

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 3<sup>rd</sup> July, 2013

The House met at 2.30 p.m.

*[The Speaker (Hon. Muturi) in the Chair]*

### PRAYERS

**Hon. Speaker:** The hon. Members, who are the entrance, please, walk in.

*(Hon. Members entered the Chamber)*

### COMMUNICATION FROM THE CHAIR

#### ALLOCATION OF OFFICE ACCOMMODATION

**Hon. Speaker:** Hon. Members, there are a number of Communications. The first one is on office accommodation. Hon. Members, on 6<sup>th</sup> June, 2013, I issued a Communication on the measures the National Assembly was taking to address shortage of accommodation facilities in the National Assembly. I had indicated that negotiations were ongoing between the Government and the Parliamentary Service Commission (PSC) to have the entire Kenyatta International Convention Centre (KICC) allocated to Parliament in order to provide offices to Members of Parliament. I now wish to report that those negotiations have been concluded and that the National Assembly has been allocated office space at the KICC from the 11<sup>th</sup> Floor to the 27<sup>th</sup> Floor.

*(Applause)*

In addition, parliamentary staff has been relocated from *Harambee* Plaza to create more space for allocation to Members of Parliament. As renovation and partitioning of offices go on, Members who do not have offices will each be allocated one office at the KICC or the *Harambee* Plaza through balloting. Officers from the Serjeant-at-Arms Department will assist Members to ballot. This exercise will take place tomorrow, Thursday, 4<sup>th</sup> July, 2013 at 10.00 a.m. near the reception of the Main Parliament Buildings. In view of the fact that certain offices at the KICC were being occupied by some Government departments, I call for orderly movement and taking over of offices even as the affected Government departments are given alternative accommodation. At least for the time being, every Member will have an office to occupy.

Thank you.

*(Applause)*

I call on the Members who are coming in to please do so quickly.

*(Hon. Members entered the Chamber)*

#### LACK OF DECORUM AND GROSS DISORDERLY CONDUCT

**Hon. Speaker:** This is further Communication from the Chair on a matter of lack of decorum and gross disorderly conduct in the House in breach of Standing Orders. Hon. Members, you are all aware that debate in this House in the past one week has not been decorous and the rules of the debate have largely been breached. I am equally concerned at the very fast degeneration in propriety of manners, behavior and speeches. We have witnessed some Members creating actual disorder, using or threatening violence against colleagues and/or abusing their privilege. We have seen behaviour that has bordered on disrespect for the presiding officers during proceedings in Committee of the whole House. Some Members have in the past week exchanged insults in the most despicable of ways and even attempted to rough up colleagues. Other Members even threatened to take away the Mace. This state of affairs, which is unacceptable, will surely erode public confidence and bring the institution of the National Assembly to disrepute.

Hon. Members, I wish to appeal to you to familiarize yourselves with the provisions of Standing Orders regarding rules of debate and order in the House and in the Committee of the whole House particularly Standing Order Nos.98, 102, 103, 104 and 107 to 112 of the National Assembly Standing Orders which should provide you good guidance on the breaches and sanctions that follow. Those Orders are designed to ensure that you exercise your privilege of free speech with good sense and good taste, maintaining courtesy of language towards other Members in debate. Personal references, unbecoming language and insults during the debate do not augur well for the House.

Members are reminded of the provisions of Standing Order No. 87(3) which *inter alia* states and I quote: “It shall be out of order to use offensive or insulting language whether in respect of Members of the House or other persons.” One main duty of the presiding officers in the House is to maintain order and if the rules are breached or the situation deteriorates, there would be recourse of removal of a Member from the House for a certain period, or if the situation worsens, the offending Member or Members may be named and suspended from the House altogether.

Standing Order No.107 defines “grossly disorderly conduct” as where a Member concerned creates actual disorder, knowingly raises a false point of order, uses or threatens violence against a Member or other person, persists in making serious allegations without, in the Speaker’s opinion, adequate substantiation, otherwise abuses his or her privileges, deliberately gives false information to the House, votes more than once in breach of those Standing Orders, commits any serious breach of those Standing Orders or acts in any other way to the serious detriment of the dignity or orderly procedure of the House.

The Speaker or the Chairperson of the Committees is expected to order any Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the Assembly on the first occasion, for the remainder of the day’s sitting and on the

second or subsequent occasion during the same Session, for a maximum of three sitting days including the day of suspension.

If the situation were to get worse and the Speaker or the Chairperson deems that his or her powers are inadequate, the Speaker or Chairperson may name such Member or Members resulting in a suspension in accordance with Standing Order No.108.

The Mace of the Assembly has come to be associated with the authority of the Speaker and the House as a whole. While the Speaker is officiating over the House, the Mace must be in its proper place on a Table before him or her. No business may be conducted in the House unless the Mace is present. I wish to remind you of the need to honour those symbols of authority and for the orderly conduct of the House.

There is a parting shot to this though, the punishment for disgracing or removing the Mace is even severe; an offender will face the full wrath of the House and would be considered a grave disorderly conduct that may attract expulsion from the Sittings of the House for a period that, under Article 103 of the Constitution of Kenya, may lead to the loss of a seat of a Member. The Members are reminded that certain actions that we take for granted have indeed grave implications and consequences.

This august House has an obligation to espouse decorum, behavior and deportment which bespeak of us as hon. persons and we owe this to the society. We do not have a choice. I also wish to remind you that your presiding officers are your leaders, the face of your Assembly who carry your image and dignity. I encourage you to respect them and to honour their decisions. Thank you.

*(Applause)*

There is further communication because of the matters that are coming up, when we have more Members. Hon. Florence Kajuju, take the Floor.

### NOTICE OF MOTION

#### ESTABLISHMENT OF AD-HOC COMMITTEE ON MATTERS RELATING TO *MIRAA*

**Hon. (Ms.) Kajuju:** Thank you, hon. Speaker, Sir. I beg to give notice of the following Motion: -

THAT, aware that Khat (*Miraa*) is an economic mainstay of many people in Kenya and has led to economic growth and development in the country; noting that the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) has continued to campaign against consumption of the commodity and classified Khat (*Miraa*) as a drug; concerned that most countries have banned chewing of Khat (*Miraa*) and others are in the process of banning entry of the product into their markets including recommendation of severe penalties against consumers, while others have granted the Government of Kenya a window period to consider the suitability of the product for export; further noting that recent research has established that Khat (*Miraa*) is not a drug, and therefore appropriate legislation should be put in place to regulate the industry; this House resolves to establish an *ad-hoc* Committee to comprehensively

investigate, inquire into all matters relating to Khat (*Miraa*), consider and review all research findings and make recommendations to the House within ninety days, and that the Committee comprises the following Members:-

1. The Hon. Florence Kajuju, MP – Chairperson
2. The Hon. Franklin Mithika Linturi, MP
3. The Hon. Muriuki Njagagua, MP
4. The Hon. Gladys Wanga, MP
5. The Hon. Daniel Maanzo, MP
6. The Hon. Dennitah Ghati, MP
7. The Hon. Dr. Susan Musyoka, MP
8. The Hon. Fatuma Ibrahim, MP
9. The Hon. Cyprian Kubai Iringo, MP
10. The Hon. Joseph M'Eruaki, MP
11. The Hon. Farah Abdulaziz, MP
12. The Hon. Tiyah Galgalo, MP
13. The Hon. Dan Kazungu, MP
14. The Hon. Mohamed Elmi, MP
15. The Hon. Rachel Nyamai, MP
16. The Hon. Jimmy Angwenyi, MP
17. The Hon. Beatrice Nkatha Nyaga, MP
18. The Hon. Benson Mutura, MP
19. The Hon. Alfred Kiptoo, MP
20. The Hon. Kanini Kega, MP
21. The Hon. Zipporah Kering, MP
22. The Hon. Ayub Savula, MP
23. The Hon. Sabina Chege, MP

**Hon. (Ms.) Kajuju:** Thank you, hon. Speaker, Sir.

**Hon. Speaker:** The Leader of Majority Party.

## STATEMENTS

### TRIP TO SENEGAL BY CHIEF JUSTICE TO MEET PRESIDENT OBAMA

**Hon. A.B. Duale:** Thank you, hon. Speaker, Sir. I have two Statements to make, one on security sought by the Member for Saboti, hon. Wafula and the other by the hon. Johnson Sakaja.

I will start with the one by hon. Johnson Sakaja on trip to Senegal by the Chief Justice to meet President Obama of the United States of America. This Statement is from the Judiciary and it is very brief.

It says: "The Hon. Chief Justice, Dr. Willy Mutunga, received an invitation from the Ambassador of the United States of America to Kenya to attend a meeting in Dakar Senegal. The said meeting was graced by His Excellency President Barrack Obama and other Chief Justices from various African countries including Senegal, Malawi, Benin, Zambia, Côte d'Ivoire, Botswana, Niger and Gabon as well as senior most judges from Ghana and Uganda.

The visit was fully funded by the United States of America Embassy in Nairobi. The agenda of the said visit was to discuss the role of judiciaries in promoting democracy and devolution. The discussion appreciated the huge leap countries in Africa have made in the journey towards democracy from gaining political independence to entrenching multi-partyism and the launch of constitutionalism”.

Finally, and this is the Chief Justice himself and the Judiciary saying, “I am not privy to the identities of other Kenyan State officers who had been invited to meet the American President either in Senegal or in Tanzania. The discussions in Senegal bear no impact on the independency or otherwise of the Judiciary as per the Constitution”.

I beg to table the report.

*(Hon. A.B. Duale laid the document on the Table)*

**Hon. Sakaja:** Hon. Speaker, first I would like to thank the Leader of the Majority Party for quickly seeking that Statement from the Judiciary. I wish to seek further clarification because the question which I had asked has not been answered. I had mentioned, as you all know, what our Constitution states in Article 160(1), that the Judiciary is supposed to be independent and conduct itself in a manner that shall not be subject to control or direction of any person, least of all, the president of another country that has pronounced itself on ongoing judicial processes in this country. The USA Government had stated that the precise reason why the President was not visiting this country, in as much as we are not splitting hairs to the fact that he did not come, was because of an ongoing judicial process, namely, the International Criminal Court (ICC). So, how would his inviting the head of our Judiciary to meet him impact on the cases? Was he directing our chief justices around Africa on how to deal with such cases if they come before them?

Secondly, our relationship with the President of America---

**Hon. Simba:** Yes!

**Hon. Speaker:** Hon. Sakaja, I want to warn hon. Simba. I have just read the rules of debate in the House. I will not allow you from your place to answer anybody. Please, if you want to ask a question, indicate. We are degenerating. You are the one who is answering him. You are saying that the Chief Justice was being directed. You are breaching Standing Order No.87. You cannot discuss the conduct of the Chief Justice and that is why I have to pay attention because if anything comes close to that, I must stop anybody. The question he is asking is whether the Chief Justice was being directed and that is why I have to pay attention. So, if you pretend to be answering yes, you are now saying that the Chief Justice was being directed. That is out of order.

**Hon. Sakaja:** Hon. Speaker, secondly and as I was saying, the relationship between this country and the USA, especially the relationship with the President of the USA is a political relationship. The former Director of Communications for the former Prime Minister stated last weekend in an article, “why would Barrack Obama talk to an African judge over the head of the President? A judge who attends such a forum panders to the whims of a bloated international egotism”. The clarification that I seek is whether the USA President followed the required protocol in inviting the Chief Justice of an independent country?

Thirdly, in his remarks, and I have the speech that the President of the USA read out in the meeting with the chief justices, which I will table and it is also available on the White House website, he alluded to the issue of helping to fund the Judiciary and expressed willingness to partner with our Judiciary and others in Africa to strengthen their independence. That in itself is an oxymoron. Our Constitution is clear in Article 174 in the manner in which the Judiciary is funded through the creation of the Judiciary Fund, whose Estimates are approved by this House and are a charge on the Consolidated Fund. The clarification that I seek from the Leader of Majority Party is whether this in itself is an interference with the independence of our Judiciary, if we start trying to get funding or assistance from other States? I will quote what the President said in one sentence of his speech. He said: "On a basic level, judicial systems require funding to do their jobs". He continued to say: "In this meeting, I want to hear from you how we can be more helpful and encourage in building stronger judiciaries and systems of law around the continent. We want to work with partners across Africa to strengthen the independent judiciaries". That is an oxymoron and goes against the issue of independence.

Finally, we know and media reports have stated that when President Obama was in Senegal, he advocated for gay rights and called on African Governments to give gay people equal rights by de-criminalizing homosexual acts. In his remarks to the chief justices of the continent, he actually asked the media to walk out so that he could discuss such matters in private. I will read again his speech: "Thanks to all of you who have in some cases travelled from a very long way to be here. Of course, we know Kenya is far from Senegal, and with that let me give the Press a moment to depart so that we can have a good conversation". The question is: Which conversation is this? Is there an attempt to introduce gay rights or tolerance for gay issues in this country which is a very religious country? Is that a matter that is being supported by the Chief Justice or by the Judiciary? That is the clarification that I seek from the Leader of Majority Party.

**Hon. Ochieng:** Hon. Speaker, I want to thank you for being keen on the clarification. In my legal mind, I do not think that the clarification that is being sought by the Member can be delivered without necessarily having to go into the conduct and to the performance of the functions of the Chief Justice. Secondly, you know the history of our current Chief Justice. When he was being interviewed for the job, the issue of gay rights was a major issue. I do not think we can discuss or the Leader of Majority Party can clarify that without necessarily going into the conduct of the Chief Justice. I request your guidance on this matter.

**Hon. Speaker:** Everybody, including the Leader of Majority Party, is advised against discussing the conduct of the Chief Justice as a person.

**Hon. Linturi:** Hon. Speaker, I wish to seek further clarification from the Leader of Majority Party in regard to the discussions that were held in Senegal. If you allow me, I just want to read a paragraph of the Third Schedule of our Constitution on the oath of office that the Chief Justice took. It says that: -

"I,.....(The Chief Justice/President of the Supreme Court, a judge of the Supreme Court, a judge of the Court of Appeal, a judge of the High Court) do (swear in the name of the Almighty God) (solemnly affirm) to diligently serve the people and the Republic of Kenya and to impartially do justice in accordance with this Constitution as by law established, and the laws and customs of the Republic, without any fear, favour, bias, affection, ill-will, prejudice or any political, religious or other influence..."

This is the oath of office that the Chief Justice took. I want the Leader of Majority Party to clarify whether in terms of conduct or engagement in this particular meeting, the Chief Justice was acting within the oath of office that he took considering that issues of protocol demand that a State officer should be accountable to the public in terms of deliberations of this nature that touch on the country.

**Hon. Ng'ongo:** Thank you, hon. Speaker. I think our rules of debate are very clear. Our Constitution is also very clear. The separation of powers between the Legislature and the Judiciary is respected. If you listened keenly, and I am sure you did, to the clarification sought by hon. Linturi it clearly discussed the conduct of the Chief Justice of the Republic of Kenya. Even though I did not know at what point the honeymoon between the Chief Justice and the Jubilee Government ended, I think rules of debate are rules of debate. If hon. Linturi wants us to debate the conduct of the Chief Justice – which we will be glad to do – why can he not be courageous enough and bring a substantive Motion here so that we do that? We will be glad to discuss the conduct and behavior in office of one Justice Willy Mutunga. He should not hide behind raising issues or seeking Statements which even the Leader of Majority Party cannot clarify. He has no capacity to clarify. It is only the Chief Justice who can clarify some of those issues.

Hon. Speaker, I request that you rule that the matter that we are debating now is un-procedural and that we ask hon. Sakaja to put his perfect idea in a Motion so that we debate it.

**Hon. Mirenga:** Hon. Speaker, I also join my colleague hon. Mbadi in asking for your further guidance as to the issue that is being sought by my friend, hon. Sakaja. I think that other than the possibility of trying to sneak a discussion and debate on the conduct of the Chief Justice, the nominated Member is also trying to sneak a debate on the conduct of the President of a friendly nation.

Hon. Mbadi, I do not think the honeymoon between Jubilee and the Chief Justice is over. I think they are just using the Chief Justice as a shield to discuss the President of a friendly nation. And this is a President who is the most powerful man on earth. Stop pretending there. Know that there was nothing wrong with this.

**Hon. Speaker:** Hon. Ken Obura, the point you are making, which is the same point hon. Ochieng and hon. Mbadi raised is, indeed--- If you listened to the Statement as read from the Judiciary and the portion which was attributed by the Leader of Majority Party to have been written by the Chief Justice himself, I think it is quite general. If we start digging deep into some of those issues, we will be breaching our own Standing Orders. I have just ruled on this a while ago.

So, to the extent that you are going to find out whether the Judiciary wants to get assistance--- Of course even Parliament sometimes, I hear seeks assistance. You know Judiciary and the Legislature are part of the national Government. I will be making a Communication just now to expound on this issue. I do not see anything wrong if the Judiciary or the Legislature wish to engage with each other to seek whatever assistance. However, if, indeed, what we are questioning is the conduct of the Chief Justice of the Republic of Kenya who is also the President of the Supreme Court, then I will not allow that one.

Leader of Majority Party, to the extent that what you may have to clarify does not touch on the personal conduct of the Chief Justice, you may give further clarification.

**Hon. A.B. Duale:** Hon. Speaker, I want to confirm that the Chief Justice went to Senegal in his private capacity. Secondly, that visit has no impact on the ongoing ICC cases. The cases are before the court in the Netherlands. The lawyers there are able. The Chief Justice's visit has no relevance and no impact. It does not contravene Article 161 of the Constitution.

On protocol, the Judiciary is an independent institution. The Chief Justice is not under anybody's command. He does not get clearance from anybody when he wants to go and attend any function outside this country.

On the issue of funding raised by hon. Sakaja, any institution even Parliament may seek funding, but again that funding will come through the National Treasury. There are procedures in Government. Even our county governments can go and seek funding, but the funding must come through the National Treasury and the Office of the Solicitor-General. If the Chief Justice in his informal discussion wanted to get more funding, I hope not for the expansion of gay rights, but for other judicial functions, then that is good for our country.

On gay rights, Kenyans spoke in 2010 when they passed the Constitution. Kenya is a God-fearing nation. We have a culture and religion. We abhor gayism as a country. One of the issues that the American Government was sending across Africa was gay rights. If that, indeed, was the case then I am lucky at least that he did not come to Kenya. This is because Kenyans have shown categorically that they do not believe in those kinds of acts. It is in the Bible and the Quran that communities that went through that kind of behaviour were destroyed by God. We stand with our bishops.

With regard to hon. Linturi, I said that the Chief Justice went on a private mission and that does not contravene the oath of office as stipulated in the Third Schedule of our Constitution.

**Hon. Speaker:** Hon. Duale you have another Statement to issue. Please, finish first.

#### SECURITY SITUATION IN TURKANA, MANDERA AND WAJIR COUNTIES

**Hon. A.B. Duale:** Hon. Speaker, Sir, I have two small related Statements on insecurity; one on insecurity in Saboti Constituency sought by hon. Wekesa and another on security situation in Mandera, Wajir and Turkana counties. I will start with the one of Mandera, Wajir and Turkana.

Hon. Speaker, Sir, I wish to issue a Statement about the security situation in Mandera, Wajir and Turkana counties. In the last two months, Mandera and Wajir counties have experienced 27 cases of fatal attacks and counter attacks between the Degodia and Garre militia where 52 people have been killed and 25 seriously injured. At the same time, a number of insecurity incidences have been reported in the county of Turkana.

Turkana County has experienced the following incidences in the last one month: On 18<sup>th</sup> June, 2013, a gang of about 70 raiders attacked Eng'oli Village in Turkana Central District, shot dead an 11-year-old child and seriously injured another, before driving away unknown number of camels and goats. On 2<sup>nd</sup> June, 2013, suspected Ethiopian raiders attacked Kibish Town where two people were injured, a Kenya Police



Reservist rifle stolen and 30 goats shot dead. On 30<sup>th</sup> May, 2013, about 50 suspected Toposa militants from South Sudan killed five people in Kibish District.

On the other hand, Mandera and Wajir counties have experienced the following incidents in the recent past: On 23<sup>rd</sup> June, 2013 suspected Garre militia attacked Chorogo Village where they killed eight residents and injured 17 others before stealing unspecified number of livestock. On 22<sup>nd</sup> June, 2013 armed militia attacked Guba and Chorogo villages where again three people were killed including one attacker. A number of initiatives have been undertaken in a bid to seek a durable solution to the perennial inter-clan conflict in Mandera and Wajir counties. Those include: -

(i) Security meetings held between the local administrators and leaders from the region and the national security machinery. On 24<sup>th</sup> June, 2013, His Excellency the President held a security meeting in Nairobi with leaders from the two warring clans and other leadership from the North Eastern Province. This was a follow up of another meeting held and convened by the Deputy President on 6<sup>th</sup> May, 2013. The National Steering Committee on Peace Building and Conflict Management in conjunction with the National Cohesion and Integration Commission (NCIC) held a mediation meeting between the Garre and Degodia clans between 21<sup>st</sup> and 23<sup>rd</sup> June, 2013. The leaders resolved to restore peace and reconciliation between the two communities.

(ii) Deploying security officers from the Rapid Deployment Unit (RDU) and the General Service Unit (GSU). The Ministry of Interior and Coordination of National Government has requested the Ministry of Foreign Affairs to urgently liaise with both the Ethiopia and Sudanese governments in an effort to stop the foreign militia from crossing into country. The Government will implement a full-scale disarmament exercise in the North Eastern Region that started yesterday.

(iii) All officers from the two warring communities serving in Mandera and Wajir counties to be transferred immediately.

(iv) The Government will provide humanitarian assistance to the displaced people.

(v) The resettlement of the displaced people to their towns must be facilitated and this was a joint effort that will be coordinated by the Ministry of Interior and Coordination.

As a way forward, the security service will remain vigilant and proactive in the management of security and intensify intelligence information gathering and sharing in order to preempt threats to national security. There will also be fast-tracking of the ongoing police reforms and finally the full operationalisation of the county security committee to manage it.

#### INSECURITY IN SABOTI CONSTITUENCY

On the Saboti issue, on 22<sup>nd</sup> June, 2013, at about 11.55 p.m. an armed gang of about 15 criminals attacked Muroki Trading Center which is about 24 kilometers from Kitale Police Station, four kilometers from Gituamba AP Camp and three kilometers from Saboti Police Patrol Base. However, the officers were only able to arrive at the scene at about 1.00 a.m. This was occasioned by the fact that the two posts do not have a vehicle and they had to access the scene on foot. In addition, the Saboti Patrol Base has only four officers while the Gituamba AP Camp has three officers and, therefore, had to seek reinforcement from Kitale Police Station. Unfortunately, the gang managed to

escape after shooting dead four people while a fifth one succumbed to injuries while undergoing treatment at Kitale District Hospital. Five other people were injured. Those shot dead are Fredrick Tindi, Cornelius Juma Wafula, Marko Chang'asha Wafula, Andrew Wekesa, Simon Wamalwa Werungu and those who were injured are Phanice Wafula, Meshak Opicho, Ferdinand Masinde, Bernard Simiyu and Andrew Wamalwa. During the incident, the victims were robbed of an unknown amount of money. Investigations were launched immediately and so far, two suspects, Phobian Kones and Regan Matians Wambani have been arrested and charged via Kitale Police Station Cr. No.811/589/2013, Court File No.14464/2013. Efforts are underway to trace and arrest the other suspects.

The following measures have been put in place by the Government to ensure that security prevails in the area: -

- (i) Assistant County Commissioner, Saboti, has been allocated a vehicle.
- (ii) Gituamba AP Camp has been allocated a vehicle for patrols.
- (iii) A contingent of GSU officers has been deployed in the area to boost police efforts.
- (iv) A squad of officers from the Special Crime Prevention Unit (SCPU) is already on the ground to track down the suspects.
- (v) Both foot and mobile patrols have been intensified.
- (vi) Collection of intelligence information has been enhanced.
- (vii) Two OCPDs have been posted to take charge of Kwanza and Trans Nzoia East districts.

Lastly, plans are underway to put up two police stations at Saboti and Kiminini trading centers while the National Police Service is also in the process of posting more police officers. Further, plans are underway to set up a Flying Squad unit in the area.

**Hon. Abass:** Hon. Speaker, Sir, I want to thank the Leader of Majority Party for that clarification but I want to seek more clarifications. Since we signed that agreement, the situation has escalated to an extent that elected leaders from Wajir County, Members of this House, are here today by the grace of God. In that agreement I think we had some specific timelines and sanctions that if something were to happen, the first bullet coming from somewhere, then we had specific sanctions. We deposited that agreement with the President. So, what will come out of that? How is the Government going to enforce it on the aggressors? I am told there have been several incidents. That is not the only one since then.

Finally, can our security apparatus forestall this kind of situation? Do they have to collect bodies every time and react when something has happened?

**Hon. Mohamed Abass:** Hon. Speaker, Sir, I want to thank the Leader of Majority Party but despite what he has said, the conflict between Wajir and Mandera, especially Mandera County has been going on for the last two years. Many people have been killed, several schools closed and destroyed, boreholes destroyed but to date nobody has been apprehended. Militiamen are moving freely in Wajir and Mandera counties with sophisticated ammunitions that are superior to the ones by the Kenya Defence Forces (KDF). This is an independent country and it is the most unfortunate situation that to date, no action has been taken. As my colleague has rightly said, at the weekend when we were going for the peace mission, the lives of the entire Wajir leadership was threatened. We were attacked by the militia in Kenya at the borders of Wajir and Mandera. I would

like to seek clarification from the Leader of Majority Party on what happened. Why has it been that for the last two years not a single person has been apprehended? The conflict is supported by many businessmen, militia and political leaders yet to date there is no single person who has been mentioned or taken to court. Can I have clarification from the Leader of Majority Party?

**Hon. (Ms.) F.I Ali:** Thank you, hon. Speaker. I acknowledge the Statement of the Leader of Majority Party. First, I want to say that, with the blessings of Allah *Subhanahu Wataalah*, I survived the attack in Bur Maiyo, Wajir County. All of us nearly died. There is no single Kenyan security person at Bur Maiyo border point. I was with the entire current and former elected leadership of Wajir County.

**Hon. Abongotum:** On a point of order, hon. Speaker. This is not in relation to what the hon. Member is saying but rather in relation to the clarification sought by hon. Abass. He has just said that the militiamen have more superior weapons than the Kenya Army. That statement is misleading the House. I want to confirm to him that the weapons of the Kenya Army are more superior to those of the militia. Is he in order to mislead the House? I can hear hon. (Maj.-Gen.) Nkaisery saying that they do have superior weapons.

**Hon. Speaker:** Your point of order has been overtaken by events, hon. Abongotum.

Proceed, hon. Fatuma.

**Hon. (Ms.) F.I Ali:** Thank you, hon. Speaker. It is now my time to speak. I want to confirm to hon. Kamama that the militia have more sophisticated weapons. We have witnessed it. If the Government had more sophisticated weapons than those of the militia, the killings of its citizens by the militia, which have gone on for two years now, would not have continued.

**Hon. Member:** On a point of order, hon. Speaker. Could the hon. Member, please, name those weapons? Categorization of weapons as superior or inferior should be done in such a way that would identify specific weapons used, such as M15 Rifles, AK47 Rifles, bazookas, Anti-Aircraft Guns, *et cetera*. I would like her to name the weapons used, so that we know that the Kenya Army was using G3 Rifles or Mark 4 Rifles whereas the militia were using AK47 Rifles.

**Hon. Speaker:** Hon. F.I. Ali, please, just seek clarification because the area you are venturing into is going to be complicated. As you can see, hon. Gen. Nkaisery is getting agitated.

**Hon. (Ms.) F.I. Ali:** Thank you, hon. Speaker, for that direction. Definitely, I do not want to be an expert on weaponry. I only wanted to share with hon. Members the serious scenario we had and show that one can easily die in the hands of militia, especially in the northern Kenya region.

**Hon. Speaker:** What do you want clarified, hon. Fatuma?

**Hon. (Ms.) F.I. Ali:** Hon. Speaker, when we went to Wajir County, we found that almost all the schools had been closed down. There were no children in school. Teachers were present and ready to teach. They had not taken part in the ongoing teachers' strike but they could not teach because of the aggression from Mandera. The students fled with their parents to neighbouring areas.

**Hon. Speaker:** So, what do you want clarified?

**Hon. (Ms.) F.I. Ali:** Hon. Speaker, I want to know what the Government is doing to ensure that the students go back to school. I also want the Leader of Majority Party to

tell us what the Government is doing to provide security in that area. When we toured the area, there was no presence of Government.

**Hon. Speaker:** That is enough, hon. Fatuma. We will take one more clarification request on that Statement. We have a Statement on Trans Nzoia. So, let us allow the Leader of Majority Party to respond in a consistent manner.

Proceed, hon. Mohamed Ibrahim Elmi.

**Hon. Elmi:** Thank you, hon. Speaker. I am going to seek a very simple clarification, so that the House can understand that it is not the whole of the two counties that are completely on fire. The fighting between the two clans is happening in Mandera. The clashes have spilled over to Wajir. It was very clear in our agreement with the Government that the officers that were to be transferred were those who hail from Mandera. We have another security problem in Wajir, namely, *Al Shabaab*, although the local security officers have so far done very well. We managed to recover many bombs and arrest many *Al Shabaab* fighters. So, we must safeguard that gain. There has never been a community attack from Mandera in Wajir, apart from the other areas that were attacked by the militia. We have managed to restrain the people in Wajir. Could the Leader of Majority Party assure us that what has been said in that Statement is not what we had agreed upon?

**Hon. Speaker:** Yes, Leader of Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, there are two hon. Members by the name of Abass in the House. One of them is the Member for Ijara, while the other one is the Member for Wajir Town. The hon. Member to whom you gave the Floor happens to be the Member for Ijara.

Having said so, I want to totally agree with the leadership of the northern Kenya region, including hon. Abass of Ijara, hon. Fatuma, hon. Elmi and hon. Abass of Wajir Town. The matter at hand is serious. I am sure that the leadership of that region will confirm that we had agreed to provide leadership. We cannot allow innocent women and children to be butchered by their own people. It is very shameful and immoral. As the leadership of that region, we must work with the Government. I am sure that the hon. Members are aware that the seven days they were given ended on the day before yesterday. Yesterday, there was a meeting of the top national security organ, which basically discussed the issue of disarmament and how to find the militia in Mandera County and in the border area with Wajir County. Of course, there is displacement of people. Schools have been closed. It is very sad that devolution is not working in some of those counties. What we have agreed on is what is going to be implemented, following yesterday's meeting.

Hon. Speaker, of course, in the border areas between Kenya and Ethiopia, and Sudan and Somalia, we have the KDF. I am sure that the KDF will stop infiltration by any militia from across our borders. I want to confirm here that Kenya has the best army, the best navy and the best Air Force. The KDF have the best weapons. We cannot equate the KDF to a marauding militia. So, I want the negative notion retracted. The KDF have done a wonderful job. They have secured Southern Somalia. They have dismantled *Al Shabaab*'s infrastructure in that region.

**Hon. Kaluma:** On a point of order, hon. Speaker.

**Hon. A.B. Duale:** Hon. Speaker, protect me. Hon. Kaluma should know that he has to wait for the microphone.

**Hon. Speaker:** Proceed, hon. Kaluma.

**Hon. Kaluma:** Thank you, hon. Speaker. I am seeking your direction on the clarifications that we seek, as a House. We usually seek clarifications from the Leader of Majority Party. Traditionally, we send him to the various Government agencies, as the link to bring us information. I wonder what further clarifications he can be giving on his own, having brought a written communication from whichever Government agency we sent him to; without referring back to those agencies? Are we being fed on his imaginations or thinking?

*(Laughter)*

Hon. Speaker, this is a matter which should be addressed, if we are going to take the issue of Statements and clarifications very seriously. It is time the Chair gave guidance on a matter like this one. If there are matters we are calling “clarifications”, my thinking is that he should note them down and refer them back to the relevant Government Departments, so that we can have tangible details we can work upon as a House, through the relevant Committees.

**Hon. Speaker:** Hon. Members still insist on seeking clarifications from the Leader of Majority Party after the Statement has been read out. Of course, the assumption is that the Leader of Majority Party, apart from the Statement that he reads out, has also got some briefing in a style that is reminiscent of years gone by. I am sure that hon. Anyango could tell you how it used to happen. However, you are right and I agree with you. This is a matter that we, as a House, must really get seized of and make a decision one way or the other on how we want to proceed. However, I can see many experienced Members want to seek further clarifications. So, let the Leader of Majority Party clarify that.

*(Applause)*

**Hon. A.B. Duale:** Hon. Speaker, Sir, first, I want to clarify that I am not a messenger. What I am doing is spelt out under Article 108 of the Constitution. I thought that hon. Kaluma is a lawyer and can do better unless he is a back-street lawyer.

Secondly, for clarification, I can reply even on what I have read. So, clarification does not mean that you go back. A Member can seek clarification on what he was maybe not paying attention to.

Having said that, militias are there and I think the Government has a responsibility under the Constitution--- That is what they were discussing. What Hon. Elmi said is true. The problem is in Mandera County and not in Wajir County. *Al Shabaab* is another big issue that needs to be discussed another day and not today. Of course, the Government has said, and we will pass the information that arrest must be made. However, I am sure that even hon. Members of this august House have recorded statements with the police. I am also sure that, that is part of the ongoing investigation to make sure that anybody who is a businessman, politician, community elder or militia and is involved in this heinous act in Mandera must be brought to book.

Schools and roads must be opened and normalcy must be brought to the people of Mandera County. Under the Constitution, that is the function of the Government and it cannot run away from it.

**Hon. Keynan:** Thank you, hon. Speaker, Sir. I have a similar view as hon. Kaluma but for purposes of this business, I want to seek clarification from the Leader of Majority Party. The function of any Government or the cardinal responsibility of any Government is to protect the lives and properties of its citizens.

What has been happening in Mandera County over the last two years, and more so over the last three months, is something that should not be allowed to happen in the midst of any civilized nation. The heads of those criminal gangs are known to the intelligence. This country is endowed with one of the best intelligence networks in the world. Scorched earth policy has not worked for the heads of those criminal gangs because they have destroyed, they have maimed and raped. Literally, they have killed very many people in the last three months. The entire leadership of Wajir County is alive today by the grace of God. I was stuck in the village for three hours waiting to join my colleagues from my constituency. Had it not been for the services of one great chief who had a satellite phone and brought the issue to our attention; hon. Sane who is seated here, Senator Halima and I, all of us would have been dead.

The Government did not act when innocent people were being killed. The Government did not act when there was attempt to---

**Hon. Speaker:** Do you want the Leader of Majority Party to hear that or do you want to seek clarification?

**Hon. Keynan:** Hon. Speaker, Sir, I am trying to build my---

**Hon. Speaker:** We cannot use this process for debate.

**Hon. Keynan:** This is the clarification, hon. Speaker, Sir. On Monday, last week, we appeared before none other than the Chief Executive of the Republic Kenya, His Excellency President Uhuru Kenyatta, and we deposited a commitment signed by the entire leadership of North Eastern Province under the auspices of North Eastern Parliamentary Group. We were promised that any group that takes action after that particular day will meet the full force of the law. Since that time, there have been seven incidents. Could the Leader of Majority Party tell us what action the Government has taken against the perpetrators? There are individuals in the groups who have breached that agreement because there have been seven incidents since Monday, last week. This is the case and yet they are known and those issues are with the President. What action have you taken to nab or apprehend the culprits and take them to court?

Right now, the Leader of Majority Party has confirmed that over the last two months over 57 people have been killed, more than those that were allegedly killed in certain quarters that contributed to some of our leadership being taken to the ICC. What have you done to nab those culprits so that they are dealt with in accordance with the Constitution and in accordance with the rule of natural justice? We have competent courts.

**Hon. Speaker:** The Leader of Majority Party, respond to that issue briefly because I have to give---

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

**Hon. Speaker:** What point of order, hon. Nooru? I will look with disfavor anybody who continues to attend the House without his or her card.

**Hon. Nooru:** Hon. Speaker, Sir, for the purpose of correcting the record of this House, the Members have a right to seek clarification. However, I want to correct the impression that is being created here. The leaders from Wajir were not attacked in Mandera but they were attacked in Wajir. So, they should be able to tell us who attacked them. They should not pass the buck to Mandera. The issue of clashes in Mandera and Wajir is known to everybody and all Kenyans. However, the impression that is being created that the leaders were attacked from Mandera is not right. I thought they were in Wajir and we were in Mandera. All the leaders in Mandera went to Mandera while all the leaders in Wajir went to Wajir to talk to their people. So, I do not know how they went to Mandera where they were attacked.

**Hon. Speaker:** Obviously, hon. Nooru, you were not on a point of order. However, I have sympathy to the issues being discussed. Those are matters of security because human life and property have been lost. Otherwise, I do not believe in this process. You see you are engaging in a lot of debate. Obviously, Hon. Keynan talked about that and now hon. Nooru feels something different.

Maybe the Leader of Majority Party will respond to the point by hon. Keynan; we will come to the other point. There is another Statement sought by hon. Wakhungu that I am aware of.

**Hon. A.B. Duale:** Hon. Speaker, we should not politicize this problem in Mandera County. We must take politics out of it. I think the leaders in that region must lead from the front, and make sure that death, destruction and displacement of innocent people is stopped. I agree with hon. Keynan that leaders gave a commitment, whose days ended on Monday. The elders' meeting that took place will address everything.

This august House has a very powerful committee known as the Committee on Administration and National security. I want that Committee to be seized of the Mandera matter and investigate it. I want you to order Committee to report to the House within three weeks or one month, so that this august House, an independent institution, can get facts from a source other than the Executive. The House should debate a report on Mandera so that the country can know the businessmen behind the problem. Members of Parliament are saying that those who are behind it are known. If they are known, the institutions that are concerned with this problem are very vibrant. On Sunday the governor, the Senator and Members of Parliament had their lives at risk. They were attacked when they were preaching peace.

A Member of this House should propose the setting up of a select committee within the provisions of the Standing Orders. Hon. Keynan has the privilege, like me, of serving a second term. If hon. Kajuju can propose the setting up of a select committee to discuss *miraa*, I see a committee on the Mandera problem as being more urgent, or being as urgent as the one on *miraa*. Hon. Kajuju is telling me "no", both are important.

Hon. Speaker, Sir, I need your direction whether it is the relevant Departmental Committee or a Select Committee of which I do not mind even being a member and chair because I was part of the peace process. However, this House is an independent institution and I asked my colleagues that we lead our people. We are the custodians of peace. If we preach peace and if we lead from the front, the deaths, destruction and displacement of our people will end. We want our people to enjoy the fruits of devolution. We want our people to enjoy the fruits of the Jubilee Government. Let us lead from the front. Let us all preach peace and let Parliament investigate the issue.

**Hon. Speaker:** Very well. As you know, the Speaker can only refer upon being moved. The hon. David Wafula, ask for clarification.

**Hon. Wekesa:** Thank you, hon. Speaker, Sir. The fact that Muroki Market was under siege for about three hours is disturbing. Muroki Market is between Saboti Police Patrol Base and Kapretwa Administration Police (AP) Camp. This is the third time Muroki Market is being attacked and the policemen are aware of it. Why were they ill equipped to handle this situation at Muroki Market?

**Hon. Speaker:** Hon. Pukose.

**Hon. (Dr.) Pukose:** Thank you, hon. Speaker, Sir. I am the Member of Parliament for Endebess which is also in Trans Nzoia and Saboti is my neighbouring constituency. I want to thank the Leader of Majority Party for the answers he has given. In his Statement, he said there is one Officer Commanding Police Division (OCPD) who has been posted to Kwanza and another to Saboti. The one posted to Kwanza is stationed at Endebess and I was able to see him over the weekend and what I realized is that Endebess initially was "End of the Base". The houses there are the oldest in that place. So, what I want to seek from the Leader of Majority Party is the following: You have posted an OCPD to an end of the base where he is supposed to be in charge of a certain number of officers under his command. Do you have any plans to ensure that housing, vehicles, personnel and equipment are going to be upgraded to proper standards for an OCPD to be able to function effectively? Thank you.

**Hon. Speaker:** Hon. Ferdinand Kevin Wanyonyi.

**Hon. F.K. Wanyonyi:** Thank you, hon. Speaker, Sir. I stand up with a very heavy heart. The situation in Trans Nzoia is getting out of hand as I speak. This is because even one hon. Member of Parliament from Trans Nzoia had to be whisked out of her house in the middle of the night and she is here. She can testify to that. We are all here and the situation in Trans Nzoia is getting out of hand. Of course, I appreciate the Statement made by the Leader of Majority Party but I just want to clarify an issue because I am coming from the ground. Only one vehicle has been posted to Kitale and another one was supposed to go to Endebess. Could he clarify when the stations he mentioned in Kiminini are going to be put up?

Hon. Speaker, Sir, secondly, there are people who have died. I am talking with a very heavy heart because seven people being butchered is sad. In fact, as hon. David has just mentioned, the station is hardly more than 500 metres from the police station. Now, the police came after three hours. The Government must be serious because there are no logistics because the police had to go on foot - the Leader of Majority Party mentioned that.

Hon. Speaker, Sir, thirdly, we have been asking for the vehicles from the time we actually got into this House and nothing has happened. As I talk like this, I just want to find out from him---

**Hon. Speaker:** Honestly, we have some communication to make. Seek clarification, hon. Wanyonyi.

**Hon. F.K. Wanyonyi:** Hon. Speaker, Sir, I just want him to clarify one issue before I sit. There are people who are in hospital today. There are burial expenses today. Does the Leader of Majority Party have an answer on whether the Government is going to assist in mortuary expenses?



Fourthly as I sit, I think the problem in Trans Nzoia is lack of personnel. He has not mentioned anything to do with personnel, whether there is going to be additional staff or not. I want him to give us an answer on that. Thank you, hon. Speaker, Sir.

**Hon. Speaker:** Hon. Korir Wesley.

**Hon. Korir:** Thank you, hon. Speaker, Sir. I stand here with a deep heart because of insecurity in Trans Nzoia. I come from Cherangany and one thing I would like to ask the Leader of Majority Party is: This country depends so much on the police. We think the police will solve all our problems but there is one component of security that I think the Government is not doing enough about and that is the civilians. What is the Government doing to involve the civilians on maintaining security? Does the Government have a hotline that civilians can call and report? This is because those people committing crimes live with those civilians. They eat with them. They know them but when you ask the civilians why they have not reported those criminals, they are afraid of being victimized. What will the Government do to make sure that those reports and information that civilians have can be reported to the relevant authorities?

Another thing is that I came from Cherangany this weekend and when I went to the police station to ask, the police station told me that they have cars but they do not have fuel. They said that they are given Kshs15,000 for three months. That will not even buy gas for them. So, what is the Government doing to make sure that more money---

**Hon. Anyango:** On a point of order, hon. Speaker, Sir. As you have witnessed, we are getting it all wrong. From past records, there was a minimum of three Questions every day including Wednesday mornings in the Tenth Parliament on security. The burden we are putting on the Leader of Majority Party is a wrong burden and he should stop pretending that he is capable of shouldering it. All Questions should be addressed to the relevant Departmental Committees even if they are 10 Questions per day. The Executive should be summoned to the Committee to answer each of those Questions. A report should be brought to the House and debated with the relevant Executive committee members sitting over there to listen directly to the comments of Members. Then we have material on which we can enforce implementation.

So, proceeding in this manner as you have ruled before is not helpful. We are not holding the Executive accountable on those matters through the answers and we are giving an opportunity for the Executive to keep away some information from Parliament and pass the message through the Leader of Majority Party. We should stop asking for those responses. We should accumulate them and bring them to the Departmental Committee. We debate the report of that Committee in their presence out there. They get the full sentiments of the Members and then the Committee on Implementation can follow up through the relevant Departmental Committee.

Thank you, Sir.

**Hon. Speaker:** Very well-spoken hon. Anyango, but Members seem to think that they are seeking action. That appears to be the thing because I have ruled on this in the past and unless those matters are canvassed before the relevant House Committees, which then will produce a report here, we are not doing much. Indeed, just like you have seen the Treasury mandarins sit here as proposed by Hon. Otieno, so that they know what it is that you are saying. But the Members seem to imagine that if you speak here, you appear to be putting the Leader of Majority in some corner and you are getting something done. It is going to take quite some time. Of course, it is very painful what hon. Wanyonyi has

said and everybody, you witnessed attacks and people have been killed. Obviously, I can understand the feelings of Members, but until we also appreciate that the way to go about this in this dispensation is different from what we are doing, we will not achieve much. Your own Committee on Implementation then will have something on which to act; undertakings given by the Government, then you can seek their implementation.

**Hon. Korir:** Hon. Speaker, the issue of security is very important. We have sung this song in this country for many years. That is why everybody is very interested in knowing what the Government is doing to make sure that security is enhanced in this country. Also, we need to know what the Government is doing to hire more police officers. The ratio of civilian to police officer in this country is below what is required.

**Hon. Speaker:** That is debate, please.

**Hon. Wakhungu:** Hon. Speaker, I want to thank the Leader of Majority for attempting to answer the questions. I also sympathize with the situation he is in. The security issue in Trans Nzoia County has been deteriorating every day. I asked a similar question two months ago and nothing has been done. Specifically, when are we going to have a police station in Kiminini? Two, specifically, when are we going to get vehicles for patrol? I had a meeting with the Inspector-General and I asked this question two months ago and I was given the same answers, but so far, nothing has been done. Security is deteriorating. He comes from the Jubilee Government of *kusema na kutenda*. Can we see this action please?

**Hon. A.B. Duale:** Hon. Speaker, the Statement on Saboti was very categorical and arrests have been made. I want to say it very categorically to hon. Dalmas Otieno that this is not a Government that hides information. I have never pretended because I have never served in Governments where people used to pretend, maybe he did in a Government where there were so many pretenders. But in the Jubilee Government that I serve---

**Hon. Shimbwa:** On a point of order, hon. Speaker.

**Hon. Speaker:** Hon. Mwinyi, you are out of order. The Speaker does not issue cards. Please go and look for the cards wherever they are issued.

**Hon. A.B. Duale:** Hon. Speaker, that is not on the HANSARD.

**Hon. Speaker:** Hon. Mwinyi, you know you are out of order? I have just read out your name.

**Hon. A.B. Duale:** Hon. Speaker, some measures were put in place, but hon. Wakhungu was not there. Those include having in place the County Commissioner, the up-scaling and giving of equipment and vehicles to Gituamba. A contingent of General Service Unit (GSU) officers and a squad from the Special Crimes Unit were deployed there. Plans are underway also to put up two police stations. We are beginning a financial year and this will be done.

With regard to hon. Korir's request, there is something in the Constitution called the county community policing which is supposed to be formed between the county government and the National Police Service and this is underway.

With regard to hon. Wakhungu, I do not seek sympathy because before the elections, I knew the winning team and I joined it. So, maybe he is the one who needs sympathy. Under the Budget that we have approved as a House, there is Kshs4.5 billion for equipment and vehicles. There are enough personnel to be recruited and enough money for intelligence gathering.

Hon. Speaker, you have made it very categorical in your ruling and the only problem is that Members do not want to read the Communication from the Chair. There are issues that are pertinent that Members need from the Government and if you take them to a Committee, they will take three weeks. There are issues that can be presented to the House and you have made that very clear. So, the ball is in the Members' hands. There are issues that can go to Committees and can be better executed when the Cabinet Secretary in charge is interrogated and a report is tabled before the House. There are issues that are profiled as of national importance that a Member of Parliament cannot wait for a Committee to submit a report for one month. But, if the Members could read the Communication made by the Speaker very clearly, then we would not have all those.

As the representative of the Jubilee Government in the House, we are ready. We do not hide facts. Facts were hidden when there was a Government of two coalitions, but this Government, under the new Constitution, will put all the facts on the table. If this is not factual, Parliament has the oversight role to investigate. The power to investigate, legislate and represent our people lies in this House.

## COMMUNICATION FROM THE CHAIR

### STATUS OF BILLS RECENTLY PUBLISHED

**Hon. Speaker:** Hon. Members, I have the following Communication to make on the status of Bills recently published as relates to Article 110 of the Constitution.

You will recall that on 22<sup>nd</sup> May 2013, I made a Communication regarding the Division of Revenue Bill, 2013, which has since become part of our laws. In that Communication, I guided that I will be giving further guidance as and when need arises on matters relating to marshalling of business between the two Houses. Indeed, several Members have since sought my further guidance in my Chamber on matters related to the subject of marshalling business between the two Houses. This Communication, therefore, is predicated on that premise.

Hon. Members, you will also recall that in the course of last week and early this week, the following Bills have been read a First Time in this House: -

(i) The Supplementary Appropriation Bill, 2013, read the First Time on 25<sup>th</sup> June, 2013.

(ii) The Appropriation Bill, 2013, read the First Time on 26<sup>th</sup> June, 2013.

(iii) The Kenya Deposit Insurance (Amendment) Bill, 2013, read the First Time on 27<sup>th</sup> June, 2013.

(iv) The Micro-Finance (Amendment) Bill, 2013, read the First Time on 27<sup>th</sup> June, 2013.

(v) The Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, 2013, read the First Time on 27<sup>th</sup> June, 2013.

(vi) The Tax Appeals Tribunal Bill, 2013, read a First Time on 27<sup>th</sup> June, 2013.

(vii) The Capital Markets (Amendment) Bill, 2013, read a First Time on 27<sup>th</sup> June, 2013.

(viii) The Insurance (Amendment) Bill, 2013, read a First Time on 27<sup>th</sup> June, 2013.

(ix) The Finance Bill, 2013, read a First Time on 2<sup>nd</sup> July, 2013.

(x) The Value Added Tax Bill, read a First Time on 2<sup>nd</sup> July, 2013.

Hon. Members, some of these Bills have already been passed by this House and assented to by the President and are now part of our laws. As you are aware, Standing Order No.122 provides that “upon publication of a Bill, and before the First Reading, the Speaker shall determine whether (a) it is a Bill concerning county governments, and if it is, whether it is a special or ordinary Bill, or (b) it is not a Bill concerning county governments.” This Standing Order was meant to operationalize the provisions of Article 110 (3) of the Constitution of Kenya which provides that “Before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.”

Will hon. Members standing at the door, please, take their seats?

*(Hon. Members walked into the Chamber)*

Hon. Members in order to properly deduce the meaning of Article 110(3), regard must be paid to the other provisions of the Constitution, notably Article 259 which requires that the Constitution be interpreted in a manner that best promotes its purposes, values and principles and further that every provision of the Constitution must be construed according to the doctrine of interpretation, that the law is always speaking and “not dead”. This, therefore, calls for a holistic and not segregatory look at the provisions of Article 110 of the Constitution.

To argue that no House can proceed on a Bill without the joint resolution of the two Speakers is tantamount to arguing that one House can decide to sabotage the constitutional obligations of the other House and, therefore, precipitate a constitutional stalemate in the performance of the legislative role of Parliament. It is further tantamount to contending that the provisions relating to the roles of the two Houses as set out in Part I of Chapter Eight of the Constitution and procedure for the exercise of the legislative powers set out in Article 109(2), (3) and (5) were provisions written into the Constitution but with desire that those provisions should have no legal effect.

Indeed, it is tantamount to contending that Article 259 of the Constitution has no effect and certain Articles of the Constitution can be assumed to be “dead” and without life and that the interpretation that favours that the law is not speaking is allowed by the Constitution. Nothing could be further from the truth.

Hon. Members it is my considered opinion that Article 110(3) of the Constitution only contemplates a joint resolution of the two Speakers only when a question arises as to whether it is a Bill concerning counties or whether it is a special Bill or an ordinary Bill. Where there is no question arising there is, indeed, no requirement for a joint resolution of the two Speakers. The big question in the eyes of the Constitution is: How then does a question arise?

The issue of how a question arises is a matter of law rather than facts. The Constitution has in its wisdom categorized Governments in two levels, that is, the national Government served by the national legislature (Parliament) and the county government which is served by the county legislatures (county assemblies). The Constitution further contemplates a different procedure for enactment of legislation relating to both levels of Government. Article 109(3) of the Constitution provides that a

Bill not concerning county government is considered only in the National Assembly and passed in accordance with Article 122 of the Standing Orders of the Assembly. Article 109(4) provides that a Bill concerning county government may originate in the National Assembly or the Senate and is passed in accordance with Articles 110 to 113 and Articles 122 and 123 and the Standing Orders of the Houses.

Article 110(1) defines a Bill concerning county government to mean: “(a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule. (b) a Bill relating to the election of members of a county assembly or county executive; and (c) a Bill referred to in Chapter Twelve affecting the finances of county governments.”

What then is a Bill concerning county governments in the real sense of this Article? Firstly, it is important to note the use of the word “and” at the end of paragraph (b) of Article 110(1) which is not, in my view, accidental. I put the emphasis on the word “and”. It, therefore, follows that for a Bill to meet the criteria to be qualified as a Bill concerning county governments, that Bill must meet the three ingredients specified in paragraphs (a), (b), and (c) of Article 110(1) at the same time.

Secondly and more importantly, Article 110(1) (a) requires that the Bill must have provisions affecting the functions and powers of the county governments set out in the Fourth Schedule to the Constitution. In order to fully appreciate the import of this sub-article it is important to internalize the categorization of functions within the Fourth Schedule to the Constitution.

Article 186 of the Constitution identifies four categories of functions within the Fourth Schedule. Firstly, there are those functions which are exclusively vested in the national Government to the exclusion of the county governments pursuant to Article 186(1) of the Constitution. Examples of those functions include, foreign affairs, foreign policy, international trade, the use of international waters and water resources, immigration and citizenship, courts, national economic policy and planning, monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations. All the Bills currently under consideration by this House fall under this category. It is expected that the bulk of the proposed national legislation to be considered by National Assembly will always be within this category.

Secondly, there are those functions which are exclusively vested in the county governments to the exclusion of the national Government pursuant to Article 186(1) of the Constitution. Examples of those functions include pre-primary education, village polytechnics, home craft centres and childcare facilities, fire-fighting services, animal control and welfare including licensing of dogs and facilities for the accommodation, care and burial of animals amongst others.

*(Laughter)*

Hon. Members at the door may come in.

*(Hon. Members walked into the Chamber)*

Hon. Members, I will continue.

Thirdly, there are those functions that are vested in the concurrent jurisdiction of both the national Government and the county government by virtue of Article 186(2) of the Constitution. Those functions include disaster management, agriculture and health policies where they touch on the county function of agriculture and county health.

Fourthly, there are those functions that are not directly mentioned by name in the Fourth Schedule and Article 186(3) contemplates that those functions are exclusively vested in the national Government to the exclusion of the county government.

Hon. Members, it is clear from the wording of Article 186 as read together with Article 185(2) of the Constitution that the national legislature comprising the National Assembly and the Senate cannot and should not, except in exceptional circumstances contemplated by Article 186(4), legislate on any of the functions that are exclusively vested in the county governments. Legislation in those areas is a preserve of the county assemblies under Article 185(2) of the Constitution. The national legislature can therefore only proceed to legislate in four areas: -

(a) Where the function is exclusively vested in the national Government pursuant to Article 186(1) of the Constitution;

(b) Where the function is concurrently vested in the national Government and the County government pursuant to Article 186(2);

(c) Where the function is not mentioned in the Fourth Schedule as it remains an exclusive function of the national Government pursuant to Article 186(3) of the Constitution; and,

(d) Where the function is exclusively vested in the county government but the national Government wants to invoke the provisions of Article 186(4) of the Constitution to legislate on this function.

Where the national legislature proceeds to legislate in furtherance of paragraphs (a) and (c), Article 109(3) of the Constitution contemplates that process to be an exclusive preserve of the National Assembly.

Where the national legislature proceeds to legislate in furtherance of paragraph (b), Article 110 contemplates that process to be a preserve of both the National Assembly and the Senate. Where the national legislature proceeds to legislate pursuant to Article 186(4) and thereby legislating on functions exclusively assigned to county governments to the exclusion of the National Government, the process is a preserve of both the National Assembly and the Senate. It is my view, therefore, that given the nature of our bicameralism, only a handful of laws would fall in this category; where both Houses have to work. When such a law is proposed, as your Speaker, I will not hesitate to forward such a Bill to the Senate.

The question contemplated under Article 110(3) of the Constitution, therefore, only arises if the Bill before the Assembly relates to matters within the Fourth Schedule falling within the concurrent jurisdiction of both the national and county government or within the exclusive jurisdiction of the county government. The framers of the Constitution did not give us a constitutional dispensation that is akin to that of the United States of America where the Senate has full legislative powers in a system of government that is fully federalist or, indeed, the United Kingdom, for that matter, where the House of Lords enjoys full legislative powers. Article 109, as read together with Part 1 of Chapter 8 of the Constitution clearly demarcates the legislative boundaries of the Houses

of Parliament in the Kenyan Parliament. This is a fact that we must all be alive to at all times, that our bicameralism is unique to the Kenyan context.

*(Applause)*

This House must therefore resist any attempt to stretch the meaning of Article 110(1) of the Constitution to imply that everything that is done at the national level affects the functions and powers of the county governments in their corporate aspect and, therefore, that the exclusive functions of the national Government must be subjected to the considerations of the county governments rather than the wishes of the people as manifested in their national representatives in the National Assembly. Indeed, this line of reasoning makes a mockery of the framers of the Fourth Schedule to the Constitution to the extent that it implies that the categorization of functions between the national and county government pursuant to Article 186 is a fallacy that does not exist in practical terms. A distinction must be drawn between affecting people living in the counties and affecting the functions and powers of the county governments. Indeed, any national legislation will affect the people living in the counties because those same people are the citizens of this country ably represented by the Members in the National Assembly.

*(Applause)*

Article 110(1) does not talk about citizens but talks about county governments as a corporate entity.

Hon. Members, the 10 Bills which have proceeded to First Reading before this House all fall within the jurisdiction of matters exclusively vested in the national Government by the Fourth Schedule to the Constitution. Arising out of this determination, no question, therefore, arises under Article 110(3) of the Constitution that would warrant a joint resolution of the two Speakers as contemplated under Standing Order No.122. Indeed, I have previously ruled in the case of the Division of Revenue Bill that this House should proceed to make the necessary amendments to the Standing Orders so as to bring them in tandem with the Constitution. I therefore, direct the Procedure and House Rules Committee to sit and expeditiously look at Standing Order No.122 in the forthcoming August recess.

Thank you!

*(Applause)*

#### DEGAZETTEMET OF LEGAL NOTICE

**Hon. (Ms.) Chege:** Hon. Speaker, Sir, I would like to stand on a point of order to seek your guidance on the matter of the report by the Committee on Delegated Legislation that was tabled towards the end of the Tenth Parliament. The recommendations of the report have been a subject of discussion especially on the ongoing tussle between the Government and the Kenya National Teachers Union (KNUT) on the allowances and benefits for teachers. The recommendations contained there read as follows: -

“The Committee hereby recommends that the House urges the Minister for Education to degazette the Teachers Service Commission (TSC) amendment order of 2003 gazetted in the *Kenya Gazette Supplement* No.17 of 21<sup>st</sup> February, 2003 as Legal Notice No.16 of 2003.”

In seeking your direction in the matter, I met with the TSC together with the Union and the Union clearly said that the House was supposed to degazette the legal notice. I sought advice from the former Chair of the said Committee and I learnt from the report that it was tabled but it was not adopted by Parliament. Therefore, the Departmental Committee on Education, Science and Technology would like to get direction from you as to whether the Government is bound by such a matter before the House even though the matter has not been adopted by the House.

**Hon. Speaker:** I think it will require my looking at the records but, of course, without prejudice to what the record would show, even Bills published also lapse with the expiry of Parliament. The Clerk should confirm this by tomorrow.

Next Order!

## MOTION

### ADOPTION OF REPORT ON IMPLEMENTATION STATUS OF COURT RULING

**Hon. Chepkong’a:** Hon. Speaker, I beg to move the following Motion: -

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on Statements sought, pursuant to Standing Order No.44(2)(c), regarding the implementation status of the court ruling on Petition No.8 of 2013, regarding failure by the Attorney-General to release payment to one Otieno Mak’Onyango, as awarded by court, and on the Government’s commitment to the International Criminal Court, laid on the Table of the House on Tuesday, 25<sup>th</sup> June, 2013.

*(Hon. (Ms.) Amina Abdalla stood up in her place)*

**Hon. Speaker:** Are you on a point of order, hon. Amina Abdalla?

**Hon. (Ms.) Abdalla:** Yes, hon. Speaker.

**Hon. Speaker:** Please, proceed.

**Hon. (Ms.) Abdalla:** Hon. Speaker, I rise on a point of order regarding the Motion that is being moved by the Chairman of the Committee on Justice and Legal Affairs. I want a clarification as to whether the Motion covers the entire contents of the Report. I am seeking the clarification because the Motion only talks about the payment to Mr. Mak’Onyango Otieno and the issue of the ICC, whereas this Report includes a recommendation on the recruitment of Commissioners of the Teachers Service Commission (TSC). So, the Report he has tabled has more statements than the Motion he is moving. Would it, therefore, be in order for him to move debate based on a Report which has a matter that is not canvassed in the Motion?

**Hon. Speaker:** Hon. Chepkong’a, what is your reaction?



**Hon. Chepkong'a:** Hon. Speaker, it is unfortunate that my colleague is not a lawyer. If she was a lawyer, she would have realized that the court ruling on Petition No.8 of 2013 is about the matter of the TSC. So, it is in regard to the Statement sought by hon. Abdi Saney. That is the import of the Petition.

**Hon. Speaker:** Hon. Chepkong'a, we cannot hear you.

**Hon. Chepkong'a:** Hon. Speaker, my height is the problem.

**Hon. Speaker:** Hon. Chepkong'a, you appear to be in a different type of trouble. Many people are vertically challenged.

**Hon. Chepkong'a:** Thank you, hon. Speaker. I have no intention of reducing my height. I think I have advantage over hon. Amina when it comes to height.

What I was saying is that the matter of the TSC is covered under the status of the court ruling on Petition No.8 of 2013. The petition is about the TSC. Those are matters which were referred to the Committee on Justice and Legal Affairs. The Attorney-General was summoned, and he appeared before the Committee to shed light on the Statement requests that were raised by hon. Members of this House. The Report has already been circulated. The request was made, pursuant to Standing Order No.44(2)(c), after which the Chairperson of this Committee was directed to respond. We are responding in good time.

The Statement request by hon. Ibrahim Saney is with regard to the challenges faced by the membership of the TSC, who advertised to fill up vacancies in its membership in September, 2012. The TSC shortlisted 11 candidates for the position of Commission Members and five for the Chairperson and thereafter interviewed the said persons. Thereafter, the panel shortlisted three candidates for the position of Chairperson and forwarded the names to the appointing authority. The President nominated the persons and submitted their names to the National Assembly for approval. However, the nominees were rejected by the National Assembly.

The same names were subsequently re-submitted to the National Assembly and the National Assembly approved them on 9<sup>th</sup> January, 2013. The list contained an additional name which had not been rejected previously. The other two were the same persons who had previously been rejected by the National Assembly. This caused a case to be filed in court, through a petition, challenging the legality of the approval of those names by this House. The appointment of the nominees was, therefore, stopped by the court, and was declared improper, null and void in law. One other person was nominated.

*[The Speaker (Hon. Muturi) left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Mbalu) took the Chair]*

Hon. Deputy Speaker, hon. Saney sought a Statement as to why the court ruling on Petition No.8 of 2013, whose parties were Abdi Sitar Yusuf verses the Attorney-General and the selection panel of the TSC was not implemented, in light of the remaining two vacancies for members of the Commission. The second question that hon. Saney asked is why the State Law Office is not fulfilling its constitutional mandate of advising the President to submit the names of the remaining nominees, as ruled by the High Court and as duly guided by the Teachers Service Commission Act.

When he appeared before the Committee, the Attorney-General stated that, in view of the decision of the National Assembly to reject the first list of nominations and the subsequent nullification of the second list by the High Court, the proper course to be adopted is for the President to draw a fresh list of nominees from the shortlist made by the selection panel. That particular statement made by the Attorney-General was the legal advice that was given to the TSC, which they are supposed to implement as required by law.

As regards the Statement requested by hon. John Waluke touching on non-payment of monies to a former detainee, hon. Otieno Mak'Onyango, by the High Court on 15<sup>th</sup> June, 2012 for wrongful detention, the Attorney-General stated that he has advised the Cabinet Secretary in charge of Internal Security and Co-ordination to make arrangements to pay. We will be making a recommendation with respect to this particular issue.

Hon. Temporary Deputy Speaker, as regards the Statement requested by hon. James Opiyo Wandayi, regarding Kenya's position on the ICC cases, in summary, the Attorney-General clearly stated that the Government of Kenya is committed to the full implementation of all ICC undertakings made by Government. Specifically, he stated the following: -

(i) the Government of Kenya has fully domesticated the Rome Statute, through the International Crimes Act of 2008;

(ii) the Government has facilitated the work of the ICC investigators in Kenya by facilitating collection of evidence through enactment of the International Crimes Procedures for Obtaining Evidence Rules, 2013;

(iii) made reference to the appointment of a Judge of the High Court to preside over taking of statements from Government officials; and,

(iv) the Government has the capacity and preparedness to investigate and prosecute the three ICC cases, if referred back to Kenya.

Hon. Temporary Deputy Speaker, the recommendations of my Committee are that, in view of the rejection of the first list of nominees by the National Assembly and the subsequent nullification of the second list by the High Court, the proper course to be adopted is for the President to draw a fresh list of nominees from the shortlist made by the selection panel, under Section 8(6) of the Teachers Service Commission Act, 2012, which states that when the National Assembly rejects any nominee, the Speaker shall, within five days, communicate its decision to the President and request him to submit fresh nominations from amongst the persons shortlisted and forwarded by the selection panel, under sub-section 6. The recommendation of the Committee is that the President should submit the names of the nominees to the National Assembly for consideration as required by the law.

As regards the payment to Hon. Mak'Onyango, the Committee intends to call the Secretary for Interior and Co-ordination of National Government to answer why he has not made arrangements to pay the amounts that have already been awarded to the Member by the court.

Hon. Temporary Deputy Speaker, as regards the International Criminal Court, the Committee noted and recommends that Kenya should remain committed to its obligation under the Rome Statute having voluntarily negotiated, signed, ratified and domesticated the Rome Statute. Kenya has been actively engaged in the activities of the court and

promptly paid its access contribution to the court. Those are the recommendations of the Committee that we are seeking this House to adopt.

Thank you, hon. Temporary Deputy Speaker.

**Hon. Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Chepkong'a, who was seconding your Motion?

**Hon. Chepkong'a:** Hon. Temporary Deputy Speaker, I am supposed to be seconded by hon. (Ms.) Kajuju who is a Member of the Committee so that we can expedite and discuss the Motion.

**Hon. (Ms.) Kajuju:** Thank you, hon. Temporary Deputy Speaker. I beg to second the Motion that has been moved in this House, and state that the issues that have been raised in terms of the three questions that were before the Committee have been appropriately addressed as per the observations and recommendations of the Committee.

Hon. Temporary Deputy Speaker, I beg to second the Motion.

*(Question proposed)*

**Hon. Waiganjo:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to support this Motion. Being a Member of that Committee, we sat and made recommendations that appear crucial.

On the issue of the Teachers Service Commission, it is only fair that the list of the two nominees that is with the President be considered. On the issue of hon. Otieno Mak'Onyango and the unpaid award by the High Court, this is not just an issue of this hon. Member alone. We are aware that because of the Government Proceedings Act, which prohibits anybody to attach any Government, most Kenyans do not get their awards paid even when the courts have clearly awarded them compensation.

On this issue, we also noted that the hon. Attorney-General was not competent enough. He tried to explain but he is not the paymaster. So, he could not make the payment and he was not clear on how he could make those payments. It was for that reason that the Committee decided to summon the Cabinet Secretary for Interior and Co-ordination of National Government to confirm that hon. Otieno Mak'Onyango will be paid his dues.

Hon. Temporary Deputy Speaker, on the issue of the ICC, we all know that the cases are before the court and they have their own diaries. The indictees have been appearing and, therefore, there is no reason why anybody should say that Kenya is not committed to the proceedings in the ICC.

I support this Motion.

**Hon. Ogallo:** Thank you, hon. Temporary Deputy Speaker. Even as I support this Motion to adopt the Report, I have misgivings on the performance of this Committee. We had three questions and the Committee decided to meet the Attorney-General, drew its observations from one meeting with him and decided to bring a Report to this House.

Hon. Otieno Mak'Onyango is alive and he is in the country. We did not see any contact between the Committee and him. We also do not see any contact between the Committee and the Cabinet Secretary who is supposed to make the payment. It, therefore, means that this question was supposed to be given to the Leader of Majority Party to go and ask the Attorney-General in order to bring an answer to the House instead of giving it to the Committee.

We have the issue of the ICC. The Committee did not make any effort to contact the ICC to hear from it whether it is being facilitated or not, and whether it feels that the country is co-operating or not. They met the Attorney-General and decided to make recommendations.

On the issue of the TSC, the Committee made no effort to meet that Commission. It also made no effort to meet the President to understand why he cannot get the two new names and send them to the National Assembly. There is also the selection panel. If this Committee was out to do a proper job, it should have gone to that selection panel and understood the intricacies around this appointment. The TSC is very important and we cannot just scratch the surface on a matter that is dire as the appointment of the TSC commissioners.

Hon. Temporary Deputy Speaker, even as I support, I would like you to rule that this Committee goes further and ensures that hon. Otieno Mak'Onyango gets his compensation. It should go ahead and investigate whether the President will bring the two new names to the House before they can hand over this matter to the Implementation Committee. Thank you, hon. Temporary Deputy Speaker.

**Hon. Okoth:** Thank you, hon. Temporary Deputy Speaker. I am a Member of this Committee and I would like to say that even as a Member of this Committee with our very able Chairperson who is seated there, justice delayed is justice denied. There has to be a way in which the whole House operates. On the bigger picture about the Report and the work of the Committee, it is urging, for instance, the Leader of Majority Party to report on matters which we cannot implement or the answers that we get back which cannot be held with full force of the law.

Hon. Mak'Onyango's right to be paid is an important issue and the complications and the doctrines that exist in attaching Government property right now even through an award has been made for him is a very tricky matter. So, while he languishes and suffers, I really wish we could move quickly, and that includes me as a Member of this Committee, to summon and get the relevant Cabinet Secretary to get down to the bottom of it so that this matter is history. The most important thing, however, is that it is not just hon. Mak'Onyango who is here. There are hundreds of Kenyans in this country who have cases against the Government for wrongful prosecution, treatment, misdemeanors and mistakes by Government officials, who have been awarded compensation but the Government does not pay them.

I think two things are important here; the Government has to budget for liability. That it will be held liable and has to pay in a just and quick manner the Kenyans who sue the Government and win such cases. However, we found out, as a Committee, that the Government does not really budget for such liabilities. So, year in, year out, you will hear a Cabinet Secretary say: "Yes, I agree there is an award for Mak'Onyango in which we are supposed to pay Kshs20 million but I do not have a vote head for that amount of money to pay him." I think it comes back to us, as leaders of the country in our budgeting process to see what we can do in terms of advising and making sure that the Executive and officials of the Government do their job properly so that they do not expose the Government to liability, prosecution and loss of huge monies when judgment is passed against it. This is because that is taxpayers' money that we are protecting as much as we are fighting for the rights of citizens who have been mistreated or treated poorly by Government officials and have sought justice in our courts. We must also make sure that

the Government officials are trained and competent to carry out their duties so that they do not put the Government in jeopardy and liability situations like those. So, those are the two key issues I have been talking about that I think we need to think about carefully and as a member of this Committee I take responsibility for it. I know with our able Chair and other devoted Committee members we will push to see what we can get as a commitment and a quick timeline for hon. Mak'Onyango. He is not the only one, there are others who were mentioned to us. Those are people like Mwandawiro Mghanga who have got cases and are suffering from years of torture in prison and wrongful treatment by past governments of this country. We must fix those historical mistakes.

Hon. Temporary Deputy Speaker, the question that I am really concerned with on this report and I want to bring here even as a member of the Committee is the question of ICC. On the matter of the ICC to us as Kenyan leaders and citizens, the question we must ask ourselves is: Will the ICC process bring justice to the regular Kenyans who know that in 2007/2008 a relative of theirs was slashed with a *panga* and can identify who did it? Will the ICC case bring them justice? Has the ICC process become so politicised that it is not going to bring justice to Kenyans and it is just an ongoing international issue out there that is really not to the advantage of our nation? My call would be to the Members of this House, not just my Departmental Committee on Justice and Legal Affairs, both CORD and Jubilee, to really think through this and make the right decisions and see how we can engage on this process. I know in the past it was very fashionable to say "Let us not be vague; let us go to the Hague."

Now, we know that the Hague is not really helpful in many ways to our people. There are benefits and disadvantages for our cases going to the Hague. So, I really hope that the Members of this House, away from the glares of the cameras and their usual competition that might go on here, will find ways to communicate and engage and seek ways to see what is a helpful Kenyan position that can get our country to move beyond ICC and get justice to our people here locally. There are hundreds and thousands of Kenyans who are looking for justice from that process. I am convinced in my heart that they are not going to get that justice through the ICC process as it stands and so in that sense, the ICC process has enough impediments.

Hon. Temporary Deputy Speaker, this report says very clearly that Kenya has set up mechanisms and is capable of handling those cases of the ICC if they were referred back to us. I would really like to know the Government's commitment to that if that might really help us. I will read the last page of the report which is page 10. It says: "Kenya should remain committed to its obligation under the Rome Statute and which we have voluntarily negotiated, signed, ratified and domesticated." So, that is true but there is also a part of the Report that said clearly that we are capable of managing those cases if referred back here to Nairobi or Arusha. So, that is the type of thing I am really concerned about.

The last point I would like to make is on the question of the role we have here as Parliament and it touches both on the first question of injustices to people like hon. Mak'Onyango. Coming from our history and difficult past, we have seen that justice can never be hidden forever. Then when we are talking about the ICC, there are three clear cases that are going on there. They are private matters. They are not State matters but unfortunately, they are important matters to us because two of our key leaders are involved there and we have to be interested as the Members of this Parliament.

So, this is what guides my comments to those points that I want to say. Kenya has accomplished something through the elections of March 4<sup>th</sup> that no other country has accomplished in the last 50 years. We have 311 new Members of Parliament and only 38 Members of Parliament ever sat in here before. We basically had a revolution and a change of leadership; a new chapter and a chance to move this country forward that they did not achieve in Egypt. If you pay attention to the news today, you will see that despite all the trouble and efforts that happened in Egypt, they did not succeed in achieving the revolution that we Kenyans, and I am proud as a Kenyan to say this, achieved in the March 4<sup>th</sup> elections without fighting and killing each other. So, as I speak to you my honourable Members, I really want you to understand that even when Nelson Mandela came out of prison and South Africa got a new Government, they did not achieve the level of change in leadership that we have been able to accomplish in Kenya and that credit is to us as we conducted ourselves well during the campaign period and competed politically. It is a credit to us and a duty for us, on behalf of the Kenyan people, to make sure that the conduct and the accomplishments of this House will be equal to the revolutionary faith that the Kenyan people gave us at the ballot box on 4<sup>th</sup> March.

With those few remarks, I really hope my Members understand where I am coming from. With those genuine remarks and heartfelt as they are, I really hope that more and more Members of this House will exercise a sense of collegiality, a seriousness of purpose and a high sense of patriotism to even make difficult decisions to approach each other as partners and see where we can make joint decisions that move our country forward. Let us accomplish in the next four years as Members of the 11<sup>th</sup> Parliament what the last five parliaments could not achieve. Let us make this constitutional dream become a reality in those four years.

**The Temporary Deputy Speaker:** (Hon. (Ms.) Mbalu): The Chairperson of the Departmental Committee on Education, Research and Technology, hon. Sabina Wanjiru Chege.

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Temporary Deputy Speaker. I would like to appreciate the Report from the Departmental Committee on Justice and Legal Affairs and of course my interest is on the Teachers Service Commission and about the commissioners. I have seen the recommendation where the Committee got it right, to actually get the list resubmitted to Parliament based on the fresh list of already shortlisted candidates. It is important for the Chair and his Committee to know that already some of those positions have been advertised. I think the same day that this Report was tabled in this Parliament those positions were advertised. I would like to seek further clarification from the Chair on the way forward because the Kamunge Panel is still on. They might decide to recruit new candidates while we know that in that list that was tabled in Parliament and then rejected, there were candidates who had qualified but their names never saw the light of the day. Their names were never tabled in this House.

So, I would still encourage the Departmental Committee on Justice and Legal Affairs to actually find out where that process is and if it is still ongoing, to be paused for justice to be done to the candidates who had already been shortlisted. From the shortlisted candidates for the position of the Chair, we already have two names that were never tabled in this House. We have other names for the position of commissioners and currently you know TSC has so many challenges. With one commissioner, they are not able to move. There are so many decisions that need to be made by TSC but this cannot

be done if we do not have commissioners. We only have one commissioner who the House approved and also the court said the process was fairly done. Let the Office of the President, and I hope this is through the Committee on Justice and Legal Affairs, bring the names to Parliament having considered gender, regional balance and merit.

**Hon. Linturi:** Hon. Temporary Deputy Speaker, I rise to support this Motion. What informs my decision is that when you look at this HCC No.845 of 2003, between Otieno Mak'Onyango and Anthony Ndung'u, this innocent Kenyan was charged and prosecuted maliciously. He was arrested and prosecuted and detained for no reason at all. This is not the only Kenyan that has faced such problems in this country. We have other Kenyans who in view of the political positions that they took in those early years of the 1990s, they found themselves behind bars for reasons that were not warranted.

Some of the people that we are talking about are friends of mine like hon. Gitobu Imanyara, hon. Koigi wa Wamwere and others. I want to make it very clear because I believe in the rule of law that this country has a new Constitution. Some of the major duties of the Attorney-General are to advise the Government, promote, protect and uphold the rule of law. If you look at the provisions of Article 159 of the Constitution, there are clear alternative dispute resolution mechanisms that are promoted. I wish to advise the Attorney-General because there are so many similar cases in court. He should probably explore discussions, so that amicable settlements are found. In many cases that I have found after those cases are heard and determinations made by the court, the taxpayer ends up paying so much money, which could have been mitigated if there were discussions and settlements before a final verdict is made by the court.

Those are not the only cases. You will find that the contingent liability on the part of the Government in regard to pending cases in our law courts is very high. Some of the Committees of this House are looking at cases where out of irrational decisions of Government officials, the taxpayer is paying so much money. As a promoter of the rule of law, those Kenyans that have won cases against the Government should be paid. This is due to them and we cannot have a Government that promotes impunity and does not respect the rule of law.

**Hon. Kisoi:** Hon. Temporary Deputy Speaker, I rise to support this Motion with a lot of reservations, with special interest in the TSC issue that was raised in Parliament. This country is undergoing a crisis in the education sector. Therefore, my expectation from this Committee; it was obliged by the Parliamentary rules and procedures to have carried out a thorough job. I am completely disappointed as to why the Committee never took time to summon the TSC team and hear their version of the story and also any of the Commissioners. We know that Commissioner Tirop is currently in office. Why was any TSC Commissioner or team not given an opportunity to appear and give a version of what has been happening?

Again, I also note with exception that Kamunge, who is the Chair of the selection panel was also not given an opportunity to appear before this Committee to give his version. Therefore, I want to echo the sentiments of my colleague who has said that this does not give a complete version of exactly what is happening in the education sector. We know that the TSC has a constitutional mandate to deal with all matters relating to teachers. The current strike that is going on in this country requires a lot of input from the TSC as the employer of the teachers. When you look at it, you find that there are certain issues that we need to be very careful with. As Parliament, our work is to ensure that the

right procedures are followed in this. When the first list was rejected, names were submitted here and were also rejected. We need to take note that when those nominees have been rejected, as far as the Teachers Service Commission Act is concerned, if any name has been rejected twice, it cannot be resubmitted to this Parliament. Sections 5, 6 and 12 of the Teachers Service Commission Act give those powers. Issues pertaining to education in this country are being taken casually. I would request the Chair of this Committee that they should have done a thorough job because we needed to get proper information regarding what exactly is ailing this sector. We need those Commissioners as early as yesterday to execute their duties and give the TSC the mandate to work.

I also want to look at the issue that was raised in this House of Otieno Mak'Onyango. I heard the Attorney-General castigating KNUT officials for not honouring a court order. I see a total contrast of him in this House through this Report because up to now, the court made a ruling that Otieno Mak'Onyango be paid a certain amount of money. This gentleman is ailing. His family is suffering. He cannot meet his needs. If the Attorney-general wants this country to honor and take heed of courts' decisions and every citizen of this country is obliged to honour courts' decisions, then he must lead as an example. Therefore, as Parliament, we expect the Attorney-General to expedite the process and ensure that Otieno Mak'Onyango is paid without delay.

Concerning the ICC cases, we are trying to reform the Judiciary and we must also be very cautious in terms of our relationship with the international community. Our expectation as Parliament is that whatever the Attorney-General's office is supposed to do as far as the ICC cases are concerned, it should do, so that it does not jeopardize our relationship with the international community.

Otherwise, I support with those reservations.

**Hon. Saney:** Thank you, hon. Temporary Deputy Speaker. I am the one who sought this Statement from the Departmental Committee on Justice and Legal Affairs. The issues sought touch on the law. It is perfect that it is the Attorney-General who ought to have been consulted with regard to the Statement I sought.

I asked three questions: One, why the court ruling was not implemented in light of the remaining two vacancies for members of the Commission. It all amounted to the interpretation of the TSC Act and we felt that the Attorney-General is best placed to advise Government institutions with regard to matters of law. Two, I wanted to know why the State Law Office is not fulfilling its constitutional mandate. After names were rejected in Parliament, it was him to advise because we had problems. We had received so many correspondences from different Government institutions and as a result we realized that it is only the Attorney-General who can advise the Government, particularly TSC being a constitutional office, as to what they should do next.

Today, as we speak, the constitutionality of the TSC is questionable. The Commission has only one commissioner by the name Mr. Tirop and yet the Constitution stipulates that there must be a minimum of three commissioners for any constitutional commission to operate. I have presented three different documents some emanating from the Attorney-General. They were tabled before the Committee in regard to what the TSC should do in recruiting the remaining two commissioners. The Attorney-General's letter dated 30<sup>th</sup> May, 2013 is clear and I feel is elaborate and it is within the TSC Act.

Equally, there was a court judgment on 25<sup>th</sup> March, 2013 in regard to a petition filed by one Abdi Sitar challenging the appointment of the second name that was



approved by this House. It is clear that the TSC Act is being violated. I feel that the advert that was placed on 25<sup>th</sup> June is in disregard of the TSC Act and it violates the court's ruling, the Committee's Report and the Attorney-General's advice. I, therefore, seek guidance in the process of--- The Chairperson of the Departmental Committee on Education, Research and Technology should direct the selection panel to stop the advert and the subsequent recruitment of the commissioners. This is because the Act is precise. The Committee should ask the President to go back to the old list and pick two nominees.

With regard to those who have been shortlisted and interviewed, I have read their curriculum vitae and they are competent Kenyans who qualify to fill the remaining two slots. Their names are Dr. Salome W. Gichura and Ms. Saadia Abdi Kontoma which have not been rejected by this House. The panel must go to the old list and at least pick two commissioners based on regional balance, meritocracy and gender. If they do that, I am sure the issue will be solved.

**Hon. Nakara:** Thank you, hon. Temporary Deputy Speaker. If those who are closer to power like Otieno Mak'Onyango can be denied their rights, what about a Turkana who was expelled in 1982 when there was a *coup de tat*? Some of them were taken to court and found not guilty. However, they were expelled from their jobs. If there is any justice that we need to do then it is to remember those who are now in Turkana leading very terrible lives. Those are innocent people, but they were suspended from their jobs. How I wish the Departmental Committee on Justice and Legal Affairs collected all the names of the people who were affected from 1982. This way those who are in Turkana would stand to benefit.

**Hon. M'uthari:** Thank you, hon. Temporary Deputy Speaker. I rise to support this Motion. However, there are issues that I think are not very clear. The question of TSC is of interest. At the moment, we have the teachers' strike going on. We also have a vacuum in the leadership of the TSC. There was that panel that came up with the shortlist. The names that were shortlisted were not forwarded. It appears like there are other undercurrents, otherwise what is the basis for having people who are qualified and then contravening the very Act? The Government should take responsibility and obey the law. Those particular officers should follow the law. There should be no further interview carried out because that will be in contravention of this. We need to have effective chairperson of the TSC and then other commissioners so that the TSC plays its rightful role in terms of guiding teachers.

With regard to the Mak'Onyango issue, I think it is fair that the Government also takes responsibility. If this person was awarded, he should be paid. With regard to the ICC issue, I do not know who the ICC is serving. Even for the citizens of this Republic who have been taken to the ICC, even if the case proceeds, for sure, it will not serve the interests of Kenyans. Maybe it will serve the interests of others. Although the Government has its obligations to keep peace, the ICC should give us a break. They should allow Kenyans to continue with their own lives.

**Hon. Oyugi:** Thank you, hon. Temporary Deputy Speaker. I am a Member of the Departmental Committee on Justice and Legal Affairs. I support this particular Report for adoption.

I would like to request my colleagues not to castigate Members of this Committee in the manner that they have actually done. This Report has annexes. The annexes fill up the spaces that might be in the body of the Report.

On the first aspect of the TSC, we must appreciate two things. The Attorney-General's matter concerning the TSC's Secretary, Lengoiboni is very elaborate. There are two aspects in that letter and two things ought to happen. First, there was a list of nominees that was supposed to have been filled before 14<sup>th</sup> June. The Attorney-General's letter in paragraph four answers this issue. It says in part:

"The President ought to draw fresh names of nominees from the shortlist made by the selection panel under Section 8(6) of the Act."

This means that there ought to be a selection of three nominees. This is still pending and yet they were interviewed earlier and found competent. That is what should happen first as per this letter. On the second part, something that ought to happen is what the Attorney-General does in paragraph 5 of the letter to the Secretary of the Teachers Service Commission. That is with regard to the vacancies that fell vacant after 14<sup>th</sup> June, there needs to be a fresh selection panel.

Hon. Temporary Deputy Speaker, I was hoping that the Chairperson of the Departmental Committee on Education, Research and Technology would be listening because it is of her interest to understand how she ought to proceed in this particular matter regarding the TSC. There ought to be a fresh Gazette Notice and the selection panel for the commissioners whose term expired after 14<sup>th</sup> June; that is on the second part. But on the first part, by now there ought to have been nominees, two people who had been previously interviewed and selected. Three of them exist in that list. That list ought to be in this House as early as before the term of the other nominees expired. That is the reason we are having a problem with the TSC because as it presently stands, it is unconstitutional but we ought to have made a constitutional obligation by appointing two out of the three who have already been interviewed or presently existing. That ought to be done by the Chairperson of the Departmental Committee on Education, Research and Technology. They need to request the TSC Secretary to--- They need to interview him and ask him why he did not submit those three names for selection by the President as was advised by the Attorney-General because that is what the law anticipates. There is no reason why, for example, the three nominees who had qualified should suffer injustice by having them being interviewed again or unfortunately not being shortlisted again because they have already qualified and ought to proceed to the next level of being appointed.

The second thing on this Report that I would like to support is the compensation of hon. Otieno Mak'Onyango. It is true that the Attorney-General is very willing to have people who have been awarded such huge damages being compensated. But we must appreciate that the Attorney-General is handicapped because his office does not have this money. As a country and as a House we need to give the Attorney-General some money or establish for him a fund from where he can compensate persons who are going to be awarded such huge damages. Under the new Constitution, there will be awards and several damages that have been given to various victims of human rights abuses, victims of all manner of Government malicious prosecution and it will be unfair for courts of law to give those awards and then the Attorney-General does not have the means. We need to move with speed as a House, perhaps, in the next budget year to establish for the Attorney-General a fund that would help him in compensating those particular victims.

On the third question of the International Criminal Court, I am happy that one of my colleagues---

**Hon. (Ms.) S.W. Chege:** Hon. Temporary Deputy Speaker, I wanted to raise the attention to the recommendation of the Committee and from the contributions from hon. Members, they have recommended that the President should draw two names of nominees from the list that was prepared by the selection panel and submit to the National Assembly for consideration. I would request for an amendment where they should draw two names of nominees for commissioners.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Is it an amendment or a point of order?

**Hon. (Ms.) S.W. Chege:** Hon. Temporary Deputy Speaker, it is an amendment.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): You can propose your amendment to the Clerks.

**Hon. Oyugi:** Hon. Temporary Deputy Speaker, I am happy that the Chairperson of the Departmental Committee on Education, Research and Technology has finally got wind and direction in terms of how we should proceed on this matter on education. I am happy that we should expedite this issue of the TSC so that we have commissioners in office so that teachers can have people to negotiate with because as it is, one commissioner cannot negotiate with them and our children are out of classes because of various reasons. I also hope that the Government will pay them their dues as per Legal Notice No.534.

Since I had finished contributing on that particular matter, I wanted to speak to the last issue on the ICC. Whereas it is true that Kenya has met its obligations in terms of cooperating with the ICC, both domesticating the ICC statute and also cooperating with the prosecutor and several other persons in terms of the investigations that are ongoing, it comes to a time as a country where we must appreciate--- The side of the Government supported an international local tribunal. When it comes to issues of crimes against humanity and the injustices that Kenyans watched, we really think and I believe that the best way to go is, for example, to copy what the Rwandese did. In terms of reconciliation for communities---

**Hon. Kisoi:** On a point of order, hon. Temporary Deputy Speaker. On the matter of the TSC, the hon. Member said that the selection panel should go to the list that had already been forwarded here and get a name. But if you go to the TSC Act, Cap.12, it says: "If the National Assembly rejects any or all of the subsequent nominees submitted by the President---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Is it a point of order or information to the hon. Member?

**Hon. Kisoi:** It is a point of order, hon. Temporary Deputy Speaker because I wanted to get clarity from the speaker in terms of the information he is giving to this House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Can you clarify the information?

**Hon. Oyugi:** Hon. Temporary Deputy Speaker, I am happy that the hon. Member is asking me to clarify and that is why it behooves the hon. Members to read the Report in its entirety without castigating Members of the Committee.

If you look at the last page of the Report which is an attachment by the Attorney-General copied to, amongst others, Mr. Francis Kimemia and Prof. Godia, the seventh paragraph of that passage reads very well and it is a legal opinion. It says: "The decision

of the court invalidated only the second... submitted to the National Assembly but did not affect the entire selection process including the constitution of the selection panel so as to require setting up of a new selection panel for the already existing vacancies.” That is the best it can go and if at all the hon. Member cared to read the second paragraph, he would have known what we are talking about. That is why I am saying that there are two facets of this thing. On the first part, there were vacancies that took place before 14<sup>th</sup> June. For those two vacancies, there is already a list that was interviewed by a selection panel. Several of those names were rejected by Parliament a couple of times but three of them were never brought to Parliament, never subjected to any known vetting and were never refused. That is what the Attorney-General in his legal opinion under this paragraph is saying, there ought to be those two names submitted to Parliament out of the three names. That is what I mean.

On the second name, the ones that require a fresh selection panel, is what is in paragraph dated 30<sup>th</sup> May by the Attorney-General. I hope I have sufficiently clarified for the hon. Member. That is why I appeal that we read the Report in its entirety.

Unless he wants further clarification, I am speaking to the issue of the ICC which is a matter that---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your time is up! Yes, hon. (Ms.) Kipchoim.

**Hon. (Ms.) Kipchoim:** Hon. Temporary Deputy Speaker, I am not ready for now.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): If you are not ready, please, learn how to use the technology.

Proceed, hon. Kabando wa Kabando.

**Hon. Kabando wa Kabando:** Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity. I rise to support the Report of this Committee. In doing so, I would like to accept that I have not completely internalized the issue of the TSC recommendations but I understand that it has engaged in a continued discussion. Therefore, I will limit myself to the two issues raised; namely, that of compensation for Mak’Onyango and Kenya’s commitment to the ICC cases.

Hon. Temporary Deputy Speaker, it needs a serious understanding of the journey that Kenya has taken to arrive where we are today. One needs to appreciate the suffering of individuals who took the bold step of engaging in competition with a totalitarian regime. There can never be enough material compensation for individuals who have been affected physically and psychologically. As I was driving through the Central Business District (CBD) this morning, I saw a former Member of Parliament, who is a professor I know very well. He must have gone through a lot of trauma because of certain activities subjected to him by a previous regime. He is a professor of a very unique PhD in science. Due to a person’s courage to say “I did this”, he is subjected to certain inhuman activities that traumatize him to the extent that he feels completely alienated from society. We cannot compensate such persons enough, either physically or materially.

Hon. Temporary Deputy Speaker, we have been saying a lot of things here. We have seen questions being raised for compensation of individuals who have circumvented procedures in business, employment and even in international contracting. The basic thing that we are obliged to do, as a country, is really to appreciate our own individuals who have done things that are very beneficial to the collectiveness of the sovereign society that is Kenya. I know hon. Otieno Mak’Onyango, who has spent a lot of his time

in the Parliamentary Library. He is still a journalist despite his advanced age and what happened to him alongside many others who continue to ask for compensation. He has been going through a lot of frustration from the State Law Office.

I do not think we are saying that Kshs21 million or Kshs30 million is enough compensation for somebody who had a prolific career that was terminated because of his service to the nation. Service to the nation includes questioning issues like denying Kenyans good governance. For instance, can we compensate hon. Kenneth Matiba sufficiently, considering his status as an indigenous entrepreneur and all that he went through? Therefore, I support the Motion with the emphasis that something needs to be done quickly to settle the dues of Mak'Onyango and his likes.

Hon. Temporary Deputy Speaker, the second point I want to make very quickly is on Kenya's commitment to the ICC cases. The commitment remains but this comes at a time when we are being told that a son of a Kenyan pioneer bureaucrat, who heads a certain country in the West, cannot visit our nation because of the Kenyan cases going on at the ICC. I know that we are not supposed to discuss any of those Heads of State because of the ICC even though those particular nations are not signatories to the Rome State that created the ICC. We know that in July, 2008, the Secretary of State of the Republic of the United States of America (USA), Madam Rice, apologized to Nelson Mandela, the icon of the anti-apartheid crusade because for 18 years and five months, Mandela's name remained on the list of terrorists of the Government of the USA. It was only in July, 2008, when Mandela was to visit the USA that the Bush administration realized that Mandela and the Minister for Foreign Affairs of the Republic of South Africa were still listed as terrorists. They called it a "small" matter, which was very embarrassing.

The commitment remains, and should remain but in this era of the Jubilee Government, and particularly this week when we are laying to rest the man who shot down the colonial war planes during the *Mau Mau* war, Mzee Ndung'u Gicheru, in Kieni, Nyeri – the lot of the *Mau Mau* fighters who were the lieutenants of Dedan Kimathi – everyone needs to understand that our commitments are even more to a sovereign will. Our commitments are more to the jurisdiction of the Kenyan people, through the democratically elected Government and their representatives, and the renewed and fortified institutions of governance, including the Judiciary. Therefore, our commitment to the ICC, truly, remains because we are signatory to the ICC Statute, and because we must do what is right. However, the spirit must also go that we should not be lorded over by any other individual or any other country 50 years after Independence, because we know that we deserve to show that we are not only intellectually conscious but we are also politically very conscious to do that which is important and entitled to the Republic of Kenya.

Hon. Temporary Deputy Speaker, with your permission, I salute with the greatest honour, Mzee Ndung'u Gicheru, the man who remains shining despite fare thee well. His call of duty has not been terminated. The spirit lives on.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes, hon. Fatuma Ibrahim Ali.

**Hon. (Ms.) F.I. Ali:** Thank you, hon. Temporary Deputy Speaker. I rise to support the Motion. In particular, I want to make reference to the part that deals with the

award of compensation to Mak'Onyango. I want to confirm here that people who have suffered human rights atrocities and general abuses of human rights have never been compensated. This country had a bad regime which disregarded human rights of her citizens. There were general abuses of human rights. What is more painful is that those people had been tortured and maimed. Psychologically, they have been traumatized. They have been socially excluded from their communities by the State. The compensation was intended to allow those people to recover from the abuses they suffered and then settle down and start new lives.

This award was also intended to punish the State, including individuals who perpetuated human rights abuses. When the State fails to enforce payment of such awards, the victims continue to suffer. If you look at Mak'Onyango's claim, you will appreciate that it is for abuses he suffered in the 1980s and the 1990s. That is over 30 years ago but, up to now, he has not been compensated. We need to restore confidence in this country, in terms of enforcing decisions awarded by our law courts and other institutions. This country has a bad precedent in terms of ignoring the law. The laws are sometimes regarded irrelevant. I am, therefore, appealing to this House to enforce payment of awards by the courts to individuals who have suffered decades of human rights abuses in order to comfort them, so that they can also access medical care.

Hon. Temporary Deputy Speaker, the other matter I would like to support is that raised by hon. Ibrahim Abdi Saney. This is a very unfortunate case. It is always neglected because it involves some women who were supposed to benefit from the appointments. If you look at the rulings and the legal discussions around this case, you will appreciate that there were two ladies and a gentleman who would have been appointed after two wise rejections of the names from the selection panel. This country might be in record for ignoring and disregarding laws, including the Teachers Service Commission Act, which states clearly that once names presented to the National Assembly for approval are rejected by the Assembly, if there is a list of other persons that have the same merit, the selection panel should pick the next set of names from that list, so that they can be forwarded to the National Assembly for approval and subsequent appointment by the President. In this case, the Government disregarded the law.

As a Member of the Justice and Legal Affairs Committee, I want to confirm that the Attorney-General said that the Government has been instructed, through his legal advice, to pick up the next set of names from the list of the selection panel. In this case, there are two ladies and a gentleman who qualify for appointment. What the Government has done, because it is disrespecting the laws and the advice from the Attorney-General, is to advertise fresh names including the ones which were to be appointed. This is meant to deny individuals who have merit from benefiting from those appointments. I want this august House to restore sanity in terms of respect for the law. The panel should recommend those names which were in its previous list so that the appointment can be made in order for them to start working at the Teachers Service Commission as commissioners.

Hon. Temporary Deputy Speaker, the country is in a crisis because of the teachers' strike. There is only one Commissioner at the TSC who cannot sit because there is a quorum that is required. This is so because the Government has illegally failed to appoint those people who have merited.

I would like to alert this House that this Government is misusing its powers and ignoring the legal advice from the Attorney-General. It is also ignoring the Act that states that this procedure should be followed. We, the people from North Eastern Province feel that those positions should not have been advertised. We should have reverted to the list that existed---

**Hon. Kimaru:** On a point of order, hon. Temporary Deputy Speaker. Is the Hon. Member really in order to insinuate that the Government is ignoring rulings when we know very well that most of the rulings were made during the previous Government? The Government is very young, and I do not think that there is a single ruling that the Government has neglected or refused to honour. I think the Hon. Member is out of order to state that the Government is ignoring any such advice.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The hon. Member contributing, please put your points in order. However, continue because you are not speaking on behalf of the Government.

**Hon. (Ms.) F.I. Ali:** Thank you, hon. Temporary Deputy Speaker. My points were very comprehensive. I want to refer the Member to the advice of the Attorney-General that I have referred to. The Attorney-General is the Principal Legal Advisor to the Government. This includes the former Government and the current Government.

If this Government was committed to the rule of law, it should have directly taken in the advice of the Principal Legal Advisor who is the Attorney-General. I think the letter of the Attorney-General is very clear that he has advised the Government that the appointment of the remaining position of commissioners to the TSC should be done; that is in terms of referring to the list of the panel which I have referred to. I want to refer the hon. Member to that Report which clearly states that.

Hon. Temporary Deputy Speaker, in conclusion, I request this Parliament to bring sanity to this country because we totally disregard laws and advice from legal statutory offices including institutions, commissions and the Attorney-General's Office. This case is a miscarriage of justice. This is because people who have been in office as commissioners are out of the job which they rightly qualified to be appointed.

Thank you, hon. Temporary Deputy Speaker.

**Hon. Murungi:** Thank you very much, hon. Temporary Deputy Speaker. I would like to support this Motion.

The recommendations on the TSC and the ICC are very fair. However, this Committee that is composed of very good legal minds is not very fair to the former hon. Member, hon. Otieno Mak'Onyango. This is because the Committee recommended that the Cabinet Secretary will be invited to appear before this Committee again so that he can say when hon. Otieno Mak'Onyango will be paid his dues. I think the Committee rushed to bring this Report to this House. At least, it should have met the Cabinet Secretary so that he could give an undertaking as to when hon. Otieno Mak'Onyango will be paid his dues.

I would like the Chairperson or a Member of this Committee like hon. Kajuju to give an undertaking as to when they will meet the Cabinet Secretary so that this Kenyan can get justice. The lawyers say that justice delayed is justice denied but the Committee is further delaying the release of this money to this Kenyan. Other Kenyans have been given such award.

I remember a month ago another Kenyan who comes from my county, hon. Gitobu Imanyara was awarded Kshs15 million because he was tortured at the same time with hon. Otieno Mak'Onyango. This clearly shows that even hon. Imanyara is not sure whether he will ever be paid his dues.

I would like the Committee to give an undertaking as to when it will see the Cabinet Secretary so that he can make a commitment as to when those Kenyans will get their compensation.

**Hon. Lati:** Thank you, hon. Temporary Deputy Speaker. I was having a very good afternoon today until I saw the initials "ICC" on this Report. I want to commend the Committee for doing a good job. However, over time, some of us have grown very sick about the ICC issue. I do not see any value for us, as a House or as a country to keep on referring to the ICC.

Hon. Temporary Deputy Speaker, if you want to know the real value of the ICC, you can only refer to the 4<sup>th</sup> March elections and see what Kenyans did. It was a verdict against the ICC.

*(Applause)*

If you want to know the truth about the ICC, you can only refer to the cases that were on television and see the evidence they have. My small court in Maralal can do a better job than the ICC. This tells you what kind of an international court we have. If you want to know something about the ICC, look at its signatories. The biggest countries that pretend to do justice, like the United States of America and China are not signatories to this court. So, what do we need to know about the ICC? We have seen that this is not a court because Kenyans proved this on 4<sup>th</sup> March. I think we need to get out of the hangover of the ICC as Kenyans, as a House and as a country.

Hon. Temporary Deputy Speaker, I sympathise very much with the victims of 2007 elections but I know that our country is beautiful. We have done well or we have reconciled as a country. We have gone through another election and we have seen that we do not need the ICC at all. I think for our Members, we need to get out of this ICC thing and forget about it forever. It is not something that is helpful to our country. Today, during the debate of the Motion of hon. Dr. Laboso, the Deputy Speaker, you could actually see the malice in the ICC. The Benin Agreement that was basically a trade agreement, if you look at the revised meetings out of the Economic Partnership Agreements (EPAs), you can see that now the Benin Agreement has incorporated other things like you have to ratify the Rome Statute in order for you to trade with Europe. It tells you something about this ICC thing. It tells you the drivers and I think as a country we should get out.

Hon. Temporary Deputy Speaker, on the second question about hon. Mak'Onyango, I sympathise with him and I hope the Government will do something very quickly to help that gentleman for the work that he has done for our country. I always think that we give more attention to the things that happen in Nairobi and particularly things about people who live in urban areas. However, if you look at the injustices which are done to people who live in rural areas, far flung from the city like Samburu, we forget the injustices that are done there. Three years ago, families in Samburu saw something that nobody else has seen in our country since Independence. The Government, in



essence, became a raider and a bandit by taking away cows from people who lived in Archers Post by force and took them across the river and killed them. When do we compensate those people from the injustices of our Government? I think we should extend the arm of justice to those poor people who cannot be represented in our capital.

For the Teachers Service Commission case, I think it is very clear from what you have heard from the hon. Members that there is nowhere where TSC is involved in this thing. Everything rests with the presidency and I think we should take TSC out of this debate on that matter.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Benson Makali Mulu.

**Hon. Mulu:** Thank you, hon. Temporary Deputy Speaker. I rise to support the Report and more so on the area of the TSC and the issue of hon. Mak'Onyango. Relating to the TSC commissioners, I think the Government is being very unfair to the teachers because we know the work of those commissioners. They handle very important roles for the teachers. Those are issues to do with discipline and other important issues relating to teachers' issues and I think it is important that those commissioners are appointed. As we are talking, we have only one commissioner and they need a quorum just as we do in the House and unless that quorum is achieved then no business can be conducted. On this basis, I think it is important that the remaining commissioners are appointed. I think the Attorney-General has given his legal opinion where he says that already people were interviewed to be commissioners and were not appointed. So, the fact that we were not able to pick those who were shortlisted, I think it is important that we can get more commissioners from the remaining lot and we have a fully constituted TSC so that its work is not constrained.

Relating to the issue of hon. Mak'Onyango, I think it is very unfair that somebody was actually harassed by his own Government and as a result of that harassment a decision was made so that, that person is compensated. However, for the last almost 30 years this compensation has not been forthcoming. It is very unfair to such a Kenyan. I do not know whether the Government is waiting for this character to die and then they pay the money to the relatives or the family members. So, what is the delay for?

Hon. Temporary Deputy Speaker, so, I think that it is important that this Report is adopted and immediately the Committee on Implementation picks up the matter so that hon. Mak'Onyango is compensated. This is so that before God takes him away at whatever time that is planned, he will be able to enjoy some of this money. I think he has suffered enough and it is very unfair that the Government keeps on delaying. It makes very lame excuses which do not make sense to anybody. I really support this Report that this hon. Member should be compensated.

With those remarks, I want to support the Report. Thank you very much, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Junet Nuh.

**Hon. Nuh:** Thank you, hon. Temporary Deputy Speaker. I rise to support the Motion. This is a very good Report and it shows the competence of the Chairman of the Committee. This is one of the best reports that this House has received so far for the last three months we have been here and it shows that his Committee will take us far in the next four years with the kind of Chairman we have.

(Applause)

Hon. Temporary Deputy Speaker, to add on to that, on this issue of Mak'Onyango, let me say that he is a good friend of mine. I know him very well. He is a man who has suffered in the hands of the former regime. This is one man who was jailed for no reason and for no crime that he had committed against anybody. It is high time that this Government pays what is due to Mak'Onyango. Those are some of the people who fought for the freedom and the liberties that we are enjoying in this country at the moment. We do not see why the Government should be like the bad people who fail to settle their debts. They have paid people who do not deserve any payments. They have compensated people who have no respect for the rule of law and for many contracts that are of no benefit to the country. It is high time the Government settles the bill that belongs to Mr. Mak'Onyango and other people of that group who have been awarded money by the courts. They should be paid.

Secondly, on the issue of the TSC, this matter is very clear. The Attorney-General is very competent and I think he is one of the best attorney-generals that this country has ever had except when he became *amicus curie* in the famous Supreme Court case. That is the only time when we realized that he is a bit shaky but we know he is a man of integrity. He is a man who knows the laws of this country very well. He has already advised the Government. If you look at the letter that he wrote to Mr. Lengoiboni and copied to Francis Kimemia and Godia, the former PS for Education, in point number eight he said:

“In view of the above, I am of the considered opinion that as regards to the existing vacancies for which a selection process has already been initiated, it behooves the President to draw fresh names of the nominees from the list that has been prepared by the selection panel.”

So, this issue of a new advertisement and putting up of a new selection panel is unconstitutional. It is against the law. It is unacceptable and this House must put it to a stop because already there are names that have been forwarded. If some have been rejected, we expected the President to go back to the previous list and select more names from the list that already exists. I do not think it is in order for advertisement of vacancies. The law does not allow that and as we are speaking now, the TSC has only one commissioner and constitutionally a commission must have a minimum of three commissioners. It is high time the President appoints two more people from that list and submits those names to Parliament for approval as has been advised by the able Attorney-General of this country.

Hon. Temporary Deputy Speaker, on the third issue of the ICC, as you know the ICC is a very thorny issue for this country and let us not lie to each other. It is us who took ourselves to the ICC. We had the opportunity to form a local tribunal through this House so that those cases could be heard and determined in this country but we said: “Do not be vague, go to Hague.” Now, that is the issue that is haunting us up to today. The issue of whether we shall get justice at the ICC is another matter but it is us who took ourselves to the Hague. So, we should not complain and the Government is bound through the Rome Statute to abide and to cooperate with the ICC. It is not a favour. It is a constitutional thing because any treaty you sign is bound in the Constitution. So, that is

why we found ourselves in the Hague. To say it in black and white, it is we who took our people to the Hague because this august House of the Tenth Parliament had an opportunity to form a local tribunal so that those cases could be heard and determined in this country.

With those few remarks, I wish to support the Motion. Thank you so much.

**Hon. Mati:** Hon. Temporary Deputy Speaker, I stand to support the Report. Democratically, I am bound by the Report as a Member of the Committee on Justice and Legal Affairs. I just wanted to emphasize one thing, that the issue of Mak'Onyango is just one among many. It is very discouraging to all of us, even the few of us who have not gone to court and have good reasons to go to court, having suffered under that regime for 14 years in exile. Their children and their grandchildren continue to suffer after a competent court of the Republic of Kenya has awarded them some meager damages. There is no compensation that one can get for being exiled for 14 years and being jailed without trial in Kamiti for 10 to 15 years.

I hope and pray that this House will come up with mechanisms of enforcing decisions of the court. Just yesterday, our Committee was here seeking this House to approve the name of the new Solicitor-General. Parliament has been very responsive to the Judiciary. One would like to hope that the haste with which they bring names to be approved here would be the same haste with which they would act to settle such claims.

On the issue of the TSC, I support the teachers very strongly. One of the reasons why the strike might be taking a while is because there is no representative of the teachers' employer, namely, the Teachers Service Commission. There is no commission to negotiate with the Government and for that reason, we have continued to see a protracted struggle between the Ministry and the KNUT. I wish to support the Report, but emphasize that one would like to hope and pray that the Jubilee Members of Parliament present here today will implore the new Solicitor-General to talk to the President's office or whichever office that compensates the victims of torture and human rights abuses, so that this is settled sooner than later.

There has also to be established a mechanism that binds the Government to settle such awards within a given period of time. If that is discussed, that period should not be more than six months. If you get to know some of the victims, and I know all of them, not only Mak'Onyango, I know Gitobu and Mwandawiro Mghanga, those people have been reduced to paupers. They have a right to enjoy the fruits of their work which is the liberty that we enjoy in this House. This House used to be treated to drama during those dark days when Members of Parliament would be arrested in this House without enjoying any immunity. They sacrificed for that purpose, but they continued to suffer. It is like we want to punish them even further for fighting so that we can enjoy the fruits that we so gladly enjoy today.

**Hon. Chanzu:** Hon. Temporary Deputy Speaker, I also rise to support this Report on the same vein. Everything is clear now.

### QUORUM

**Hon. (Ms.) S.W. Chege:** On a point of order, hon. Temporary Deputy Speaker. I really needed to move a very important amendment to this Report, but I can see that we

do not have quorum. So, I request you to order that the Quorum Bell be rung, so that we can have enough Members in the House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): It is true we do not have quorum. So, I order the Quorum Bell to be rung for 10 minutes. Members, you are supposed to remain seated.

*(The Quorum Bell was rung)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, we are unable to raise quorum to transact business. This is a House of rules and the Standing Order is our Bible. Therefore, the House stands adjourned until tomorrow, Thursday, 4<sup>th</sup> July, 2013, at 2.30 p.m.

The House rose at 6.10 p.m.