if you were the sitting President or Prime Minister, you could not be prosecuted and they went for the people who did not deserve to carry those crosses. I stand today here to support this Motion and ask that if according to the Waki Report there were 20 members in that list, can it be made public?

(Applause)

We want to have people carry their own responsibility. I know very well that the Deputy President was here at the KICC for three days and everybody saw him on television. When was he organizing anything? We know people who went to the streets and said that they could not accept the results and today innocent people are suffering. They are moving from one country; from Kenya to The Hague to defend themselves on trumped up charges. This is unfair. This is not right and this should be condemned. We know that Waki had a constitutional mandate and we shall bring a Bill to this House to demand, as the Leader of the Majority Party says, that the report be handed over to the current President and the list of the 20 be made public. I think that is very clear.

We also wish to ask the NGOs working in this country that they should not thrive on trumped up charges. These are briefcase NGOs which sit in offices and concoct reports. To me, at times when you look at the Europeans, I think they believe so much in lies. The ICC itself has not sent an investigation team to the ground to talk to victims and find out what happened. They have relied on the reports of the NGOs like AFRICOG and others which have their own interests. They have an agenda for the paymaster who calls the shots.

With those few remarks, I beg to support.

Hon. Gikaria: Hon. Speaker, Sir, first of all, I want to thank you for giving me this opportunity and thank the Leader of the Majority Party for bringing this Motion. Recently, I had an opportunity of listening to the wife of the late Dedan Kimathi in a function that we had at a place called Bahati. That old lady, despite her age, still recognizes the issues at the ICC. We were around nine hon. Members and she challenged us in that meeting to come to Parliament and resolve to delete Kenya from the ICC as signatory to the Rome Statute. She spoke very passionately about what they went through when they were fighting for the Independence of this country. She gave a narration and her only request was, let us not put to waste the effort that the late Dedan Kimathi put to get victory to this country. Let his fighting for freedom not look like it was in vain.

Secondly, I come from a constituency where we had over 12,000 IDPs and we still have a place where the Government had given them to rest as they await to be given land. I want to thank the Government for giving them land to settle down but recently when Madam Bensouda came on her mission to try and get the true stories on the issues of the IDPs--- That is why I rise to support this Motion because of the voices of the victims. In that meeting, the victims themselves made it very clear to Madam Bensouda that this country has healed. This country has reconciled and asked her as the prosecutor to withdraw the cases that are facing the three Kenyans at the ICC. This was the message from the victims. When they heard that the House was being recalled and, of course, it was in the Press, that it is because we wanted to pull out of the ICC, a few of their leaders called us and we went there. They had the same sentiments. They said: "As our representatives, go and echo our voices that we want to ask justice, not only for the three gentlemen but also justice for the victims." We were very surprised and they are looking forward to the start of the cases because they want to see who the witnesses are because none of the 12,000 families living in Nakuru were ever---

Hon. Speaker: Your time is up!

Hon. A.B. Duale: Hon. Speaker, Sir, I wish to donate a minute each to hon. (Ms.) Shebesh, Hon. Abongotum, Hon. Baiya and Hon. Njenga.

Hon. Speaker: Hon. Duale, you have 10 minutes.

Proceed, hon. Shabesh.

Hon. (Ms.) Shebesh: Hon. Speaker, I want to thank hon. Duale for giving me a minute of his time to say what I feel needs to be said.

Hon. Speaker, we can never change history. Kenyans know exactly how we got to the ICC. So, being lectured about it continuously does not make sense, because we all know. However, I believe that, as a leadership, we can determine the future of this country. The future of this country is that we must be part of the African nations that have decided that we should come up with African solutions to African problems. I want to echo what the person who has just spoken talked about: How the ICC prosecutor can ignore the voice of the victims. Every time we speak, it is assumed that we are protecting the President, the Deputy President and Mr. Sang but we have always spoken in this House for the victims of the post-election violence. I believe that the victims' voices must be heard. I wonder why the civil society has not made it clear, if their work is really to listen to the victims; that---

Hon. Speaker: I am sorry, your minute is gone, hon. Shebesh.

Hon. Asman Kamama, you are next.

Hon. Abongotum: Hon. Speaker, first of all, I want to thank my brother for donating the minutes to me. I rise to support the Motion with amendments and say that Africans have actually come across challenging times, right from the times of slavery and colonialism to now neo-colonialism. The ICC is a neo-colonialism court as well as a political one. Why am I saying so? The audited accounts of an NGO called AFRICOG for 2010 show that they got Kshs1,306,751 from the ICC---

Hon. Speaker: Sorry, hon. Kamama. Your minute is gone.

Proceed, hon. Baiya.

Hon. Baiya: Hon. Speaker, I would also like to thank the Leader of the Majority Party for donating a minute to me. I also rise to join all my colleagues who have supported this Motion.

Article 143 of our Constitution grants the President immunity from prosecution, or even from civil proceedings, while in office. The reason as to why the Constitution has done so is to grant the President full unencumbered time to actually pursue his mandate. That is the time he is supposed to use to address the challenges and the problems that Kenyans are facing. So, when Kenyans elected leaders to come here to support a process that will actually keep the President away from this country for much of his time, they are certainly failing this country. They are only showing---

Hon. Speaker: Yes, hon. Kigo Njenga.

Hon. Njenga: Hon. Speaker, Sir, I rise to support the Motion for some reasons. What we are debating here today is a reflection of the feelings of the people of Kenya. We represent the people of Kenya. Therefore, what we are saying is what they are saying. We should get ourselves out of the Rome Statute. However, we are a law-abiding people. Kenya is a country that has healed. We are a reformed state. The 2013 elections were very peaceful. The President issued title deeds to people in Mombasa. Everyone can see how happy the people at the coastal region are. If we bring in The Hague issue, we will erode the confidence that Kenyans have.

Another thing I would like to say about this Motion is that it actually indicates that our people---

Hon. Speaker: Hon. Duale, who else did you donate time to?

Hon. A.B. Duale: Hon. Speaker, I need hon. Members to speak. I want to donate a minute to hon. Bowen, hon. Sabina Chege and hon. Florence Kajuju.

Hon. Speaker: Proceed, hon. Bowen.

Hon. Bowen: Hon. Speaker, Sir, I just want to say that the ICC is a political court. The ICC is the investigator, the prosecutor and the jury at the same time in these cases. We have seen that the ICC has done a very shoddy job in their investigations. The rate at which the witnesses of the Kenyan cases at the ICC are withdrawing shows that all that the ICC has been doing is basing their investigations on cooked-up stories and fabrications. We have heard from many colleagues that it is only Africans who are tried at the ICC. It is time that Kenyans, through this House, withdrew from the Rome Statute.

Hon. Speaker: Your time is up, hon. Bowen.

Proceed, hon. Florence Kajuju.

Hon. Murungi: On a point of order, hon. Speaker.

Hon. Speaker: What is your point of order, hon. Murungi?

Hon. Murungi: Hon. Speaker, mine is to note that somebody has just intimated to this House that the ICC is the investigator, the prosecutor and the jury at the same time.

So, I support the Motion.

(Laughter)

Hon. Speaker: Proceed, hon. Kajuju.

Hon. (Ms.) Kajuju: Hon. Speaker, I am happy that I do not have to do a jig for hon. Duale to notice me because I know that there are women who are better endowed. I have just received a text message from one of my constituencies, who says that this is not a beauty context, as if that is what we are doing.

I rise to support the Motion as amended by saying that it is very unfair for a legal process to be clouded by a political process. The ICC process has all along enjoyed a lot of faith from each and every Kenyan. However, the moment a legal process is turned into a political process, as leaders chosen by the people, we must give a political direction to our people. What I am saying is that today, as the 11th Parliament, we are showing the people of Kenya the political direction that we must take as a country.

Hon. Speaker: Hon. Duale, is there any other person to whom you would want to donate some time?

Hon. A.B. Duale: Yes, hon. Sabina Chege.

Hon. Speaker: Proceed, hon. Sabina Chege.

(Several hon. Members stood up in their places)

Hon. Members, this is hon. Duale's time. He is the one donating part of it to Members. So, do not bother catching my eye now.

Hon. (Ms.) S.W. Chege: Hon. Speaker, I rise to support the Motion.

I would like Kenyans to know that, under Article 127 of the Rome Statute, any country that is a signatory is allowed to withdraw. So, Kenyans should not be afraid. The decision that we are going to make today, as a House, will not affect the cases that are going on at the ICC. So, Kenyans should be at peace. They should know that, as a House, we are very sober. We have a sober Judiciary. The only thing we want to tell the world is that Kenya is now ripe, and that we have a sober Judiciary. We do not want any other Kenyan to be taken to the ICC in future.

Hon. Speaker: Hon. Maina Kamanda, are you on a point of order?

Hon. Kamanda: Yes, hon. Speaker. Mine is very simple. From the look of things, hon. Members need more time to discuss this matter. Kenyans need to express their views about the ICC. We support the Motion but we need more time.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Sabina, have you finished or has your time run out?

Hon. (Ms.) S.W. Chege: Hon. Speaker, the other thing I would like to say is that, as a House, we need to move another Motion. We need to know the list of the 20---

Hon. Speaker: Hon. Duale, make your concluding remarks.

Hon. A.B. Duale: Hon. Speaker, I have one-and-a-half minutes and I want to make two serious statements. Firstly, the country has seen who the owners of the ICC are, and that their investment did not give dividends on 4th March 2013. Secondly, you can even see “Breaking News” on television that the ICC is recruiting new witnesses two days to the commencement of the trial of the Deputy President. We have made a statement today based on our sovereignty as a nation. We might be called Jubilee but all of us represent constituencies and counties and we swore before you that we will defend the Constitution and independence of our country.

Hon. Speaker, Sir, I beg to move.

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, aware that the Republic of Kenya promulgated a new Constitution on 27th August 2010 which has fundamental changes in the circumstances relating to the governance of the Republic; aware that the Republic conducted its general elections on the 4th of March 2013 at which the President and Deputy President were lawfully elected in accordance with the Constitution of Kenya; this House resolves to introduce a Bill within the next 30 days to repeal the International Crimes Act (No.16 of 2008) and that the Government urgently undertakes measures to immediately withdraw from the Rome Statute and the International Criminal Court, as adopted by the United Nations Diplomatic Conference of Plenipotentiaries on 17th July 1998.

ADJOURNMENT

Hon. Speaker: Hon. Members, as I had indicated to you, this is a Special Sitting convened in accordance with Standing Order No.29 about which I have had an allocation to hold. That concludes the business for which the House had been recalled.

Therefore, the House stands adjourned until Tuesday, 17th September 2013, at 2.30 p.m.

The House rose at 6.05 p.m.