



REPUBLIC OF KENYA





TWELFTH PARLIAMENT – SECOND SESSION - 2018

THE NATIONAL ASSEMBLY

**THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS**

**REPORT ON THE CONSIDERATION OF A PETITION BY MR. DAN
OKEMWA AND MS. LYN KEMBOI, ON THE ARREST AND
DETENTION OF MR. DON BOSCO GICHANA OOGA**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 20 NOV 2018	DAY: TUESDAY
TABLED BY:	CHAIRPERSON, DEFENCE AND FOREIGN RELATIONS
CLERK-AT THE-TABLE:	

**Directorate of Committee Services,
NOVEMBER, 2018,
Clerk's Chambers,
Parliament Buildings,
NAIROBI.**

NOVEMBER 2018

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1.0 CHAIR'S FOREWORD

On behalf of the Departmental Committee on Defence & Foreign Relations and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the arrest and detention of Mr. Don Bosco Gichana Ooga. The petition was tabled before the House pursuant to Standing Order No. 225 (2)(a) by the Speaker of National Assembly, regarding the arrest and detention of Mr. Don Bosco Gichana Ooga.

The Committee wishes to thank the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during the consideration of this Petition.

On behalf of the Committee, I now wish to table this report before the House.



HON. KATOO OLE METITO, EGH, MGH, M.P

**CHAIRPERSON DEPARTMENTAL COMMITTEE ON DEFENCE &
FOREIGN RELATIONS**

1.1 Mandate of the Committee

The Departmental Committee on Defence and Foreign Relations is established under Standing Order No. 216. Its mandate pursuant to SO 216 (5) with the following terms of reference: -

- i) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;*
- ii) study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;*
- iii) study and review all legislation after First Reading subject to the exemptions under Standing Order 101 A (4);*
- iv) study and review all legislation referred to it;*
- v) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;*
- vi) investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister; and*
- vii) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

The Committee is mandated to consider the following subjects:-

- i. Defence
- ii. intelligence,
- iii. foreign relations
- iv. diplomatic and consular services,
- v. international boundaries,
- vi. international relations,
- vii. agreements,
- viii. treaties and
- ix. Conventions.

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. Ministry of Defence
- ii. Ministry of Foreign Affairs
- iii. The National Intelligence Service
- iv. The State Department for East African Community Integration.

1.2 Members of the Committee

Chairperson Hon. Katoo Ole Metito, EGH, MGH, MP

Vice Chairperson Hon. Richard Tongi, MP

Members

Hon. Yusuf Hassan Abdi, MP

Hon. Charles Kilonzo, MP

The Hon. Patrick Makau King'ola, MP

Hon. Dido Ali Raso, MP

Hon. John Lodepe Nakara, MP

Hon. Peter Mungai Mwathi, MP

Hon. Beatrice Nkatha Nyaga, HSC, MP

Hon. Memusi Ole Kanchory, MP

Hon. Martha Wangari Wanjira, MP

Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP

Hon. (Dr.) Lilian Gogo, MP

Hon. Nelson Koech, MP

Hon. Moses Nguchine Kirima, MP

Hon. Vincent Kipkurui Tuwei, MP

Hon. Caleb Amisi, MP

Hon. Ernest Ogesi Kivai, MP

Hon. Asha Hussein Mohamed, MP

1.3 Committee Secretariat

Samuel Kalama	Senior Clerk Assistant
Abdiaziz Shobay	Third Clerk Assistant
Brigitta Mati	Legal Officer
Grace Karanja Wahu	Research Officer
Edison Odhiambo	Fiscal Analyst
Andrew Shangarai	Senior Sergeant At Arms
Rodgers Kilungya	Audio Officer

2.0 BACKGROUND

2.1 Committal of the Petition to the Committee

Pursuant to Standing Order 227 (1), the petition was referred to the Departmental Committee on Defence & Foreign Relations for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227 (1) and (2).

The Committee proceeded with the consideration of the petition by holding meetings to review the prayers sought by the petitioners and scheduling of meetings for consideration of the petition.

In considering the petition, the Committee invited and held meetings with the petitioners, Mr. Dan Okemwa and Lyn Kemboi, the Ministry of Foreign Affairs & the Ministry of Interior & Coordination of National Government. The meetings were aimed at responding to issues raised by the petitioners.

2.2 Evidence

In considering the Petition, the Committee was guided by the Provisions of Standing Order 227 (2) and (3). The Committee held meetings with the Petitioners, Mr. Dan Okemwa and Ms. Lyn Kemboi, and the Ministry of Foreign Affairs. During the meetings, written and oral evidence was adduced and recorded as hereunder:-

2.2.1 Submissions by the Petitioners, Mr. Dan Okemwa & Ms. Lyn Kemboi

The Petitioners, Mr. Dan Okemwa and Ms. Lyn Kemboi appeared before the Committee on Tuesday 2nd October, 2018. They informed the Committee that:-

1. A Kenyan citizen by the name Don Bosco Gichana Ooga has been in detention in Tanzania for a period of five years without trial since his arrest on 29th day of March 2013 at Namanga boarder on his way back to Kenya after visiting a friend in Arusha.
2. His arrest in 2013 was illegal because he was arrested by Kenyan authorities and handed over to Tanzanian authorities against the laid down procedures of extradition.

3. Don Bosco Gichana was arrested in connection to criminal case number 330/2011. He was taken to Dar es Salaam and was charged at the resident magistrate court at Kisutu in Dar es Salaam in criminal case NO. 10/2013 and was taken to Keko Remand Prison.
4. After spending six months at Keko prisons in Dar es Salaam when his case was called for continuation of uncounted mentions, the Republic of Tanzania decided to enter a *Nolle prosequi* October 2013 and subsequently taken to Arusha where he was charged with 3 others (Tanzanian citizens) and had been arrested in 2011 on charges of money laundering in the Resident Magistrate court of Arusha at Arusha.
5. *Noelle prosequi* entered against him at Kisutu Resident magistrate court was dramatic in the sense that the Republic of Tanzania had applied for leave to interrogate Don Bosco Gichana for seven days and on a promise that he could be brought before the very court every morning before interrogations starts and at the end he was supposed to be taken back to keko remand prison.
6. With abuse of the legal process, and ignoring orders of the court, the republic of Tanzania, without obtaining any order of the Kisutuj resident magistrate court at Dar es Salaam decided to transfer Don Bosco to Arusha
7. Two days later, the case turned up in preliminary inquiry under the allegation that Don Bosco Gichana was a foreigner and according to the amendments which were made to the money laundering Act No. 12 of 2006 which was amended by Act No. 12 of 2012.
8. Preliminary hearing was to commence which was presided by Fatuma Massengi J. sitting at Monduli at the resident Magistrate court of Arusha at Arusha in the criminal case PI No.37/2013 for trial criminal sessions No. 1 of 2015,

9. After the order of the court denying the entering of the Noelle prosequi by the Republic of Tanzania the plea taking and preliminary hearing was conducted and finalized and the judge ordered that Don Bosco Gichana shall stand trial in the next session as to be fixed by the deputy registrar and Don Bosco Gichana was ordered to remain in remand prison at Kisongo awaiting his trial.
10. Don Bosco Gichana was summoned to appear for his trial, which was scheduled for hearing with effect from November and December 2015 and the case was presided over by Mjemmas J.
11. The Republic of Tanzania had maliciously fabricated evidence knowingly that its not allowed in law to fabricate evidence and those documents which were not admitted into evidence by the court with competent jurisdiction could not in any way in the same or new proceedings based on the same facts and same parties in order to prejudice Don Bosco Gichana
12. The fabrication and rectifying of the rejected evidence and to re-use against Don Bosco is not in the interest of justice
13. While Don Bosco was awaiting for the return of the file to the high court for the continuation of the trial to the chagrin and dismissal of Don Bosco, instead of the Republic of Tanzania obeying orders to both the High court and Court Appeal of Tanzania in criminal session case No.61/2015 and the judgement of court Appeal of Tanzania criminal Appeal No. 2/2016 which was delivered on the 15th September 2016,
14. The state is aware by the doctrine of Estoppel by judgement, that when a fact has been agreed upon or decided in court of records neither of the parties to the proceedings as the case may be allowed to call it again to question and have it tried at any time thereafter, so long as the decision of

the high court of Tanzania at Arusha in criminal session case of No. 2/2016 stand un-reversed.

15. On the 30th October 2017 when criminal sessions case No. 61/2015 was called for continuation of hearing, the Republic of Tanzania decided to enter a Noelle prosequi. After heavy objection by Don Bosco who submitted that the Republic of Tanzania prayer to enter a Noelle prosequi was not in the interest of justice but an abuse of the court process. On 31st October 2017 Mrango J. gave a ruling allowing the Republic on the Noelle Prosequi however the judgement operates as a bar to the Republic to re-arrest Don Bosco and to be re-charged in the Resident Magistrate court of Arusha.
16. The Republic of Tanzania maliciously and with bad faith decided to disobey the ruling of Mrango J. dated 31st October 2017 that within the common knowledge the respondent committed a judicial error which defeats the purpose of litigation as a process of judicial administration of justice and if the court orders are not complied with, court decision will be accorded no meaning, and rendered impotent.
17. He has made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.
18. Don Bosco Gichana was freed after five years of detention by a Tanzanian court

2.2.2 Submissions by Amb. Monica Juma, DPHL, CBS, Cabinet Secretary, Ministry of Foreign Affairs

The Cabinet Secretary for the Ministry of Foreign Affairs appeared before the Committee on Tuesday 2nd October, 2018. She informed the Committee that:-

19. On October 2015 the Ministry presented a Ministerial Statement to the Speaker of the Senate regarding Mr. Don Bosco Gichana. Part of the

question was to explain what the Government of Kenya was doing to help Mr. Gichana

20. Mr. Gichana was arrested in Arusha on 29th March, 2013 and later arraigned at the Kisutu Resident Magistrate Court in Dar es Salaam on Wednesday 10th April, 2013
21. He was accused of money laundering to the tune of USD \$4.9 million equivalent to Tshs. 6 billion. He has been in remand in Tanzania since then
22. On the 13th September 2018 in Arusha, Mr. Gichana voluntarily pleaded guilty to the two (2) charges he was facing, namely; the offence of money laundering contrary to section 12(b) and 13(a) of the Anti-Money Laundering Act of Tanzania of 2006 and conspiracy to commit an offence contrary to section 384 of the Penal Code of Tanzania.
23. Consequently, on 18th September 2018 he was convicted and sentenced for both charges.
24. The court observed that though the two offences were committed by the convict in conspiracy with three others, it took into account the major role Mr. Gichana played in the commission of the offences.
25. In accordance with the exhibits, he was the one who submitted the fraudulent tax returns to the relevant US authority.
26. He conspired with other Kenyans in the USA to fraudulently procure the money from the Government of USA through bank accounts of his conspirators in USA.
27. The said illegal money was transferred into the account of a dubious company in Arusha and thereafter to the account of one of the other accused.

28. In regards to the offence of money laundering; he was sentenced to 5 years starting from the date of incarceration, meaning that he has already served the sentence.
29. For the offence of conspiracy; he was sentenced to a fine of three hundred million Tanzania shillings (Tshs. 300,000,000.00) equivalent to KSh.13,243,989.02 or USD 131,388.78 to be paid within one month from the date of the High Court decision which was delivered on 18th September 2018.
30. Failure to pay the fine, the custodian sentence of 5 years will commence after 30 days from the date of delivery of the Judgment. In this respect, he will begin his five (5) years jail term on 18th October 2018 if the fine is not paid in time.
31. The family members and friends of Mr. Gichana were mobilizing to raise the money for the fine.
32. The Ministry offered Mr. Gichana consular services and steps taken to safeguard his human rights.
33. Further, Kenya's High Commission in Dar es Salaam has on several occasions written and verbally engaged the Government of Tanzania to be allowed to extend consular assistance and visits to Mr. Gichana as provided by Article 36(3) of the Vienna Convention on Consular Relations which both countries are parties to.
34. The continued stay of Mr. Gichana in remand without trial was raised by the Kenyan Government during the state visit to Kenya on 4th to 6th October 2015 by the President of Tanzania H.E Jakaya Kikwete.
35. That, decisions and actions relating to court matters are handled in courts in accordance with the rule of law.

36. Further, the Ministry was informed that the Charge sheet was amended severally in accordance with Tanzania's Criminal Procedure Code Act, whenever new evidence was discovered.
37. The trial was conducted before an open court with legal representation and Mr. Gichana was represented by advocate of his choice, Mr. Shiyo
38. Mr. Gichana has a right to appeal the decision as indicated in the court judgment.
39. The draft Agreement on the transfer of prisoners was proposed by Government of the Republic of Kenya and conveyed to the Government of the United Republic of Tanzania for consideration.
40. Implementation of the agreement will ensure that Kenyan currently serving jail sentence in Tanzania would be brought to Kenya to serve half of their sentence.

3.0 COMMITTEE OBSERVATIONS

Having held meetings and considered the submissions presented on the petition, the Committee observed that;

1. The Ministry of Foreign Affairs offered Mr. Gichana consular services and made efforts to safeguard his human rights.
2. The due process of law was followed by the Tanzanian court, though it took long to conclude.
3. For the offence of conspiracy; Don Bosco was sentenced to a fine of three hundred million Tanzania shillings (Tshs. 300,000,000.00) equivalent to KSh.13, 243,989.02 or USD 131,388.78 to be paid within one month from the date of the High Court decision which was delivered on 18th September 2018.

4. Don Bosco Gichana paid the entire fine and was freed by the Tanzanian court after five years of detention on Tuesday 2nd October, 2018.
5. Kenya and the Republic of Tanzania have embarked on the process of negotiating a Bilateral Agreement on Transfer of Sentenced Persons.

4.0 COMMITTEE RECOMMENDATIONS

In view of the observations and findings made, the Committee recommends the THAT:

1. The Ministry of Foreign Affairs should fast-track the draft Agreement on Transfer of Sentenced Persons and considers having an acceptable harmonized legal framework to offer assistance to arrested persons within the East African Community.
2. Kenya Missions abroad need to reinforce consular support services for Kenyans detained and held in foreign countries.

Signed..........Date..........

HON. KATOO OLE METITO, EGH, MGH, M.P

CHAIRPERSON

**DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN
RELATIONS**

REPUBLIC OF KENYA

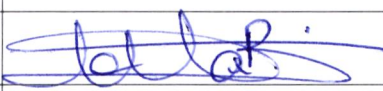
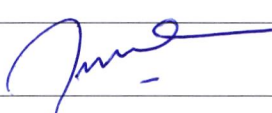
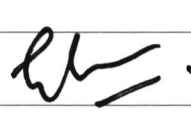


DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS.

REPORT OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS ON CONSIDERATION OF A PETITION BY MR. ADAN OKEMWA AND MS. LYN KEMBOI ON THE ARREST AND DENTENTION OF MR. BOSCO GICHANA OOGA

We, the undersigned Hon. Members of the Departmental Committee on Defence & Foreign Relations, today 17th November, 2018 do hereby affix our signatures to this REPORT ON THE consideration of a petition by My. Dan and Ms. Lyn Kemboi, on the arrest and detention of Mr. Don Bosco Gichana Ooga to affirm our approval and confirm its accuracy, validity and authenticity:-

NO.	NAME	SIGNATURE
1.	The Hon. Katoo Ole Metito, EGH, MGH, M.P - Chairperson	
2.	The Hon. Richard Tong'i, M.P - Vice Chairperson	
3.	The Hon. Yusuf Hassan Abdi, M.P	
4.	The Hon. Charles Mutavi Kilonzo, M.P	
5.	The Hon. Patrick Makau, M.P	
6.	The Hon. Dido Ali Raso, M.P	
7.	The Hon. Peter Mungai Mwathi, M.P	
8.	The Hon. Martha Wangari Wanjira, M.P	
9.	The Hon. Major (Rtd.) Bashir Abdullahi, M.P	

10.	The Hon. Memusi Ole Kanchory, M.P	
11.	The Hon. Beatrice Nkatha Nyagah, HSC, M.P	
12.	The Hon. John Lodepe Nakara, M.P	
13.	The Hon. Nelson Koech, M.P	
14.	The Hon. (Dr.) Lilian Gogo, M.P	
15.	The Hon. Vincent Kipkurui Tuwei, M.P	
16.	The Hon. Asha Mohamed, M.P	
17.	The Hon. Moses Nguchine Kirima, M.P	
18.	The Hon. Ernest Ogesi Kivai, M.P	
19.	The Hon. Caleb Amisi, MP	

**MINUTES OF THE 61ST SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE
& FOREIGN RELATIONS HELD ON TUESDAY, 2ND OCTOBER, 2018 IN MAIN
CHAMBER, PARLIAMENT BUILDINGS AT 10.00 AM**

PRESENT

1. The Hon. Katoo Ole Metito, EGH, MGH, M.P – **Chairperson**
2. The Hon. Richard Tong’i, M.P - **Vice Chairperson**
3. The Hon. Yusuf Hassan Abdi, M.P
4. The Hon. Patrick Makau, M.P
5. The Hon. Dido Ali Raso, M.P
6. The Hon. Peter Mungai Mwathi, M.P
7. The Hon. Beatrice Nkatha Nyagah, HSC, M.P
8. The Hon. Memusi Ole Kanchory, M.P
9. The Hon. John Lodepe Nakara, M.P
10. The Hon. Moses Nguchine Kirima, M.P
11. The Hon. Vincent Kipkurui Tuwei, M.P
12. The Hon. Ernest Ogesi Kivai, M.P

APOLOGY

1. The Hon. Charles Mutavi Kilonzo, M.P
2. The Hon. Martha Wangari Wanjira, M.P
3. The Hon. (Dr.) Lilian Gogo, M.P
4. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
5. The Hon. Nelson Koech, M.P
6. The Hon. Silvanus Osoro, M.P
7. The Hon. Caleb Amisi, MP

IN-ATTENDANCE

1. Amb. (Dr.) Monica Juma, DPHL, CBS - Cabinet Secretary, Ministry of Foreign Affairs
2. Amb. Ephantus Barine , - Director, Liaison, Ministry of Foreign Affairs
3. Mr. Mr. Dan Okemwa, - Petitioner
4. Ms. Bilha Vochaberi, - Friend of the Petitioner
5. Mr. Kipchumba Nyorsok, - Friend of the Petitioner

NATIONAL ASSEMBLY- SECRETARIAT

1. Mr. Samuel Kalama - Senior Clerk Assistant
2. Mr. Abdiaziz Shobay - Third Clerk Assistant
3. Mr. Andrew Shangarai - Senior Sergeant At-Arms
4. Ms. Clarah Kimeli - Senior Legal Officer
5. Mr. Rodgers Kilungya - Audio Officer

AGENDA

1. Preliminaries
 - (i) Prayers

- (ii) Introductions
- (iii) Communication from the Chair
- (iv) Adoption of the Agenda
- (v) Matters Arising

2. Meeting with Mr. Dan Okemwa & Lyn Kemboi Petitioners, Cabinet Secretaries, Ministries of Foreign Affairs & Interior & Coordination of National Government regarding arrest and detention of one Don Bosco Gichana Ooga

2. Any Other Business

MIN.NO.DC.DFR/2018/262: PRELIMINARIES & ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at 10:25am and prayer was said by Hon. Dido Ali Raso, MP. The agenda of the meeting was adopted having been proposed and seconded by the Hon. John Lodepe Nakara, M.P and Hon. Memusi Kanchory, MP respectively. The Chairperson informed the Committee that the Cabinet Secretary for the Ministry of Interior and Coordination of National Government who was scheduled to appear jointly with the Cabinet Secretary for the Ministry of Foreign Affairs could not make it for the meeting since he had other prior engagements.

MIN.NO.DC.DFR/2018/263: PRESENTATION BY PETITIONERS, DAN OKENWA AND LYN KEMBOI-REGRDING ARREST & DETENTION OF DON BOSCO

Submissions by Dan Okemwa & Lyn Kemboi:-

Mr. Dan Okwema submitted as follows: -

THAT;

- (i) A Kenyan citizen by the name Don Bosco Gichana Ooga has been in detention in Tanzania for a period of five years without trial since his arrest on 29th day of March 2013 at Namanga boarder on his way back to Kenya after visiting a friend in Arusha
- (ii) His arrest in 2013 was illegal because he was arrested by Kenyan authorities and handed over to Tanzanian authorities against the laid down procedures of extradition
- (iii) Don Bosco Gichana was arrested in connection to criminal case number 330/2011. He was taken to Dar es Salaam and was charged at the resident magistrate court at Kisutu in Dar es Salaam in criminal case NO. 10/2013 and was taken to Keko Remand Prison.
- (iv) After spending six months at Keko prisons in Dar es Salaam when his case was called for continuation of uncounted mentions, the Republic of Tanzania decided to enter a Nolle prosequi in October 2013 and subsequently taken to Arusha where he was charged with 3 others (Tanzanian citizens) and had been arrested in 2011 on charges of money laundering in the Resident Magistrate court of Arusha at Arusha.
- (v) Noelle prosequi entered against him at Kisutu Resident magistrate court was dramatic in the sense that the Republic of Tanzania had applied for leave to interrogate Don Bosco Gichana for seven days and on a promise that he could be brought before the very court every morning before interrogations starts and at the end he was supposed to be taken back to keko remand prison.

- (vi) With abuse of the legal process, and ignoring orders of the court, the republic of Tanzania, without obtaining any order of the Kisutuj resident magistrate court at Dar es Salaam decided to transfer Don Bosco to Arusha
- (vii) Two days later, the case turned up in preliminary inquiry under the allegation that Don Bosco Gichana was a foreigner and according to the amendments which were made to the money laundering Act No. 12 of 2006 which was amended by Act No. 12 of 2012.
- (viii) Preliminary hearing was to commence which was presided by Fatuma Massengi J. sitting at Monduli at the resident Magistrate court of Arusha at Arusha in the criminal case PI No.37/2013 for trial criminal sessions No. 1 of 2015,
- (ix) After the order of the court denying the entering of the Noelle prosequi by the Republic of Tanzania the plea taking and preliminary hearing was conducted and finalized and the judge ordered that Don Bosco Gichana shall stand trial in the next session as to be fixed by the deputy registrar and DoOn Bosco Gichana was ordered to remain in remand prison at Kisongo awaiting his trial.
- (x) Don Bosco Gichana was summoned to appear for his trial, which was scheduled for hearing with effect from November and December 2015 and the case was presided over by Mjemmas J.
- (xi) The Republic of Tanzania had maliciously fabricated evidence knowingly that its not allowed in law to fabricate evidence and those documents which were not admitted into evidence by the court with competent jurisdiction could not in any way in the same or new proceedings based on the same facts and same parties in order to prejudice Don Bosco Gichana
- (xii) The fabrication and rectifying of the rejected evidence and to re-use against Don Bosco is not in the interest of justice
- (xiii) While Don Bosco was awaiting for the return of the file to the high court for the continuation of the trial to the chagrin and dismissal of Don Bosco, instead of the Republic of Tanzania obeying orders to both the High court and Court Appeal of Tanzania in criminal session case No.61/2015 and the judgement of court Appeal of Tanzania criminal Appeal No. 2/2016 which was delivered on the 15th September 2016,
- (xiv) The state is aware by the doctrine of Estoppel by judgement, that when a fact has been agreed upon or decided in court of records neither of the parties to the proceedings as the case may be allowed to call it again to question and have it tried at any time thereafter, so long as the decision of the high court of Tanzania at Arusha in criminal session case of No. 2/2016 stand un-reversed.
- (xv) On the 30th October 2017when criminal sessions case No. 61/2015 was called for continuation of hearing, the Republic of Tanzania decided to enter a Noelle prosequi. After heavy objection by Don Bosco who submitted that the Republic of Tanzania prayer to enter a Noelle prosequi was not in the interest of justice but an abuse of the court process. On 31st October 2017 Mrango J. gave a ruling allowing the Republic on the Noelle Prosequi however the judgement operates as a bar to the Republic to re-arrest Don Bosco and to be re-charged in the Resident Magistrate court of Arusha.
- (xvi) The Republic of Tanzania maliciously and with bad faith decided to disobey the ruling of Mrango J. dated 31st October 2017 that within the common knowledge the respondent committed a judicial error which defeats the purpose of litigation as a process of judicial administration of justice and if the court orders are not complied with, court decision will be accorded no meaning, and rendered impotent.
- (xvii) He has made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.

The Committee was further informed that;

- (i) Don Bosco Gichana was finally free and was on his way to Kenya after five years of detention by a Tanzanian court
- (ii) Mr. Don Bosco may approach the East African Court of Justice for redress regarding his detention

MIN.NO.DC.DFR/2018/264: PRESENTATION BY THE CABINET SECRETARY, MINISTRY OF FOREIGN AFFAIRS

The Chairperson invited Amb. (Dr.) Monica Juma, DPHL, CBS to make her presentation to the Committee. She informed the Committee that: -

- (i) On October 2015 the Ministry presented a Ministerial Statement to the Speaker of the Senate regarding Mr. Don Bosco Gichana. Part of the question was to explain what the Government of Kenya was doing to help Mr. Gichana
- (ii) Mr. Gichana was arrested in Arusha on 29th March, 2013 and later arraigned at the Kisumu Resident Magistrate Court in Dar es Salaam on Wednesday 10th April, 2013
- (iii) He was accused of money laundering to the tune of USD \$4.9 million equivalent to Tshs. 6 billion. He has been in remand in Tanzania since then
- (iv) On the 13th September 2018 in Arusha, Mr. Gichana voluntarily pleaded guilty to the two (2) charges he was facing, namely; the offence of money laundering contrary to section 12(b) and 13(a) of the Anti-Money Laundering Act of Tanzania of 2006 and conspiracy to commit an offence contrary to section 384 of the Penal Code of Tanzania
- (v) Consequently, on 18th September 2018 he was convicted and sentenced for both charges.
- (vi) The court observed that though the two offences were committed by the convict in conspiracy with three others, it took into account the major role Mr. Gichana played in the commission of the offences.
- (vii) In accordance with the exhibits, he was the one who submitted the fraudulent tax returns to the relevant US authority
- (viii) He conspired with other Kenyans in the USA to fraudulently procure the money from the Government of USA through bank accounts of his conspirators in USA
- (ix) The said illegal money was transferred into the account of a dubious company in Arusha and thereafter to the account of one of the other accused
- (x) In regards to the offence of money laundering; he was sentenced to 5 years starting from the date of incarceration, meaning that he has already served the sentence
- (xi) For the offence of conspiracy; he was sentenced to a fine of three hundred million Tanzania shillings (Tshs. 300,000,000.00) equivalent to KSh.13, 243,989.02 or USD 131,388.78 to be paid within one month from the date of the High Court decision which was delivered on 18th September 2018
- (xii) Failure to pay the fine, the custodian sentence of 5 years will commence after 30 days from the date of delivery of the Judgment. In this respect, he will begin his five (5) years jail term on 18th October 2018 if the fine is not paid in time
- (xiii) The family members and friends of Mr. Gichana were mobilizing to raise the money for the fine.

The Committee was further informed that;

- (i) The Ministry has offered Mr. Gichana diplomatic protection and the steps taken to safeguard his human rights
- (ii) Further, Kenya's High Commission in Dar es Salaam has on several occasions written and verbally engaged the Government of Tanzania to be allowed to extend consular assistance and visits to Mr. Gichana as provided by Article 36(3) of the Vienna Convention on Consular Relations which both countries are parties to
- (iii) The continued stay of Mr. Gichana in remand without trial was also raised during the state visit to Kenya on 4th to 6th October 2015 by the then President of Tanzania H.E Jakaya Kikwete
- (iv) That, decisions and actions relating to court matters are handled in courts in accordance with the rule of law
- (v) Further, the Ministry was informed that the Charge sheet was amended severally in accordance with Tanzania's Criminal Procedure Code Act, whenever new evidence was discovered
- (vi) The trial was conducted before an open court with legal representation and Mr. Gichana was represented by advocate of his choice, Mr. Shiyo
- (vii) Mr. Gichana has a right to appeal the decision as indicated in the court judgment.
- (viii) The draft Agreement was proposed by Government of the Republic of Kenya and conveyed to the Government of the United Republic of Tanzania for consideration
- (ix) Implementation of the agreement will ensure that Kenyan currently serving jail sentence in Tanzania would be brought to Kenya to serve half of their sentence
- (x) In regard to persons arrested and serving jail terms outside the country and their status, the Committee was informed that the Kenyans in foreign jails were as follows;

COUNTRY NAME	NO OF KENYANS IN FOREIGN JAIL
South Sudan	10
Uganda	47
South Africa	2
Rwanda	1
Philippines	3
China	57
Pakistan	3
Indonesia	5
Thailand	7
Malaysia	25
Ethiopia	5
Japan	1
Austria	1
Brazil	1
South Korea	1
Togo	2

Botswana	3
Seychelles	6
Tanzania	79
Qatar	8
Nepal	1
France	0
United Kingdom	Info cannot be released by UK Govt.
Switzerland	Not allowed to share information on Kenya nationals in their penal detention or those with pending legal proceedings or the crimes they are accused of. This is under Swiss data protection laws
Oman	2
Kuwait	3

- (xi) The Committee was informed that the list was not exhaustive and the Cabinet Secretary undertook to provide an updated list within fourteen (14) days.

Members Observations and Recommendations

- (i) The Committee observed that the two countries should embark on the process of negotiating a Bilateral Agreement on Transfer of Sentenced Persons
- (ii) The Committee noted that the Ministry should fastrack the draft Agreement proposed by Government of the Republic of Kenya and conveyed to the Government of the United Republic of Tanzania for consideration.
- (iii) The Committee also noted that the implementation of the agreement will ensure that Kenyans currently serving jail sentence in Tanzania would be brought to Kenya to serve half of their sentence.

MIN.NO.DC.DFR/2018/265: ADJOURNMENT

And the time being 12:10pm the Chairperson adjourned the meeting.

Signed.....

Hon. Katoo Ole Metito, M.P
(CHAIRPERSON)

Date.....25/10/2018.....

**MINUTES OF THE 60TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE & FOREIGN RELATIONS HELD ON WEDNESDAY, 19TH SEPTEMBER, 2018
IN, 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11.00 AM**

PRESENT

1. The Hon. Richard Tong’i, M.P - **Vice Chairperson**
2. The Hon. Charles Mutavi Kilonzo, M.P
3. The Hon. Dido Ali Raso, M.P
4. The Hon. John Lodepe Nakara, M.P
5. The Hon. Memusi Ole Kanchory, M.P
6. The Hon. (Dr.) Lilian Gogo, M.P
7. The Hon. Nelson Koech, M.P
8. The Hon. Moses Nguchine Kirima, M.P
9. The Hon. Vincent Kipkurui Tuwei, M.P
10. The Hon. Ernest Ogesi Kivai, M.P
11. The Hon. Silvanus Osoro, M.P
12. The Hon. Caleb Amisi, MP

APOLOGY

1. The Hon. Katoo Ole Metito, EGH, MGH, M.P – **Chairperson**
2. The Hon. Yusuf Hassan Abdi, M.P
3. The Hon. Patrick Makau, M.P
4. The Hon. Peter Mungai Mwathi, M.P
5. The Hon. Beatrice Nkatha Nyagah, HSC, M.P
6. The Hon. Martha Wangari Wanjira, M.P
7. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP

NATIONAL ASSEMBLY- SECRETARIAT

- | | | |
|-------------------------|---|-------------------------|
| 1. Mr. Abdiaziz Shobay | - | Third Clerk Assistant |
| 2. Mr. Andrew Shangarai | - | Senior Sergeant At-Arms |
| 3. Ms. Brigita Mati | - | Legal Officer II |
| 4. Mr. Rodgers Kilungya | - | Audio Officer |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda
 - (v) Matters Arising
2. **Consideration of A petition regarding arrest and detention of one Don Bosco Gichana Ooga**
 2. Any Other Business

MIN.NO.DC.DFR/2018/258: PRELIMINARIES & ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at 11:28am and prayer was said by Hon. Richard Tongi, MP. The agenda of the meeting was adopted having been proposed and seconded by the Hon. Nelson Koech, M.P and Hon. Ernest Ogesi Kivai, MP respectively.

MIN.NO.DC.DFR/2018/259: CONSIDERATION OF THE PETITION BY DAN OKENWA AND LYN KEMBOI-REGRDING ARREST & DETENTION OF DON BOSCO

The meeting was informed that the petition was presented to the House on 30th August, 2018 and subsequently committed to the Committee. The Chairperson took Members through the Petition highlighting the following key areas: -

THAT;

- (i) A Kenyan citizen by the name Don Bosco Gichana Ooga has been in detention in Tanzania for a period of five years without trial since his arrest on 29th day of March 2013 at Namanga boarder on his way back to Kenya after visiting a friend in Arusha
- (ii) His arrest in 2013 was illegal because he was arrested by Kenyan authorities and handed over to Tanzanian authorities against the laid down procedures of extradition
- (iii) Don Bosco Gichana was arrested in connection to criminal case number 330/2011 however, surprising he was taken to Dar es Salaam and was charged at the resident magistrate court at Kisutu in Dar es Salaam in criminal case NO. 10/2013 AND WAS TAKEN TO Keko Remand Prison.
- (iv) After spending six months at Keko prisons in Dar es Salaam when his case was called for continuation of uncounted mentions, the Republic of Tanzania decided to enter a Nolle prosequi in October 2013 and subsequently taken to Arusha where he was charged with 3 others (Tanzanian citizens) and had been arrested in 2011 on charges of money laundering in the Resident Magistrate court of Arusha at Arusha.
- (v) Nolle prosequi entered against him at Kisutu Resident magistrate court was dramatic in the sense that the Republic of Tanzania had applied for leave to interrogate Don Bosco Gichana for seven days and on a promise that he could be brought before the very court every morning before interrogations starts and at the end he was supposed to be taken back to keko remand prison.
- (vi) With abuse of the legal process, and ignoring orders of the court, the republic of Tanzania, without obtaining any order of the Kisutuj resident magistrate court at Dar es Saalaam decided to transfer Don Bosco to Arusha
- (vii) Two days later, the case turned up in preliminary inquiry under the allegation that Don Bosco Gichana was a foreigner and according to the amendments which were made to the money laundering Act No. 12 of 2006 which was amended by Act No. 12 of 2012.
- (viii) Preliminary hearing was to commence which was presided by Fatuma Massengi J. sitting at Monduli at the resident Magistrate court of Arusha at Arusha in the criminal case PI No.37/2013 for trial criminal sessions No. 1 of 2015,
- (ix) After the order of the court denying the entering of the nolle prosequi by the Republic of Tanzania the plea taking and preliminary hearing was conducted and finalized and the judge ordered that Don Bosco Gichana shall stand trial in the next session as to be fixed by the deputy registrar and Don Bosco Gichana was ordered to remain in remand prison at Kisongo awaiting his trial.

- (x) For the grace of God, Don Bosco Gichana was summoned to appear for his trial, which was scheduled for hearing with effect from November and December 2015 and the case was presided over by Mjemmas J.
- (xi) The Republic of Tanzania had maliciously fabricated evidence knowingly that its not allowed in law to fabricate evidence and those documents which were not admitted into evidence by the court with competent jurisdiction could not in any way in the same or new proceedings based on the same facts and same parties in order to prejudice Don Bosco Gichana
- (xii) I am of the opinion that the fabrication and rectifying of the rejected evidence and to re-use against Don Bosco is not in the interest of justice
- (xiii) While Don Bosco was awaiting for the return of the file to the high court for the continuation of the trial to the chagrin and dismissal of Don Bosco, instead of the Republic of Tanzania obeying orders to both the High court and Court Appeal OF Tanzania in criminal session case No.61/2015 and the judgement of court Appeal of Tanzania criminal Appeal No. 2/2016 which was delivered on the 15th September 2016,
- (xiv) The state is aware by the doctrine of Estoppel by judgement, that when a fact has been agreed upon or decided in court of records neither of the parties to the proceedings as the case may be allowed to call it again to question and have it tried at any time thereafter, so long as the decision of the high court of Tanzania at Arusha in criminal session case of No. 2/2016 stand un-reversed.
- (xv) On the 30th October 2017when criminal sessions case No. 61/2015 was called for continuation of hearing, The Republic of Tanzania decided to enter a Noelle prosequi. After heavy objection by Don Bosco who submitted that the Republic of Tanzania prayer to enter a Noelle prosequi was not in the interest of justice but an accuse of the court process. On 31st October 2017 Mrango J. gave a ruling allowing the Republic on the Noelle Prosequi however the judgement operates as a bar to the Republic to re-arrest Don Bosco and to be re-charged in the Resident Magistrate court of Arusha.
- (xvi) Unfortunately the Republic of Tanzania maliciously and with bad faith decide to disobey the ruling of Mrango J. dated 31st October 2017 that within the common knowledge the respondent committed a judicial error which defeats the purpose of litigation as a process of judicial administration of justice and if the court orders are not complied with, court decision will be accorded no meaning, and rendered impotent.
- (xvii) The has made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.
- (ii) Lastly, the petitioners pray that:-
 - a) The National Assembly to invoke its powers under Article 125(1) of the constitution and summon the cabinet secretary for foreign affairs to provide information whether the ministry has offered Mr. Gichana diplomatic protection and the steps taken to safeguard hiss human rights.
 - b) Recommend the necessary action to be taken, to ensure justice for Don Bosco Gichana.

After intense deliberation the Committee resolved that-

- i. The Petitioners, the Cabinet Secretaries for the Ministries of Foreign Affairs and Interior & Coordination of National Government be invited for a meeting on **Tuesday, 2nd October, 2018** to deliberate on the issues raised by the Petitioner. Further, the committee directed the secretariat

to inform the Ministry of Foreign Affairs to furnish the Committee with details of persons arrested and serving jail terms outside the country if any and their status

MIN.NO.DC.DFR/2018/260: ANY OTHER BUSSINES

1. **Romania Trip** - The meeting was informed that Romania trip was on course and that the under listed Members were proposed to undertake the visit.

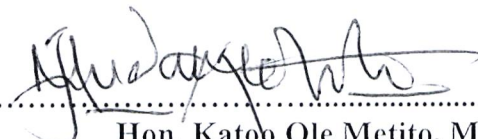
- i) Hon. Richard Tong'i, MP, **(Vice Chairperson) & Leader of the Delegation**
- ii) Hon. Charles Mutavi Kilonzo, MP
- iii) Hon. Martha Wangari Wanjira, MP
- iv) Hon. Nelson Koech, MP
- v) Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
- vi) Hon. Caleb Amisi, MP

2. **Visit to Mandera Boarder Wall** – The Committee proposed to undertake a fact finding mission to Mandera on the inquiry into the status of the implementation of the Kenya-Somalia boarder security wall project from 7th – 8th **October, 2018**. The following Members confirmed their availability to undertake the visit.

- i) Hon. Richard Tongi, MP, **Vice Chairperson**
- ii) Hon. Charles Kilonzo
- iii) Hon. Dido Ali Raso, MP
- iv) Hon. John Lodepe Nakara, M.P
- v) Hon. (Dr.) Lilian Gogo, M.P
- vi) Hon. Moses Nguchine Kirima, MP
- vii) The Hon. Ernest Ogesi Kivai, M.P

MIN.NO.DC.DFR/2018/261: ADJOURNMENT DATE OF NEXT MEETING

And the time being 11:50am the Chairperson adjourned the meeting and to be reconvened on Thursday, 16th August, 2018 at 11.00am.

Signed.....

Hon. Katoo Ole Metito, M.P
(CHAIRPERSON)

Date.....
25/10/2018



REPUBLIC OF KENYA
TWELFTH PARLIAMENT- (SECOND SESSION)
THE NATIONAL ASSEMBLY
PETITIONS

(NO. 107 of 2018)

CONVEYANCE REGARDING MR. DON BOSCO GICHANA OOGA

Honourable Members,

Standing Order 225(2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office has received a Petition from one Mr. Dan Okemwa of P.O. Box 8271-00200, Nairobi regarding alleged illegal arrest of one Mr. Don Bosco Gichana Ooga by Kenyan Authorities and his hand-over to Tanzanian authorities.

Honourable Members,

The petitioner alleges that Don Bosco Gichana Ooga was illegally arrested by Kenya authorities in March 2013 at the Namanga border, transferred to Tanzanian authorities under unclear circumstances and has been in detention in a remand prison in Dar-es-Salaam, Tanzania for five (5) years without trial since his arrest. The petitioner further states that there has been an abuse of the legal process and court orders relating to Don Bosco Gichana, which has led to his prolonged stay in prison.

Approved
30/7/18
[Signature]

The Clerk of the National Assembly

Parliament Buildings

P.O. Box 41842 – 00100

NAIROBI

Email: clerk@parliament.go.ke

DLS
to advise. Have
we had a similar
petition. CMA

RE: PETITION TO THE NATIONAL ASSEMBLY CONCERNING DON BOSCO
GICHANA OOGA

8/8/18

We, the undersigned,

Citizen of the Republic of Kenya, and residents of Nairobi



DRAW the attention of the National Assembly to the following:

1. **THAT**, A Kenyan Citizen by the name Don Bosco Gichana Ooga has been in detention in Tanzania for a period of 5 years without Trial since his Arrest on 29th day of March 2013 at Namanga boarder on his way back to Kenya after visiting a friend in Arusha.
2. **THAT**, his arrest in 2013 was illegal because he was arrested by the Kenyan Authorities and handed over to Tanzanian Authorities against the laid down procedures of extradition.
3. **THAT**, Don Bosco Gichana was arrested in connection to criminal case number 330/2011 however, surprisingly he was taken to Dar es Salaam and was charged at the Resident Magistrate court at Kisutu in Dar es Salaam in criminal Case No. 10/2013 and was taken to Keko Remand Prison.
4. **THAT**, After spending Six months at Keko Prisons in Dar es Salaam when his case was called for continuation of uncounted mentions, The Republic of Tanzania decided to enter a nolle prosequi in October 2013, and was subsequently taken to Arusha where he was charged with 3 others (Tanzanian citizens) and had been arrested in 2011 on charges of money laundering in the Resident Magistrate court of Arusha at Arusha.

5. **THAT**, nolle prosequi Entered against him at Kisutu Resident magistrate court was dramatic in the sense that the Republic of Tanzania had applied for leave to interrogate Don Bosco Gichana for seven days and on a promise that he could be brought before the very court every morning before interrogation starts and at the end he was supposed to be taken back to Keko Remand prison.
6. **THAT**, With Abuse of the legal process, and ignoring orders of the court, The Republic of Tanzania, without obtaining any order of the Kisutu Resident Magistrates court at Dar es Salaam decided to Transfer Don Bosco to Arusha whereby he was subsequently charged with 3 others and after 7 days of his transfer to Arusha The Republic of Tanzania entered a Nolle prosequi to discontinue his proceedings (Criminal case PI NO. 10/2013) in the Absence of Don Bosco and without notifying Don Bosco on the effect and status of his case which unwarrantedly took away his freedom to leave as a free person based on the false allegations which was levered against him and wantonly took away his freedom as per the charge sheet at Kisutu Resident Magistrates court at Dar es Salaam.
7. **THAT**, two days later, the case turned up in Preliminary inquiry under the allegation that Don Bosco Gichana was a foreigner and according to the amendments which were made to the Money Laundering Act No.12 of 2006 which was amended by Act No.12 of 2012. The Republic of Tanzania with ill motives decided to apply the amendment with a retrospective effect despite the fact that the alleged offences as per the charge sheet were committed between November , 2009 and February 2011 the time which is far beyond the amending Act No. 1 of 2012 and for all purposes and intents The Republic of Tanzania turned Don Bosco's case into preliminary inquiry case so that he spends more time in prison as remendee awaiting committal proceedings to be complete and to be committed to the High court for plea taking and Trial Respectively.
8. **THAT**, Preliminary hearing was to commence which was presided by Fatuma Massengi J. sitting at Monduli at the Resident Magistrate Court of Arusha at Arusha in the criminal case PI No.37/2013 for trial criminal sessions No.1 of 2015, surprisingly The Republic of Tanzania objected that the Preliminary

hearing should not proceed before Fatuma Massengi J. and according to The Republic of Tanzania the reason behind the objection was to the effect that the presiding magistrate erred during committal proceedings and they prayed to enter a nolle prosequi so that the criminal sessions 10/2015 should be dismissed and fresh committal proceedings should be conducted to rectify the alleged errors as per the allegations of The Republic of Tanzania but the presiding judge did not grant their prayer in her wisdom she warned The Republic of Tanzania to do justice and not abuse the legal process and persecute Don Bosco Gichana

9. **THAT**, after the order of the Court denying the entering of the nolle prosequi by The Republic of Tanzania the plea taking and preliminary hearing was conducted and finalized and the judge ordered that Don Bosco Gichana shall stand trial in the next session as to be fixed by the deputy registrar and Don Bosco Gichana was ordered to remain in remand prison at Kisongo awaiting his trial.

10. **THAT**, For the grace of God, Don Bosco Gichana was summoned to appear for his trial, which was scheduled for hearing with effect from November and December 2015 and the case was presided over by Mjemmas J. Unfortunately, The Republic of Tanzania once again entered a nolle prosequi under the allegations that; during plea taking before Fatuma Massengi J. plea was made by the Advocates of Don Bosco and as a result according to them it was a fatal error which rendered the committal proceedings a nullity and once again the order of entering a nolle prosequi was entered and fresh committal proceedings was conducted in the Arusha Magistrate Court at Arusha which was presided over by his Hon. Magistrate Rwezile in criminal committal (P.I)NO.60 of 2015 shortly after rectifying the error by The Republic of Tanzania in the subordinate Court and immediately Don Bosco Gichana was committed to the High Court to stand their trial originating from committal Proceedings No. 60 of 2015 which led to Criminal Sessions Case No. 61 of 2015.

11. **THAT**, The Republic of Tanzania had maliciously fabricated evidence knowingly that it is not allowed in law to fabricate evidence and those documents which were not admitted into evidence by the court with competent jurisdiction could not in any way be used in the same or new proceedings based on the same facts and same parties in order to prejudice Don Bosco Gichana in other words The

Republic of Tanzania are trying to demonstrate that in Tanzania once accused person are charged before any court worth the name they are found guilty as charged and the standard of proving the case beyond reasonable doubt shifts to the accused person.

12. **THAT,** I am of the opinion that the fabrication and rectifying of the rejected evidence and to re-use against Don Bosco is not in the interest of justice and it is a total abuse of the legal process and this is not the rule of law but the rule of persecution as The Republic of Tanzania violated the provision of Section 38(1), (2) (a) and (b) of the mutual assistance in criminal matters Act (CAP 254 RE 2002) but The Republic of Tanzania is bound by the decision of the Trial Judge delivered in 18th December 2015 and The Republic of Tanzania to the court of Appeal of Tanzania in Criminal Appeal No. 2 of 2015 but the appeal was dismissed on the 22nd August 2016 which was read to both parties on the 15th September 2016, but The Republic of Tanzania for its own reasons known to them, they disobeyed both orders.

13. **THAT,** while Don Bosco was awaiting for the return of the file to the high court for the continuation of the trial to the chagrin and dismissal of Don Bosco, instead of The Republic of Tanzania obeying orders to both the High Court and Court Appeal of Tanzania in Criminal Sessions Case No. 61/2015 and the judgment of the court of Appeal of Tanzania in criminal Appeal No. 2/2016 which was delivered on the 15 September 2016, The State with ill will, bad motive and his own volition he acted malafides decided to circumvent the judgment of the Court of Appeal of Tanzania and the Ruling of the High Court of Tanzania as stated herein above to show a total abuse of the Legal process and ignoring the judgment and ruling of the Court as above cited. The Republic of Tanzania for reasons best known by them between June 2017 and October 2017 with bad faith decided to fabricate Evidence which was rejected by the court as cited herein above.

14. **THAT,** the state is aware by the doctrine of Estoppel by judgment, that when a fact has been agreed upon or decided in court of records neither of the parties to the proceedings as the case may be allowed to call it again to question and have



it tried at anytime thereafter, so long as the decision of the high court of Tanzania at Arusha in criminal session case of No. 2/2016 stand un-reversed.

15. **THAT**, on the 30th October 2017 when criminal sessions case no. 61/2015 was called for continuation of hearing, The Republic of Tanzania decided to enter a Nolle prosequi. After heavy objection by Don Bosco who submitted that The Republic of Tanzania prayer to enter a nolle prosequi was not in the interest of justice but an abuse of the court process. On 31st October 2017 Mrango J. gave a ruling allowing the Republic on the nolle prosequi however the judgment operates as a bar to the republic to re-arrest Don Bosco and to be re-charged in the resident Magistrate Court of Arusha.
16. **THAT**, unfortunately the Republic of Tanzania maliciously and with bad faith decide to disobey the ruling of Mrango J. dated 31st October 2017 that within the common knowledge the responded committed a judicial error which defeats the purpose of litigation as a process of judicial administration of justice and if the court orders are not complied with, court decisions will be accorded no meaning, and rendered impotent.
17. **THAT**, I have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.
18. **THAT**, none of these issues raised in this Petition is pending in any court of Law within Kenya, Constitutional or any other legal body.

WHEREFORE, we the humble petitioner pray that the National Assembly-

1. The National Assembly to invoke its powers under Article 125(1) of the constitution and summon the cabinet secretary for foreign affairs to provide information whether the ministry has offered Mr. Gichana diplomatic protection and the steps taken to safeguard his human rights.
2. Recommend the necessary Action to be taken, to ensure justice for Don Bosco Gichana.

Dated this 8th day of **August 2018**.

NAME	ADDRESS	I.D. No.	SIGNATURE
DAN OKEMWA 0728463563	8271-00200 NAIROBI.	29616616	
LYN KEMBOI	520 ELDAMA-RAVINE	32498389	

MINUTES OF THE 67TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS & COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES HELD ON SATURDAY, 17TH NOVEMBER, 2018 IN THE 1ST BOARDROOM , THE TRIBE, HOTEL AT 10.00AM

PRESENT

1. The Hon. Katoo Ole Metito, EGH, MGH, MP(Chairperson)
2. The Hon. Yusuf Hassan Abdi, MP
3. The Hon. Charles Kilonzo, MP
4. The Hon. Dido Ali Raso, MP
5. The Hon. Patrick Makau King'ola, MP
6. The Hon. Beatrice Nkatha Nyagah, HSC, MP
7. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
8. The Hon. Ernest Ogesi Kivai, MP
9. The Hon. Nelson Koech, MP
10. The Hon. Asha Mohammed, MP

APOLOGY

1. The Hon. Richard Tongi, MP - Vice Chairperson
2. The Hon. Peter Mungai Mwathi, MP
3. The Hon. Martha Wangari Wanjira, MP
4. The Hon. Memusi Ole Kanchory, MP
5. The Hon. (Dr.) Lilian Gogo, MP
6. The Hon. Vincent Kipkurui Tuwei, MP
7. The Hon. Moses Nguchine Kirima, MP
8. The Hon. Caleb Amisi, MP
9. The Hon. John Lodepe Nakara, MP

National Assembly Secretariat

- | | | |
|-------------------------|---|-------------------------|
| 1. Samuel Kalama | - | Senior Clerk Assistant |
| 2. Ms. Brigitta Matti | - | Legal Counsel |
| 3. Ms. Grace Karanja | - | Research Officer III |
| 4. Mr. Rodgers Kilungya | - | Audio Recording Officer |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions

- (iii) Communication from the Chair
- (iv) Adoption of the Agenda
- (v) Confirmation of Minutes from the previous sittings
- (vi) Matters Arising

2. Adoption of reports

- a. On The Consideration of a Petition By Mr. Dan Okemwa and Ms. Lyn Kemboi, on the arrest and Detention of Mr. Don Bosco Gichana Ooga
- b. The Official Visit to the Republic of Romania from October 1st -5th ,2018
- c. Inquiry into the status, Viability and Efficacy in implementation of the Kenya- Border Securitization project
- d. On the Meeting With Member States & Secretariats (ECOWAS & EAC) To Promote and Popularize the Ratification of the Protocol on the Free Movement of Persons And its Implementation Roadmap

3. Any Other Business

MIN.NO.DC.DFR/2018/310: PRELIMINARIES

The Chairperson called the meeting to order at 1.30am. Prayer was read by Hon Ernest Ogesi Kivai MP.

MIN.NO.DC.DFR/2018/311: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Hon. Yusuf Hassan, MP, and seconded by the Hon. the Hon. Nelson Koech, MP respectively.

MIN.NO.DC.DFR/2018/312: ADOPTION OF THE REPORT

The following reports were unanimously adopted by the Committee as follows

- 1. The Consideration of a Petition by Mr. Dan Okemwa and Ms. Lyn Kemboi, on the arrest and Detention of Mr. Don Bosco Gichana Ooga. Proposed by Hon. Nelson Koech and seconded by Hon. Yusuf Hassan
- 2. The Official Visit to the Chamber of Deputies, Republic of Romania from October 1st - 5th ,2018. Proposed by Hon. Major (Rtd.) Bashir Sheikh Abdullah MP and seconded by Hon. The Hon. Dido Ali Raso, MP
- 3. Inquiry into the status, Viability and Efficacy in implementation of the Kenya- Border Securitization project. The adoption was proposed by Hon. The Hon. Yusuf Hassan Abdi, MP and seconded by Hon. Maj. Bashir Abdullahi, MP

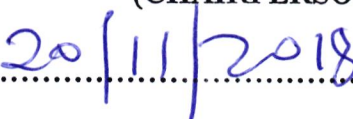
4. On the Meeting With Member States & Secretariats (ECOWAS & EAC) To Promote and Popularize the Ratification of the Protocol on the Free Movement of Persons and its Implementation Roadmap. The adoption of the report was proposed by Hon. Ernest Ogesi Kivai, MP and seconded by and seconded by the Hon. Katoo Ole Metito, EGH, MGH, MP

MIN.NO.DC.DFR/2018/313: ADJOURNMENT AND DATE OF NEXT OF MEETING

And the time being 1.30pm the Chairperson adjourned the meeting and to be reconvened on Tuesday, 20th November, 2018.

Signed.....

**Hon. Katoo Ole Metito, EGH, MGH, M.P
(CHAIRPERSON)**

Date.....

**MINUTES OF THE 66TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE & FOREIGN RELATIONS & COMMITTEE ON TRADE, INDUSTRY &
COOPERATIVES HELD ON FRIDAY, 16TH NOVEMBER, 2018 IN MEETING ROOM ,
TRADE MARK, HOTEL AT 10.00AM**

PRESENT

1. The Hon. Katoo Ole Metito, EGH, MGH, MP(Chairperson)
2. The Hon. Yusuf Hassan Abdi, MP
3. The Hon. Charles Kilonzo, MP
4. The Hon. Dido Ali Raso, MP
5. The Hon. Patrick Makau King'ola, MP
6. The Hon. Beatrice Nkatha Nyagah, HSC, MP
7. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
8. The Hon. Ernest Ogesi Kivai, MP
9. The Hon. Asha Mohammed, MP

APOLOGY

The Hon. Richard Tongi, MP - **Vice Chairperson**
The Hon. Peter Mungai Mwathi, MP
The Hon. Martha Wangari Wanjira, MP
The Hon. Memusi Ole Kanchory, MP
The Hon. (Dr.) Lilian Gogo, MP
The Hon. Vincent Kipkurui Tuwei, MP
The Hon. Moses Nguchine Kirima, MP
The Hon. Nelson Koech, MP
The Hon. Caleb Amisi, MP
The Hon. John Lodepe Nakara, MP

National Assembly Secretariat

- | | | |
|-----------------------|---|------------------------|
| 1. Samuel Kalama | - | Senior Clerk Assistant |
| 2. Ms. Brigitta Matti | - | Legal Counsel |
| 3. Ms. Grace Karanja | - | Research Officer III |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda

- (v) Confirmation of Minutes from the previous sittings
 - (vi) Matters Arising
2. Consideration of reports

- a. On The Consideration of a Petition By Mr. Dan Okemwa and Ms. Lyn Kemboi, on the arrest aand Detention of Mr. Don Bosco Gichana Ooga
- b. The Official Visit to the Republic of Romania from October 1st -5th ,2018

3. Any Other Business

MIN.NO.DC.DFR/2018/305: PRELIMINARIES

The Chairperson called the meeting to order at 2.30am. Prayer was read by Hon Ernest Ogesi Kivai MP.

MIN.NO.DC.DFR/2018/306:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Hon. Yusuf Hassan, MP, and seconded by the Hon. the Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP respectively.

MIN.NO.DC.DFR/2018/307:

**CONSIDERATION OF THE REPORT ON THE
CONSIDERATION OF A PETITION BY MR. DAN
OKEMWA AND MS. LYN KEMBOI, ON THE
ARREST AAND DETENTION OF MR. DON BOSCO
GICHANA OOGA**

The Committee observed that;

1. The Ministry of Foreign Affairs offered Mr. Gichana consular services and made efforts to safeguard his human rights
2. The due process of law was followed by the Tanzanian court, though it took long to conclude.
3. For the offence of conspiracy; Don Bosco was sentenced to a fine of three hundred million Tanzania shillings (Tshs. 300,000,000.00) equivalent to KSh.13, 243,989.02 or USD 131,388.78 to be paid within one month from the date of the High Court decision which was delivered on 18th September 2018
4. Don Bosco Gichana paid all the fine and was freed by the Tanzanian court after five years of detention on Tuesday 2nd October, 2018

5. Kenya and the Republic of Tanzania have embarked on the process of negotiating a Bilateral Agreement on Transfer of Sentenced Persons.

Committee Recommendations

In view of the observations and findings made, the Committee recommended THAT:

1. The Ministry of Foreign Affairs should fast-track the draft Agreement on Transfer of Sentenced Persons and considers having an acceptable harmonized legal framework to offer assistance to arrested persons within the East African Community.
2. Kenya Missions abroad need to reinforce consular support services for Kenyans detained and held in foreign countries.

MIN.NO.DC.DFR/2018/308: THE OFFICIAL VISIT TO THE CHAMBER OF DEPUTIES, REPUBLIC OF ROMANIA FROM OCTOBER 1ST -5TH, 2018

The Committee considered the report and made the following observations and recommendations

Committee Observations

1. Romania has a robust cyber security response center that not only manages cyber threats nationally but also globally;
2. There is need to reinvigorate diplomatic relations with Romania as there are many sectors where Kenya can benefit. These sectors include education, training, cyber security;
3. There is need to establish a diplomatic mission in Bucharest in order to revive and sustain diplomatic relations with Romania;
4. There are a four outstanding MOU's between Kenya and Romania. The Mou's are in the latter stage of negotiations. They are-

- (i) Draft bilateral agreement on Cultural Cooperation including education, science, technology, mass media, youth and sports between Kenya and Romania;
- (ii) Draft MOU between the Ministries of Foreign Affairs of Kenya and Romania on the establishment of a joint committee for follow up on implementation of cooperation programmes;
- (iii) Draft MOU between the Government of the Republic of Kenya and the Government of Republic of Romania on Information Communication and Technology; and
- (iv) Draft Agreement on Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxation on Income.

5. Romania is interested in holding international trade fairs, expos and conferences where

Committee Recommendations

The Committee recommends that-

1. The Government should ensure that cyber security, education, defence, and environment are included as priority areas for upcoming bilateral negotiations with the Government of Romania;
2. The Government to fast track the conclusion of the outstanding memoranda of understanding between the two countries. They are—
 - (i) Draft bilateral agreement on Cultural Cooperation including education, science, technology, mass media, youth and sports between Kenya and Romania;
 - (ii) Draft MOU between the Ministries of Foreign Affairs of Kenya and Romania on the establishment of a joint committee for follow up on implementation of cooperation programmes;

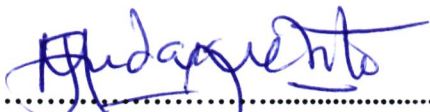
(iii) Draft MOU between the Government of the Republic of Kenya and the Government of Republic of Romania on Information Communication and Technology; and

(iv) Draft Agreement on Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxation on Income.

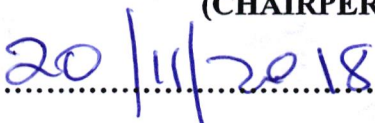
3. The Government to facilitate personnel exchange to Romania in order to learn innovations and best practices where common areas of need have been identified;
4. Parliament creates a parliamentary friendship group between Kenya and Romania to enable stronger relations between the two countries;
5. The National Chamber of Commerce to organise international trade fairs, exhibition, expos and conferences in order for businessmen to meet up, exchange information and introduce new products into both markets.

MIN.NO.DC.DFR/2018/309: ADJOURNMENT AND DATE OF NEXT OF MEETING

And the time being 4.30pm the Chairperson adjourned the meeting and to reconvened on Saturday, 17th November, 2018 at 10.00am.

Signed.....


**Hon. Katoo Ole Mefito, EGH, MGH, M.P
(CHAIRPERSON)**

Date.....


MINUTES OF THE 65TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN RELATIONS & COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES HELD ON FRIDAY, 16TH NOVEMBER, 2018 IN MEETING ROOM , TRADE MARK, HOTEL AT 10.00AM

PRESENT

1. The Hon. Katoo Ole Metito, EGH, MGH, MP(Chairperson)
2. The Hon. Yusuf Hassan Abdi, MP
3. The Hon. Charles Kilonzo, MP
4. The Hon. Dido Ali Raso, MP
5. The Hon. Patrick Makau King'ola, MP
6. The Hon. Beatrice Nkatha Nyagah, HSC, MP
7. The Hon. Major (Rtd.) Bashir Sheikh Abdullah, MP
8. The Hon. Ernest Ogesi Kivai, MP
9. The Hon. Asha Mohammed, MP

APOLOGY

The Hon. Richard Tongi, MP - **Vice Chairperson**
The Hon. Peter Mungai Mwathi, MP
The Hon. Martha Wangari Wanjira, MP
The Hon. Memusi Ole Kanchory, MP
The Hon. (Dr.) Lilian Gogo, MP
The Hon. Vincent Kipkurui Tuwei, MP
The Hon. Moses Nguchine Kirima, MP
The Hon. Nelson Koech, MP
The Hon. Caleb Amisi, MP
The Hon. John Lodepe Nakara, MP

National Assembly Secretariat

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| 1. Samuel Kalama | - | Senior Clerk Assistant |
| 2. Ms. Brigitta Matti | - | Legal Counsel |
| 3. Ms. Grace Karanja | - | Research Officer III |

AGENDA

1. Preliminaries
 - (i) Prayers
 - (ii) Introductions
 - (iii) Communication from the Chair
 - (iv) Adoption of the Agenda

- (v) Confirmation of Minutes from the previous sittings
- (vi) Matters Arising

2. Consideration of reports

- i. Inquiry into the status, Viability and Efficacy in implementation of the Kenya- Border Securitization project
- ii. On the Meeting With Member States & Secretariats (ECOWAS & EAC) To Promote and Popularize the Ratification of the Protocol on the Free Movement of Persons And its Implementation Roadmap

3. Any Other Business

MIN.NO.DC.DFR/2018/300: PRELIMINARIES

The Chairperson called the meeting to order at 10:30am. Prayer was read by Hon Patrick Makau MP.

MIN.NO.DC.DFR/2018/301:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Hon. Dido Rasso, MP, and seconded by the Hon. the Hon. Ernest Ogesi Kivai, MP respectively.

MIN.NO.DC.DFR/2018/302:

CONSIDERATION OF THE REPORT ON INQUIRY INTO THE STATUS, VIABILITY AND EFFICACY IN IMPLEMENTATION OF THE KENYA- BORDER SECURITIZATION PROJECT

The Committee considered the report and made the following observations and recommendations

Having considered the evidence adduced, the Committee made the following observations—

THAT,

- 1. The pace in the execution of the Kenya-Somali Securitization project is slow.
- 2. It is imperative for the Government to open the Kenya-Somalia Border. This will lead to improvement in revenue collection when movement of persons and services is regulated.
- 3. There is a significant improvement in the works currently undertaken by the contractor.
- 4. The impact of the project is evident since its commencement. Since construction of the fence, Mandera town has enjoyed relative peace with no incidences of terror attacks.

5. The project has been largely embraced by the local leadership in Mandera County.
6. The security border wall will enhance security by ensuring that only the desirable persons and goods are allowed into the country through gazetted entry points.
7. There is need for the Government to open the Kenya- Somalia Border. This will lead to an improvement in revenue collection when movement of persons, goods and services is regulated.
8. The National Youth Service upon handing over the project to the Ministry of Defence they abandoned equipment related to the construction works in Mandera town.
9. Insecurity in Mandera has adversely the economic activities in Mandera County.

Committee recommendations

The Committee recommends that:-

1. The Government should fast track the completion of the Kenya- Somalia Border project. The Ministry of Defence should come up with a comprehensive budget plan and a realistic timeline for the completion of the project.
2. The Government should open the border and the Customs offices so as to allow legal trade and enable it to collect taxes.
3. The concept of Border Security Management (BSM) should be strengthened to adopt a multi-agency approach to bring on board as many relevant agencies as possible for an effective Border Management and control.
4. On completion of the project, the Government should establish a Border Patrol Force to enhance rapid response capability.
5. The Government should provide adequate security in Mandera County to enable residents carrying on with their economic activities such as quarrying
6. The National Youth Service should make arrangements to ensure that all the abandoned equipment that was to be used in the construction of the project in Mandera town should be carted away as soon as possible.

**MIN.NO.DC.DFR/2018/303: CONSIDERATION OF THE REPORT ON THE MEETING
WITH MEMBER STATES & SECRETARIATS (ECOWAS
& EAC) TO PROMOTE AND POPULARIZE THE
RATIFICATION OF THE PROTOCOL ON THE FREE
MOVEMENT OF PERSONS AND ITS IMPLEMENTATION
ROADMAP**

The Committee considered the report and made the following observations and recommendations

Committee observations: -

THAT

1. The sensitization program of the Protocol should consider countries with peculiar issues. Countries have different processes in ratification of treaties, agreements and conventions. For example, Kenya faces terrorism, therefore there is need to foresee the challenges in order to advocate for the Protocol. In this regard, political will is prudent in the signing of the Protocol.
2. Opening of borders is good development. The Post-Cotonou Agreement is coming to an end in 2020 therefore the opening of borders will help increasing the 15% trade in Africa;
3. The protocol is ratifiable, for example, Rwanda, who has already signed the Protocol, has 21 exit and entry points and has inter-border management systems which integrate all exit and entry points. Rwanda is a pace-setter for the EAC on exit and entry points because it's possible to combine migration with good border management;
4. Competing issues such as poverty, offers challenges for the free movement of people because countries protect their local economies;
5. There is need to support leaders to ensure that the roadmap for the Protocol is achieved and it should have timelines. The process of ratification starts with the executive. The AU should write to the Executive for sensitization of the protocol;
6. In regards to the adoption of the AU passport, there will be financial implications on the change owing to the fact that Kenya has recently adopted the EAC passport. The Kenyan passport has been adopted as the best model for the AU passport in facilitating movement within the AU Member States.
7. The EAC seems to be far ahead on the free movement of people and thus recommends other RECs, such as the Arab Maghreb Union, to follow the EAC as an example.

Committee Recommendations

The Committee recommended the following:

1. The AU, the RECs and Member States to synergize activities and programmes relating to the African Continental Free Trade Agreement (AfCFTA) in tandem with the implementation of the AU Free Movement Protocol
2. The AU, the RECs and Member States to utilize the Regional Consultative Process (RCPs) for the promotion of the Protocol on Free Movement of Persons among AU Member States.
3. The AU, RECs and Member States to involve regional/national parliaments, private sector and civil society in the dissemination of information on the AU Protocol on Free Movement of Persons
4. The AU, respective RECs and Member States to coordinate the process for exchange of data on mobility of persons in the regions
5. The AU and respective RECs to assist Member States in strengthening their civil registries
6. The AU, respective RECs and Member States to promote the establishment of joint border patrols among Member States
7. The AU and respective RECs to assist Member States to enhance the interconnectivity of border information management systems.
8. RECs should emulate the EAC in offering free movement of persons and the adoption of the AU passports.

MIN.NO.DC.DFR/2018/304: ADJOURNMENT AND DATE OF NEXT MEETING

And the time being 1.10pm the Chairperson adjourned the meeting and to reconvened on Friday, 16th November, 2018 at 2.30PM.

Signed.....


Hon. Katoo Ole Metito, EGH, MGH, M.P
(CHAIRPERSON)

Date.....

20/11/2018