

REPUBLIC OF KENYA



*Tabled on 20<sup>th</sup> Dec/2011  
by Hon. Aden Keenan  
Chairman  
D.C-1 - Defence &  
Foreign Relations*

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TENTH PARLIAMENT – FOURTH SESSION – 2011

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THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN  
RELATIONS

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REPORT ON THE RENDITION OF KENYAN NATIONALS TO STAND TRIAL  
IN UGANDA AND IN OTHER FOREIGN COUNTRIES

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CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI

DECEMBER, 2011

## **PREFACE**

**Mr. Speaker,**

1.1 The Departmental Committee on Defence and Foreign Relations is established pursuant to provisions of Standing Order 198 (1). Under the provisions of Standing Order 198 (3) the Committee is mandated to:-

- (a). investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- (b). study the Programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;*
- (c). study and review all legislation referred to it;*
- (d). study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*
- (e). 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*
- (f). make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

1.2 The Committee is also mandated to scrutinise the budget of line Ministries as provided under Standing Order No. 152 states which that:-

- (1) Upon being laid before the National Assembly, the annual estimates shall stand committed to the respective departmental Committees according to their mandates.*
- (2) Each departmental Committee shall consider, discuss and review the estimates committed to it under this standing order and submit its report thereon to the House within twenty one days after they were first laid before the House.*

1.3 The Committee oversees the performance of the following Ministries and Government department:-

1. Defence;
2. Foreign Affairs;

3. East African Community; and
4. National Security Intelligence Service.

1.4 Under the above Ministries, the Committee covers the following subjects;

- (i) Defence matters;
- (ii) Foreign policy;
- (iii) Treaties , Conventions and Agreements;
- (iv) International and Regional Organisations;
- (v) Bilateral and Multilateral Relations;
- (vi) Regional Cooperation policy;
- (vii) East African Community Affairs;
- (viii) National Security Intelligence.

## **MEMBERSHIP**

1.5 The Committee comprise of the following Members of Parliament:-

The Hon. Adan W. Keynan, MP – Chairperson  
The Hon. Benedict F. Gunda, MP – Vice Chairperson  
The Hon. George O. Nyamweya, MBS, MP  
The Hon. Eugene L. Wamalwa, MP  
The Hon. Jeremiah N. Kioni, MP  
The Hon. Charles M. Kilonzo, MP  
The Hon. Peter E. O. Anyanga, MP  
The Hon. Wilson M. Litole, MP  
The Hon. Hussein M. Ali, MP  
The Hon. Martin O. Ogindo, MP  
The Hon. Julius K. Kilonzo, MP

## **2. RENDITION OF KENYANS TO UGANDA AND OTHER FOREIGN COUNTRIES**

**Mr. Speaker,**

2.1 The rendition of Kenyans to Uganda and other foreign countries has been a matter of great public concern. Members of Parliament have raised the issue in the House seeking to establish the reasons for the renditions; whether the due process of law was followed and the conditions of the Kenyans in Ugandan and other detention facilities.

2.2 The Committee embarked on inquiring into the matter and held meetings with the following:-

- (i) Minister of State for Provincial Administration and Internal Security and Acting Minister for Foreign Affairs;
- (ii) Minister for Justice, National Cohesion and Constitutional Affairs;
- (iii) Minister for East African Community (EAC);
- (iv) Attorney General (AG);
- (v) Commissioner of Police;
- (vi) Kenya National Human Rights Commission (KNHRC);
- (vii) The Law Society of Kenya (LSK); and
- (viii) Family members of the suspected terrorists.

2.3 From the meetings with the aforementioned State Officers and Institutions, the Committee observed and recommends that:-

- (i) In future, while undertaking extradition, the Government should uphold the Constitution and follow the due process of law when Kenyans are involved in matters that require them to be rendered to other countries to face trial.
- (ii) The Kenyans rendered to Uganda be returned to face justice in Kenya and or be subjected to proper legal process necessary for extradition.
- (iii) The Government should take responsibility for the rendition.
- (iv) The Government should at all times respect and uphold the fundamental human rights of its citizens as enshrined in the Constitution of the Republic of Kenya.
- (v) In light of the eminent danger the country faces from terrorism, there is an urgent need to have a comprehensive legislation to address the threat posed by all acts of terrorism in line with the Constitutional Provisions.

2.4 These recommendations form part of the recommendations contained in other parts of this report.

### **3. ACKNOWLEDGEMENT**

**Mr. Speaker,**

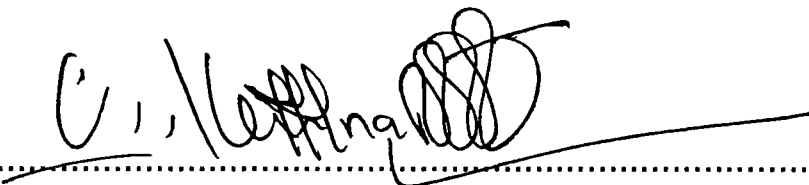
3.1 I wish to express my appreciation to Members of the Committee who sacrificed time from their families and constituents to undertake the inquiry. The Committee is grateful to the Speaker for allowing the Committee to

undertake the inquiry and to the office of the Clerk, for facilitating and providing technical support to the Committee.

3.2 The decisions of the Committee on this report were arrived at, after extensive deliberations and were unanimous.

**Mr. Speaker,**

3.3 It is my pleasant duty and privilege, on behalf of the Departmental Committee on Defence and Foreign Relations to table this report and commend it to the House for adoption pursuant to provisions of the National Assembly Standing Order 181.

Signed: .....  .....

**THE HON. ADAN W. KEYNAN, MP  
CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS**

Date: ..... 6/12/2011 .....

## **RENDITION OF KENYANS TO UGANDA**

### **Background**

On 11<sup>th</sup> July, 2010 a bomb exploded in an entertainment spot in the suburbs of Kampala killing 76 people and leaving 96 others seriously injured. The Al Shabaab leadership claimed responsibility for the attacks. The Ugandan authorities requested Kenya's assistance in the investigations upon which Joint investigations by the Ugandan and Kenyan authorities were then started. The investigations led to the implication of Kenyans, Ugandans and Tanzanians. As a result of the Kampala bombings, 16 Kenyans were arrested in Uganda and Kenya and are being held in Ugandan prison facilities. Subsequently some have been released by Ugandan authorities and have since returned to Kenya.

### **Rendition**

*Rendition* is surrender or handing over of persons or property, particularly from one jurisdiction to another. *Extraordinary rendition* refers to an extra-judicial procedure in which criminal suspects are sent to other countries for interrogation with a view to extracting information and imprisonment. On the other hand, *extradition* is a judicial process, (regulated by the Extradition (Contiguous and Foreign Countries) Act, Chapter 76 and the Extradition (Commonwealth Countries) Act, Chapter 77 Laws of Kenya and treaties), where a State surrenders a suspected or convicted criminal to another country in cases where the suspect is sought for an offence over which the requesting State wishes to exercise jurisdiction.

#### **4.1 MEETING WITH THE KENYA NATIONAL HUMAN RIGHTS COMMISSION (KNHRC)**

Mr. Hassan Omar, a Commissioner with the Kenya National Human Rights Commission appeared before the Committee on 25th January, 2010. The Committee was informed that:-

- 4.1.1 The Government has been using extra judicial means including renditions in the fight against terrorism. In 2007, Kenyans were rendered to Somalia and Ethiopia and were later returned to the country with no charges preferred against them.
- 4.1.2 Eight Kenyan citizens have been illegally rendered to Uganda following the July 11 terrorists' attacks in Kampala without any extradition proceedings taking place as required by the law.

4.1.3 They (KNHRC) believe that the Head of Anti-terrorism Unit, the Police Commissioner, Minister for Foreign affairs and Minister of State for Provincial Administration and Internal Security may be in the know on how Kenyan Citizens were arrested and handed over to Ugandan authorities.

#### **4.2 MEETING WITH FAMILY MEMBERS AND REPRESENTATIVES OF THE MUSLIM HUMAN RIGHTS**

The Committee was briefed as follows, that:-

4.2.1 Lawyers and family members were denied access to those arrested. The arrested Kenyans are being held in cruel and pathetic conditions in Ugandan prisons and there is a likelihood of the Kenyans being rendered to a third country.

4.2.2 There is need for accountability on the part of State officers for the illegal actions of rendition.

4.2.3 Appealed to the Committee to intervene so that those arrested are brought back to the country and be tried according to the Kenyan law.

#### **Committee observations**

- (i) Kenyans were illegally rendered to Uganda without due process of law being followed.
- (ii) Lawyers and family members of the suspects were denied access to the suspected terrorists by Ugandan authorities.

#### **4.3 MEETING WITH THE MINISTER OF STATE FOR PROVINCIAL ADMINISTRATION AND INTERNAL SECURITY AND ACTING MINISTER FOR FOREIGN AFFAIRS**

The Minister of State for Provincial Administration and Internal Security, Prof George Saitoti, EGH, MP appeared before the Committee on 24<sup>th</sup> February, 2011 and adduced evidence as follows:-

#### **Rendition of Kenyans to face trial in Uganda**

4.3.1 After the July 11<sup>th</sup>, 2010 Kampala suicide bombing, where 76 people were killed and 96 others seriously injured, joint investigations by the Ugandan and Kenyan authorities was started. The Al Shabaab leadership claimed responsibility for the attacks.

4.3.2 The investigations unearthed credible evidence implicating Kenyans and Ugandans in the bombing. This led to the arrest of 16 Kenyans who have since been charged in Ugandan courts. Out of the 16 Kenyans, 11 were arrested in Uganda and only 5 were arrested in Kenya.

**(a) Kenyans arrested in Uganda**

1. Hassan Abdu Issac
2. Isaac Gedi Godana
3. Hussein Aliwali Abdi
4. Abdul Aziz Abdi alias Matope
5. Abdulahi Mohamod Ahmed
6. Kenyoro Andrew
7. Osman Mohamed
8. Khalif Abdi Muhammed
9. Habib Suleiman Njoroge
10. Al-amin Kimathi alias Joe Kimathi
11. Omar Adua Omar

**(b) Kenyans arrested in Kenya and handed over to Ugandan authorities**

1. Idriss Magondu alias Christopher Magondu
2. Hussein Hassan Agade
3. Mohammed Hamid Suleiman
4. Mohamed Adan Abdow
5. Yahya Suleiman Mbuthia

4.3.3 Mr. Idriss Magondu alias Christopher Magondu, Hussein Hassan Agade and Mohammed Hamid Suleiman were handed over between 27<sup>th</sup> July, 2010 and 26<sup>th</sup> August, 2010 to Ugandan authorities to stand trial over terrorist attacks in Uganda. Their arrest followed technical telephone analysis conducted on a mobile phone handset found on unexploded device, which linked them to the attacks.

The decision to hand over the Kenyans suspected of terrorist activities was a Government decision that was taken for the interest of the country.

**Condition and welfare of Kenyans rendered to Uganda**

4.3.4 The Kenya Mission to Uganda visited the Luzira upper prison and Luzira Women's prison on 16<sup>th</sup> and 17<sup>th</sup> August, 2010 to check on the terrorist suspects and other Kenyans held in the two prisons and established that they were being treated well. However requests for official report on the Kenya terror suspects have not been responded to by the Ugandan authorities. Terror suspects in Uganda are held in separate safe houses



which are not accessible for security reasons. The Kenya High Commissioner to Uganda will be visiting the prisoners on a monthly basis.

#### **Treaties or agreements between Kenya and EAC partner states on extradition**

- 4.3.5 The arrest and surrender of the suspects is pursuant to the provisions of Article 124 of the EAC Treaty. The Treaty has been domesticated and given the full force of law by the Treaty for the Establishment of the East African Community Act, 2000. Further Article 2 of the Constitution of Kenya provides that any Treaty or Convention ratified by Kenya shall form part of the laws of Kenya.
- 4.3.6 Kenya had a legally binding obligation to arrest and surrender the terror suspects to Uganda for prosecution. However in two rulings by the High Court, the judges held that the arrest and surrender to Ugandan of the suspects was a breach of the Constitution and therefore illegal and unlawful. The Attorney General has lodged intention of appealing against the ruling. The matters are still before the courts and therefore *sub judice*.
- 4.3.7 Kenya will continue co-operating with regional and international actors on the issue of terrorism within the provisions of the law and existing international Treaties and Agreements that Kenya is a signatory to.

#### **4.4 MEETING WITH THE COMMISSIONER OF POLICE**

The Commissioner of Police, Mr. Mathew Iteere appeared before the Committee and briefed it as follows, that:-

- 4.4.1 Before the terror suspects were arrested there were thorough investigations done by the Kenyan authorities in collaboration with the Ugandan, United Kingdom and United States security agencies. The person who transported the bomb vests was this week handed over to Uganda by the Tanzanian authorities.
- 4.4.2 There is a serious threat of terrorism to the region whose cell is in Kenya. In 2010 Kenya experienced three attacks at Uhuru Park, on a Government vehicle belonging to Embakasi District Commissioner, two traffic police officers and in down town Nairobi at Kampala coach bus station. All these incidences are linked and attributed to terrorism.

4.4.3 Many Kenyan youth have been lured and recruited to fight alongside Al Shabaab in Somalia. There is a foreign element in the terrorist activity in East Africa.

4.4.4 The Commissioner of Police informed the Committee that Challenges facing the Kenya police in fight against terrorism:-

- Lack of enabling and proper anti terrorism legislation to effectively deal with acts of terrorism.
- Political intervention – politicians intervene when the police move in to deal with acts of terrorism. Politicians claim that the police are targeting and harassing their people on the basis of their ethnicity and religious beliefs.
- Constitutional provisions - The constitutional provides that persons arrested should not be held for more that 24 hrs yet investigations and interrogation of suspects might take longer that the 24 hours. The constitutional provision on civil liberties is an hindrance to the fight against terrorism.
- Equipment and facilities – The police require advanced equipment and facilities to be able to deal with the ever changing and advancing acts of terrorism in the modern age of ICT.

#### **4.5 MEETING WITH THE ATTORNEY GENERAL**

The Attorney General of the Republic of Kenya, Hon. Amos Wako, EGH, MP appeared before the Committee on 22<sup>nd</sup> March, 2011 and adduced evidence as follows:-

##### **Rendition of Kenyans:**

4.5.1 Persons were rendered to Uganda without reference to the office of the Attorney General. The Attorney General was never informed prior to the rendition and this has been the case in past renditions. Consultations were done after the Kenyans suspects had been rendered to Uganda. The renditions took place before the promulgation of the new Constitution and therefore it is the old Constitution that applied then.

4.5.2 Article 125 of the Treaty for the establishment of the East African Community provides for partner states to co-operate on security issues.

4.5.3 The matter is currently active in Courts and the High Court of Kenya has referred this matter to the East African Court of Justice for interpretation.

4.5.4 In any extradition the provisions of the Law must be followed. The normal procedure for extradition involves:-

- Formal request from the country where they are needed for a warrant of arrest to be issued.
- The Attorney General forwards the request to the Courts.
- Judicial procedures ensue before rendition.

### **Committee Observations**

- i. The Attorney General was not consulted prior to the extradition of Kenyans to Uganda.
- ii. The legal provisions for extradition were not followed.
- iii. The issue of rendition is currently active in Courts, and the High Court of Kenya has referred the matter to the East African Court of Justice for interpretation.

## **4.6 MEETING WITH MINISTER FOR JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL AFFAIRS**

The Hon. Mutula Kilonzo, EGH, MP appeared before the Committee on 18<sup>th</sup> April, 2011 and briefed the Committee as follows, that:-

4.6.1 The Ministry of Justice, National Cohesion and Constitutional Affairs is not aware of any policy of the Government of the Republic of Kenya permitting or allowing renditions. Neither the current nor the former Constitution allowed rendition of Kenyan nationals to stand trial in foreign countries.

4.6.2 The Ministry of Justice, National Cohesion and Constitutional Affairs was neither involved nor consulted before the said Kenyans were transferred to Uganda to stand trial. He personally read about the rendition in the newspapers just like most Kenyans. Had his Ministry been consulted by other Government agencies they could have advised the Government to follow procedures as stipulated in Cap 77 and Cap 76 Laws of Kenya. The matter however does not fall under the mandate of the Ministry.

4.6.3 The legal provisions that provide for extradition in Kenya include The Extradition (Contiguous and foreign countries) Act, Chapter 76 and the Extradition (Commonwealth Countries) Act, Chapter 77 Laws of Kenya. These laws guide and provide elaborate mechanisms for the extradition of fugitive criminals. Before extradition takes place:-

- The Minister must Gazette the order for extradition.
- The extradition order must be laid before the National Assembly.
- The order has to cite the Treaties or Agreements that provide for extradition.

- 4.6.4 Rendition is a violation of the Constitution of Kenya, Article 2 of which requires that international law in the form of Treaties or Agreements must follow the Laws of Kenya. The manner in which the renditions were done violates the Laws of Kenya and was unconstitutional.
- 4.6.5 Those who facilitated the rendition should be arrested for violating the Constitution and Laws of Kenya. The Kenyans detained in Uganda should be returned to Kenya to face the due process of Law. The Ministries of Foreign Affairs, East African Community, Provincial Administration and Internal Security and the Attorney General should liaise to ensure the return of Kenyans to face justice in the country.
- 4.6.6 The matter of rendition was raised in the Cabinet by the Minister for Provincial Administration and Internal Security but the subject was adjourned to await the Attorney General who was then out of the country.
- 4.6.7 He was surprised by the arrest and deportation of Kenya National Human Rights Commissioner, Mr. Hassan Omar, by Ugandan authorities while on a mission to visit Kenyans detained in Uganda.
- 4.6.8 The Kenyans arrested and detained in Uganda can seek legal redress through the East African Court of Justice.

### **Committee observations**

- (i) The extradition of Kenyans to Uganda was in contravention of the Constitution of the Republic of Kenya.
- (ii) The legal provisions for extradition as provided for under The Extradition (Contiguous and foreign countries) Act, Chapter 76 and the Extradition (Commonwealth Countries) Act, Chapter 77 Laws of Kenya were not adhered to by the authorities.

### **4.7 MEETING WITH THE LAW SOCIETY OF KENYA**

Mr. Apolo Mboya, the Secretary and CEO of the Law Society of Kenya, appeared before the Committee on 3<sup>rd</sup> May, 2011 and briefed the Committee as follows:-

- 4.7.1 Kenya has on several occasions carried out extra-ordinary renditions on its citizens and foreigners. Examples include:-
- (i) 1976 extradition to Israel of two suspected Palestinian terrorist arrested near the Jomo Kenyatta International Airport in Nairobi for attempting to bomb a plane, suspected terrorists handed over to Israel;
  - (ii) 1998 extradition to the USA of suspects of the terrorist attack on the US Embassy in Nairobi;
  - (iii) 1999 extradition of Abdalla Ocalan to Turkey;
  - (iv) 2007 extradition of about 100 men, women and children to Somalia; and

- (v) 2010 extradition of 13 people to Uganda suspected to be involved in the Kampala Bombing of 11<sup>th</sup> July, 2010.

All the above renditions happened under the old Constitution.

4.7.2 Legal provisions for rendition – the legal provisions for rendition include the Constitution of Kenya, the Treaty Establishing the East African Community, The Extradition (contiguous and Foreign Countries) Act, Fugitive Offenders Pursuit Act (Cap. 87) and The extradition (commonwealth countries) Act, Cap 77. The provisions of which are:-

- (i) **Old Constitution of Kenya** – Embodied the principles contained in various international human rights conventions. All legislative and administrative measures taken must not be contrary or *ultra vires* to the provisions of the Constitution of Kenya, which at Chapter V provided for the protection of fundamental rights and freedoms of the individual. These rights and freedoms include the right to life, personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection from arbitrary search or entry, freedom of conscience, expression, assembly and association, freedom of movement, protection from discrimination on the grounds of race, political opinion, religion, colour, creed or sex.
- (ii) **New Constitution** - Article 2 of the Constitution of Kenya states that the general rules of international law shall form part of the Law of Kenya and any Treaty or Convention ratified by Kenya shall form part of the Law of Kenya. The Constitution also contains an elaborate Bill of Rights in Chapter Four including among others rights of arrested persons, fair hearing and rights of persons detained, held in custody or imprisoned.
- (iii) **The Extradition (contiguous and Foreign Countries) Act** Chapter 76 of the Laws of Kenya- The Act consolidates the law concerning the extradition of criminals and related matters, where Kenya has an agreement with another country. Some of the countries that have mutual assistance agreements with Kenya include Uganda, Tanzania, Rwanda, United Kingdom, Canada, and Mauritius. Under section 5 the Act, a requisition for the surrender of a fugitive criminal of any country who is in or suspected of being in Kenya shall be made to the Minister by a diplomatic representative or consular officer of that country and, upon receipt of such requisition, the Minister may, by order under his hand, signify to a magistrate that a requisition has been made and

require the magistrate to issue warrant for the arrest and detention of the fugitive criminal.

- (iv) Fugitive Offenders Pursuit Act (Cap. 87)**- The Act authorizes the police of Uganda and Tanzania to pursue within Kenya offenders fugitive from those countries where there are reciprocal arrangements with Kenya. It is a requirement under section 4 that any person arrested pursuant to this Act must be delivered to a magistrate with a view to being surrendered to Uganda or Tanzania.

A fugitive is defined as any person who is in Kenya and whose surrender is requested under the Act on the ground that he is accused of an offence or has been convicted of an extradition offence committed within the jurisdiction of the requesting State.

- (v) East African Community Treaty**-Article 124(5) on Regional Peace and Security the Partner States agree to enhance co-operation in the handling of cross border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the exchange of information on national mechanisms for combating criminal activities.

- (vi) The extradition (commonwealth countries) Act cap 77, laws of Kenya** – it provides that Kenya surrender to other commonwealth countries such as Lesotho, Singapore, Malawi and Papua New Guinea on reciprocal basis persons accused or convicted of offences in those countries. Under section 9 a person arrested under this Act be brought before a court of law unless previously charged.

4.7.3 In all the occasions that Kenya has carried out renditions, the arrest, detention and removal of the subjects from Kenya to foreign countries were illegal and transgressed fundamental rights and liberties of the individuals in that:-

- (i) None of the suspects has been brought before a Court of Law in Kenya as required by the Law.
- (ii) The treatment of the suspects was in violation of Chapter V of the previous Constitution relating to the protection of fundamental rights and freedoms of the individual.
- (iii) The suspects have experienced a violation of human rights due to actual physical abuse, violation of freedom of movement, deprivation of liberty, torture, inhuman and degrading treatment, arbitrary detention and abuse.

- (iv) The treatment of the suspects has been in contravention of Articles 7 and 9 of the International Covenant of Civil and Political Rights (ICCPR) and Article 6 of the African Union Charter on Human and Peoples Rights, which Kenya has ratified. These Articles provide for protection from torture and ill treatment and the right to liberty and security of a person.
- (v) The treatment of the suspects have been in contravention of customary international law, especially Articles 3, 5, 8, 9 and 10 of Universal Declaration of Human Rights (UDHR) in relation to the right to a fair trial before an independent and impartial court. Article 2 (6) of the Constitution provides that any Treaty ratified by Kenya shall be part of the Laws of Kenya.
- (vi) While the Partner States in the East African Community agree to enhance co-operation in the handling of cross border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the exchange of information on national mechanisms for combating criminal activities, the same are to be done with the constitutional and legal framework of the respective partner states which in the case of Kenya were violated.

4.7.4 The arrest, detention and removal of the subject from Kenya to Uganda and other foreign countries were illegal and transgressed the fundamental rights and liberties of the subjects. Tanzania has refused to extradite a suspect it is holding over the July 11, 2010 Kampala Bombings without compliance with the Law.

4.7.5 The Law Society of Kenya (LSK) has engaged the Government agencies and other institutions on the mater but no action has been forthcoming. The LSK is awaiting the ruling of the East African Court of Justice before taking up the matter with the African Union.

4.7.6 The renditions were carried out by the Kenya Police Force.

#### **Committee observations**

- (i) The rendition of Kenyans to Uganda was contrary to the Constitution of the Republic of Kenya.
- (ii) The rendition and subsequent holding of Kenyans in Ugandan prisons facilities violates the fundamental freedoms and liberties of the affected Kenyans as provided for under the Constitution, customary international law, as well as International Treaties and Conventions on Human Rights which Kenya is a signatory.
- (iii) Renditions were carried out by the Kenya police.

## **4.8 MEETING WITH THE MINISTER FOR EAST AFRICAN COMMUNITY**

The Hon. Prof. Helen Sambili, EGH, MP , Minister for East African Community, appeared before the Committee on 16<sup>th</sup> May, 2011 and briefed the Committee as follows:-

### **Treaty provisions on rendition**

- 4.8.1 The Treaty for the establishment for the East African Community does not make specific reference to rendition. Article 5 (3) (f) states that the community shall ensure promotion of peace, security and stability within and good neighborliness among partner states.
- 4.8.2 Under Article 124 of the Treaty establishing the East African Community, partner states undertake to cooperate in reviewing the regions security, particularly on the threat of terrorism and in the formulation of security measures to combat terrorism.
- 4.8.3 Kenya domesticated the Treaty for the Establishment of the East African Community thus giving it the force of Law through the enactment of the East African Community Act, 2000. Under the Constitution 'any Treaty or Convention ratified by Kenya shall form part of the Law of Kenya under the Constitution'. This implies that:-
- (i) The extradition laws and procedures contained in the various extradition legislations in Kenya must be read to have been modified or altogether superceded by the provisions of Article 124 of the Treaty on regional peace and security.
  - (ii) To the extent that the Treaty forms a part of the Law of Kenya under the constitution, the arrest and surrender of the persons in question pursuant to the provisions of the EAC treaty could be understood to be in accordance with the Constitution.
  - (iii) Kenya is obliged under the current EAC cooperation framework to hand over suspects who it has reasonable ground to believe had committed crimes that are covered under the scope of cooperation as defined under Article 124.
- 4.8.4 The High Court ruled that the arrest and surrender to Uganda of the Kenyan nationals for prosecution was in breach of the Constitution but the Attorney General has lodged a notice of intention to appeal against the ruling.



## **Role of the Ministry on rendition**

4.8.5 The Ministry of East African Community was not involved in the rendition of Kenyans to Uganda. The Ministry could only have been involved had the agenda been brought procedurally before the Council of Ministers for discussion, which was not the case. The Ministry of Foreign Affairs, Provincial Administration and Internal Security and the State Law Office are the line Ministries that would ordinarily be involved in the matter.

## **5.0 COMMITTEE OBSERVATIONS**

From the interaction with the aforementioned institutions and individuals the Committee observed that:-

- (i) The Government contravened the provisions of the Constitution by rendering Kenyans to Uganda without subjecting them to the due process of the law.
- (ii) The rendition contravened the fundamental human rights and liberties of the individual Kenyans rendered to Uganda.
- (iii) The matter of rendition of Kenyans to foreign countries and in particular to Uganda has been forwarded to the East African Court of Justice for determination.
- (iv) There is no common position by Government officials on the matter of rendition and none was willing to take responsibility or offer any plausible explanation for the same.
- (v) The suspects' fundamental rights of innocence until proven guilty by a court of law were contravened.
- (vi) The High Court of Kenya has ruled in two instances that the renditions were unconstitutional, malicious and illegal. (\*attach the 2 rulings)
- (vii) The threat of terrorism is real. However, notwithstanding the security challenge as a result of terrorism, the law must be adhered to.

## **6.0 RECOMMENDATIONS**

The Committee recommends that:-

- 1. In future, while undertaking extradition, the Government should uphold the Constitution and follow the due process of law when Kenyans are suspected to be involved in matters that require them to be rendered to other countries to face trial.**
- 2. The Kenyans rendered to Uganda be returned to face justice in Kenya and/or be subjected to proper legal process necessary for extradition.**
- 3. The Government should take full responsibility for the rendition. All individuals who authorised the rendition of Kenyans to Uganda be investigated and prosecuted.**
- 4. The Government should at all times respect and uphold the fundamental human rights of its citizens as enshrined in the Constitution of the Republic of Kenya.**
- 5. In light of the eminent danger the country faces from terrorism, there is an urgent need to have a comprehensive legislation to address the threat posed by all acts of terrorism in line with the relevant Constitutional Provisions.**

MINUTES OF THE 134<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
DEFENCE AND FOREIGN RELATIONS HELD ON FRIDAY, 7<sup>TH</sup> OCTOBER, 2011 AT  
THE CONFERENCE CENTRE, SERENA HOTEL MOMBASA, AT 9.30 A.M.

PRESENT

The Hon. Adan Keynan, MP - (Chairperson)  
The Hon. Benedict Fondo Gunda, MP - (Vice Chairperson)  
The Hon. Jeremiah Kioni, MP  
The Hon. Wilson M. Litole, MP  
The Hon. George Nyamweya, MP  
The Hon. Kiema Kilonzo, MP  
The Hon. Mohammed Hussein Ali, MP

ABSENT

The Hon. Eugene Wamalwa, MP  
The Hon. Charles Kilonzo, MP  
The Hon. Martin Ogindo, MP  
The Hon. Edick Anyanga, MP

IN ATTENDANCE:                      NATIONAL ASSEMBLY

Mr. Salad Guyo	Third Clerk Assistant
Mr. Ahmad Kadhi	Third Clerk Assistant
Mr. Sherrif Mwendwa	Legal Counsel
Mr. Patrick Murindo	Sergeant-At-Arms

MIN. NO.547/2011                      PRELIMINARIES

The Meeting was called to order, prayers were said and the Chairman referred the Members to the reports to be considered

MIN. NO.548/2011                      ADOPTION OF COMMITTEE REPORTS

*(a) Report on Diplomatic Service.*

After deliberations Members proposed the following changes as regards

- Committee Observations that:

(i) Reads, "The Ministry doesn't have the enabling legislation".

(ii) reads, "The implementation on the taskforce report has not been fully implemented".

- Recommendations

(i) The words "dismiss" be replaced by "recall" while adding "enabling statutes and legislation after the full stop.

- (ii) Delete the words appearing after "diplomatic appointee".
- (iii) Add the recommendation that "unprocedural appointments be reviewed".

Subject to the above changes the report was proposed for adoption by The Hon Jeremiah Kioni and seconded by The Hon Kiema Kilonzo

*(b) Report on visit to Military training area in Ngong*

Members considered the report and recounted the visit. Under the Committee Observations it was proposed that the first observation be that:

"The lives of 5 Kenyans were lost in the explosion". The next observation should also include that other security agents also use the area without regulation with none taking up responsibility in screening the area/mop up exercises.

On Recommendations, Members concurred, but proposed changes that

- 1 The Government secures and get titles for land reserved for military use.

Number 4 to read, "The Government should urgently compensate the families of the five children killed by the explosion".

Members proposed that item 7.0 be deleted.

With those amendments, The Hon. Benedict Fondo Gunda proposed the report for adoption and was seconded by The Hon. Wilson M. Litole.

*(c) Report on the inspection visit to Kenya Missions in Vienna, Geneva and the Hague*

The Committee considered the report and the following changes were proposed

1. Page 23, item (ii) the amount in Swiss francs is converted into Kenya Shillings
2. Item (iv) be rephrased and recast.
3. Item (ix) the word "to" be replaced with "from".
4. Page 30 item (vi) the word "remunerated" be replaced by "reimbursed".
5. That the ambassador to Geneva be recalled.
6. That an additional recommendation that KACA investigate and officials responsible for losses be surcharged.
7. On page 31, the sentences be split into two after the first comma with the subsequent numbering to follow.
8. The word acquisition be replaced by disposal in (iii).

The report was thereafter proposed for adoption by the Committee by The Hon. George Nyamweya, and seconded by The Hon. Mohammed Hussein Ali

The following other reports were considered by the Committee and adopted with amendments

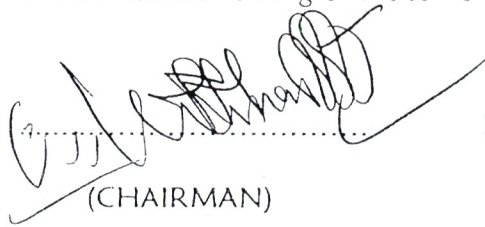
- (a) Report of the inspection visit to Kenya Missions in Tel Aviv and Rome
- (b) Report on visit to British Military training in parts of Samburu East District
- (c) Report on rendition of Kenyan Nationals to stand trials in Uganda and other foreign countries

MIN. NO.549/2011

ADJOURNMENT

There being no other business the meeting was adjourned at forty minutes past one o'clock to the afternoon sitting of the same day.

Signed: .....



(CHAIRMAN)

Date: .....

14/11/2011

**MINUTES OF THE 97<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON MONDAY, 16<sup>TH</sup> MAY, 2011 IN COMMITTEE ROOM, 5<sup>TH</sup> FLOOR, PARLIAMENT BUILDINGS AT 2.30 PM**

**PRESENT**

The Hon. Adan Keynan, MP – **Chairperson**  
The Hon. Mohamed Hussein Ali, MP  
The Hon. Jeremiah Kioni, MP  
The Hon. Wilson Litole, MP  
The Hon. George Omari Nyamweya, MBS, MP  
The Hon. Charles Kilonzo, MP

**ABSENT WITH APOLOGY**

The Hon. Benedict Gunda, MP – **Vice Chairperson**  
The Hon. Eugene Wamalwa, MP  
The Hon. Peter E. O. Anyanga, MP

**ABSENT**

The Hon. Kiema Kilonzo, MP  
The Hon. Martin Ogindo, MP

**IN ATTENDANCE: KENYA NATIONAL ASSEMBLY**

Emejan Nicholas - Clerk Assistant II  
Jackline Wairimu - Parliamentary Intern

**MINISTRY OF EAST AFRICAN COMMUNITY**

Hon. Prof Helen Sambili, EGH, MP - Minister  
Mr. Njoka - Director, Political Affairs

**PRELIMINARIES**

Meeting started with a word of prayer.

**MINUTE NO. 409/2011: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Confirmation of Minutes of previous sitting was postponed to the next sitting.

**MINUTE NO. 410/2011: MEETING WITH MINISTER FOR EAST AFRICAN COMMUNITY**

The Hon. Prof. Sambili, EGH, MP Minister briefed the Committee as follows:-

**1. Treaty provisions on rendition**

The Treaty for the establishment for the East African Community does not make specific reference to rendition. Article 5 (3) (f) states that the community shall ensure promotion of peace, security and stability within and good neighborliness among partner states.

Under Article 124 partner states undertake to cooperate in reviewing the regions security particularly on the threat of terrorism and in the formulation of security measures to combat terrorism.

Kenya domesticated the East African Treaty thus giving it the force of law through the enactment of the East African Community Act, 2000. Under the Constitution 'any Treaty or convention ratified by Kenya shall form part of the Law of Kenya under the Constitution'. This implies that:-

- (i) The extradition laws and procedures contained in the various extradition legislations in Kenya must be read to have been modified or altogether superceded by the provisions of Article 124 of the Treaty on regional peace and security.
- (ii) To the extent that the Treaty forms a part of the Law of Kenya under the constitution, the arrest and surrender of the persons in question pursuant to the provisions of the EAC treaty could be understood to be in accordance with the Constitution.
- (iii) Kenya is obliged under the current EAC cooperation framework to hand over suspects who it has reasonable ground to believe had committed crimes that are covered under the scope of cooperation as defined under Article 124.

There is a High Court ruling on the subject that have held that the arrest and surrender to Uganda of the Kenyan nationals for prosecution was in breach of the constitution. The Attorney General has lodged a notice of intention to appeal against the ruling. There is varied legal opinion within Government on the issue of rendition.

**2. Role for the Ministry on rendition**

The Ministry of East African Community could have directly been involved had the agenda been brought procedurally before the Council of Ministers for discussion

which was not the case. The Ministry of Foreign Affairs, Provincial Administration and Internal Security and the state law office are the line Ministries that would ordinarily be involved.

**MINUTE NO. 411/2011: COMMITTEE CONCERN**

The Committee expressed the following concern:-

- (i) That the matter of rendition is a regional matter and the Ministry of East African Community ought to have been involved. The Kenyan courts declared the matter unconstitutional and this was referred to the East African Court of Justice.
- (ii) The issue of rendition is about not following the rule of law notwithstanding the fact that those who commit crimes be arrested and prosecuted.

The Minister undertook to pursue the matter in Cabinet for deliberation and also before the Council of Ministers. The Minister also informed the Committee that her Ministry was opening up a regional integration centre at Namanga on Tuesday, 17<sup>th</sup> May, 2011. She invited members to participate in the exercise.

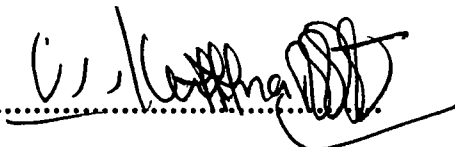
**MINUTE NO. 412/2011: ANY OTHER BUSSINESS**

The Committee reviewed and approved its programmes for local visits as follows:-

- Visit to Samburu – 19<sup>th</sup> to 21<sup>st</sup> May, 2011
- Visit to Turkana – 26<sup>th</sup> to 28<sup>th</sup> May, 2011
- Visit to military modernization programmes – 31<sup>st</sup> May to 3<sup>rd</sup> June, 2011

**MINUTE NO. 413 /2011: ADJOURNMENT**

There being no other business the meeting adjourned at Forty Minutes past eleven O'clock.

Sign: .....

Date: .....4/7/2011.....

(Chairperson)



**MINUTES OF THE 93<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, 3<sup>RD</sup> MAY, 2011 IN  
COMMITTEE ROOM, 4<sup>TH</sup> FLOOR, PARLIAMENT BUILDINGS AT 10.00 AM**

**PRESENT**

The Hon. Adan Keynan, MP – Chairperson  
The Hon. Benedict Gunda, MP – Vice Chairperson  
The Hon. George Omari Nyamweya, MBS, MP  
The Hon. Martin Ogindo, MP  
The Hon. Wilson Litole, MP  
The Hon. Mohamed Hussein Ali, MP  
The Hon. Jeremiah Kioni, MP  
The Hon. Charles Kilonzo, MP

**ABSENT**

The Hon. Kiema Kilonzo, MP  
The Hon. Eugene Wamalwa, MP  
The Hon. Peter E. O. Anyanga, MP

**IN ATTENDANCE: KENYA NATIONAL ASSEMBLY**

Emejen Nicholas – Clerk Assistant II

**LAW SOCIETY OF KENYA**

Apollo Mboya – Secretary/Chief Executive Officer  
Lilian Njeri – Research Assistant

**PRELIMINARIES**

Meeting started with a word of prayer, followed by brief introductions.

**MINUTE NO. 387/2011: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Confirmation of Minutes of the 89<sup>th</sup>, 90<sup>th</sup>, 91<sup>st</sup> and 92<sup>nd</sup> sittings was deferred to the next sitting.

## MIN. NO. 388 /2011: MEETING WITH THE LAW SOCIETY OF KENYA

The Committee was briefed as follows:-

- (i) *Rendition* is surrender or handing over of persons or property, particularly from one jurisdiction to another. *Extraordinary rendition* refers to an extrajudicial procedure in which criminal suspects are sent to other countries for interrogation with a view to extracting information and imprisonment. On the other hand *extradition* is an official process, regulated by treaties, where a State surrenders a suspected or convicted criminal to another country in cases where the suspect is sought for an offence over which the requesting State wishes to exercise jurisdiction. Where extradition is compelled by law, it is known as rendition.
- (ii) Kenya has several occasions carried out extraordinary renditions on its citizens and foreigners. Examples include:
- 1976 extradition to Israel of two suspected Palestinian terrorist arrested near the Jomo Kenyatta International Airport in Nairobi for attempting to bomb a plane, suspected terrorists handed over to Israel,
  - 1998 extradition to the USA of suspects of the terrorist attack on the US Embassy in Nairobi,
  - 1999 extradition of Abdalla Ocalan to Turkey,
  - 2007 extradition of about 100 men, women and children to Somalia and
  - 2010 extradition of 13 people to Uganda suspected to be involved in the Kampala Bombing of 11th July 2010.

All the above renditions happened under the old Constitution.

- (iii) Legal provisions for rendition
- **Old Constitution of Kenya** – Embodied the principles contained in various international human rights conventions. All legislative and administrative measures taken must not be contrary or *ultra vires* to the provisions of the Constitution of Kenya, which at Chapter V provided for the protection of fundamental rights and freedoms of the individual. These rights and freedoms include the right to life, personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection from arbitrary search or entry, freedom of conscience, expression,

assembly and association, freedom of movement, protection from discrimination on the grounds of race, political opinion, religion, colour, creed or sex.

- **New Constitution** - Article 2 of the new Constitution states that the general rules of international law shall form part of the law of Kenya and any treaty or convention ratified by Kenya shall form part of the law of Kenya. The Constitution also contains an elaborate Bill of Rights in Chapter Four including among others rights of arrested persons, fair hearing and rights of persons detained, held in custody or imprisoned.
- **The Extradition (contiguous and Foreign Countries) Act** Chapter 76 of the Laws of Kenya- consolidates the law concerning the extradition of criminals and related matters, where Kenya has an agreement with another country. Some of the countries that have mutual assistance agreements with Kenya include Uganda, Tanzania, Rwanda, United Kingdom, Canada, and Mauritius. Under section 5 the Act, a requisition for the surrender of a fugitive criminal of any country who is in or suspected of being in Kenya shall be made to the Minister by a diplomatic representative or consular officer of that country and, upon receipt of such requisition, the Minister may, by order under his hand, signify to a magistrate that a requisition has been made and require the magistrate to issue warrant for the arrest and detention of the fugitive criminal.
- **Fugitive Offenders Pursuit Act (Cap. 87)**-authorises the police of Uganda and Tanzania to pursue within Kenya offenders fugitive from those countries where there are reciprocal arrangements with Kenya. It is a requirement under section 4 that any person arrested pursuant to this Act must be delivered to a magistrate with a view to being surrendered to Uganda or Tanzania.

A fugitive is defined as any person who is in Kenya and whose surrender is requested under the Act on the ground that he is accused of an offence or has been convicted of an extradition offence committed within the jurisdiction of the requesting State.

- **East African Community Treaty**-Article 124(5) on Regional Peace and Security the Partner States agree to enhance co-operation in the handling of cross border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the exchange of information on national mechanisms for combating criminal activities.

- **The extradition (commonwealth countries) Act cap 77**, laws of Kenya – it provides that Kenya surrender to other commonwealth countries such as Lesotho, Singapore, Malawi and Papua New Guinea on reciprocal basis persons accused or convicted of offences in those countries. Under section 9 a person arrested under this Act be brought before a court of law unless previously charged.

(iv) In all the occasions that Kenya has carried out renditions as mentioned above, the arrest, detention and removal of the subjects from Kenya to Uganda and other foreign countries were illegal and transgressed fundamental rights and liberties of the individuals in that:-

- None of the suspects has been brought before a court of law in Kenya as required by the law.
- The treatment of the suspects was in violation of Chapter V of the previous Constitution relating to the protection of fundamental rights and freedoms of the individual.
- The suspects have experienced a violation of human rights due to actual physical abuse, violation of freedom of movement, deprivation of liberty, torture, inhuman and degrading treatment, arbitrary detention and abuse.
- The treatment of the suspects has been in contravention of Articles 7 and 9 of the International Covenant of Civil and Political Rights (ICCPR) and Article 6 of the African Charter on Human and Peoples Rights, which Kenya has ratified. These Articles provide for protection from torture and ill treatment and the right to liberty and security of a person.
- The treatment of the suspects have been in contravention of customary international law, especially Articles 3, 5, 8, 9 and 10 of Universal Declaration of Human Rights (UDHR) in relation to the right to a fair trial before an independent and impartial court. Article 2 (6) of the Constitution provides that any treaty ratified by Kenya shall be part of the laws of Kenya.
- While the Partner States in the East African Community agree to enhance co-operation in the handling of cross border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the exchange of information on national mechanisms for combating criminal activities, the same are to be done with the constitutional and legal framework of the respective partner states which in the case of Kenya were violated.

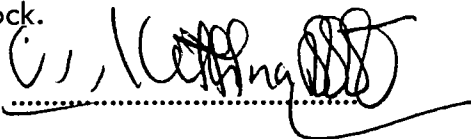
- (v) The arrest, detention and removal of the subject from Kenya to Uganda and other foreign countries were illegal and transgressed the fundamental rights and liberties of the subjects. Tanzania has refused to extradite a suspect it is holding over the July 11, 2010 Kampala Bombings without compliance with the law.
- (vi) The Law Society of Kenya has engaged the Government agencies and other institutions on the matter but no action has been forthcoming. The LSK is awaiting the ruling of the East African Court of Justice before taking up the matter with the African Union.
- (vii) The renditions were carried out by the Kenya police.

**MINUTE 389/2011: COMMITTEE CONCERNS**

Members expressed concern over the manner in which the government handled the renditions in contravention of the constitution and the Laws of the Republic of Kenya.

**MINUTE. NO. 390/2011: ADJOURNMENT**

There being no other business the meeting adjourned at Fifty Minutes past eleven O'clock.

Sign: 

Date: 5/5/2011

(Chairperson)

MINUTES OF THE 88<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
DEFENCE AND FOREIGN RELATIONS HELD ON TUESDAY, 22<sup>ND</sup> MARCH, 2011 IN  
COMMITTEE ROOM, 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS  
AT 10.00 A.M.

**PRESENT**

The Hon. Adan Keynan, MP – Chairperson  
The Hon. Benedict Gunda, MP – Vice Chair  
The Hon. George Omari Nyamweya, MBS, MP  
The Hon. Hussein Mohamed Ali, MP  
The Hon. Martin Ogindo  
The Hon. Peter E. O. Anyanga, MP  
The Hon. Jeremiah Kioni, MP  
The Hon. Gideon Konchellah, MP  
The Hon. Wilson Litole, MP  
The Hon. Kiema Kilonzo, MP

**ABSENT WITH APOLOGY**

The Hon. Charles Kilonzo, MP  
The Hon. Eugene Wamalwa, MP

**IN ATTENDANCE: KENYA NATIONAL ASSEMBLY**

Emejen Nicholas – Clerk Assistant II  
Ms. Jackline Wairimu – Parliamentary Intern

**STATE LAW OFFICE**

Hon. S. Amos Wako, EGH, MP – Attorney General  
Dorcas Achapa MBS - Deputy Solicitor General  
James Waweru – Principal State Counsel  
Edwin Okello – Principal State Counsel  
Mumbi Githaiga – Senior State Counsel  
Kenneth Gathuma – Senior State Counsel  
Patrick Okoth – Senior State Counsel

**PRELIMINARIES**

Meeting started with a word of prayer and followed by brief introductions.

## MINUTE NO. 364/2011: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of Minutes of previous sittings was postponed to the next sitting.

## MIN. NO. 365 /2011: BRIEF BY THE ATTORNEY GENERAL

Hon Amos Wako informed the Committee that:-

### **Rendition of Kenyan**

Persons were rendered to Uganda without reference to the Attorney General. The Attorney general was never informed prior to the rendition and this has been the case in past renditions. Consultations were done after the Kenyans suspects had been rendered to Uganda. The renditions took place before the promulgation of the new constitution and therefore it is the old constitution that applied then.

Article 125 of the Treaty for the establishment of the East African Community provides for partner states to co-operate on security issues.

The matter is currently active in Courts and the High Court of Kenya has referred this matter to the East African Court of Justice for interpretation.

Normal procedure for extradition:-

- Formal request from the country where they are needed for a warrant of arrest to be issued.
- The Attorney General forwards the request to the courts.
- Judicial procedures ensures before rendition

In any extradition the provisions of the law must be followed.

### **Contracts for procurement by the Ministry of Defence**

Most contracts were finalized at the level of the Solicitor General. The contracts passed through the state law office which clears them for execution. During the process comments are made and the Ministry writes stating confirmation or compliance of the issues raised by the State Law office.

Procuring entity is obligated to ensure due diligence when procuring goods.

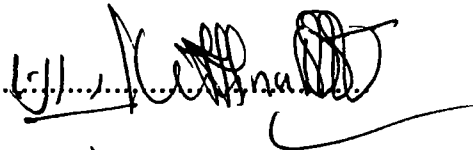
The Department of Registration of Companies has in the past been in a mess but is currently being modernized and data base is being updated.

MIN. NO. 366/2011: CONCERNS BY THE COMMITTEE

The registrar of companies did not have the details of Union Logistics Limited in its database in spite the company having paid for its registration and filled its returns.

MINUTE. NO. 367/2011: ADJOURNMENT

The meeting adjourned at Twenty Minutes past twelve O'clock.

Sign: ..........

(Chairperson)

Date: .....18/4/2011.....



MINUTES OF THE 91<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON MONDAY, 18<sup>TH</sup> APRIL, 2011 IN COMMITTEE ROOM, 5<sup>TH</sup> FLOOR, PARLIAMENT BUILDINGS AT 2.00 P.M.

PRESENT

The Hon. Adan Keynan, MP – Chairperson  
The Hon. Benedict Gunda, MP – Vice Chair  
The Hon. George Omari Nyamweya, MBS, MP  
The Hon. Martin Ogindo, MP  
The Hon. Peter E. O. Anyanga, MP  
The Hon. Wilson Litole, MP  
The Hon. Kiema Kilonzo, MP

ABSENT WITH APOLOGY

The Hon. Hussein Mohamed Ali, MP  
The Hon. Charles Kilonzo, MP  
The Hon. Eugene Wamalwa, MP  
The Hon. Jeremiah Kioni, MP

IN ATTENDANCE: KENYA NATIONAL ASSEMBLY

Emejan Nicholas – Clerk Assistant II  
Salad Guyo – Clerk Assistant III  
Jackline Wairimu – Parliamentary Intern

MINISTRY FOR JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL AFFAIRS

Hon. Mutula Kilonzo, EGH, MP - Minister  
Mr. Allan Meso - Senior State Counsel

PRELIMINARIES

Meeting started with a word of prayer and followed by brief introductions.

MINUTE NO. 376/2011: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of previous sittings were confirmed as follows:-

- Minutes of the 57<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.
- Minutes of the 58<sup>th</sup> sitting - proposed and seconded by Hons. Benedict Gunda, MP and George Omari Nyamweya, MP respectively.

- Minutes of the 60<sup>th</sup> sitting - proposed and seconded by Hons. Benedict Gunda, MP and George Omari Nyamweya, MP respectively.
- Minutes of the 61<sup>st</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.
- Minutes of the 62<sup>nd</sup> sitting - proposed and seconded by Hons. Wilson Litole, MP and Peter E.O. Anyanga, MP respectively.
- Minutes of the 63<sup>rd</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.
- Minutes of the 64<sup>th</sup> sitting - proposed and seconded by Hons. Benedict Gunda, MP and George Omari Nyamweya, MP respectively.
- Minutes of the 66<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Wilson Litole, MP respectively.
- Minutes of the 67<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.
- Minutes of the 68<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Wilson Litole, MP respectively.
- Minutes of the 69<sup>th</sup> sitting - proposed and seconded by Hons. Benedict Gunda, MP and Peter E. O. Anyanga, MP respectively.
- Minutes of the 71<sup>st</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Peter E. O. Anyanga, MP respectively.
- Minutes of the 72<sup>nd</sup> sitting - proposed and seconded by Hons. Peter E. O. Anyanga, MP and Benedict Gunda, MP respectively.
- Minutes of the 73<sup>rd</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Peter E. O. Anyanga, MP respectively.
- Minutes of the 74<sup>th</sup> sitting - proposed and seconded by Hons. Martin Ogindo, MP and Wilson Litole, MP respectively.
- Minutes of the 75<sup>th</sup> sitting - proposed and seconded by Hons. Peter E. O. Anyanga, MP and George Omari Nyamweya, MP respectively.
- Minutes of the 76<sup>th</sup> sitting - proposed and seconded by Hons. Benedict Gunda, MP and Peter E. O. Anyanga, MP respectively.
- Minutes of the 77<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.
- Minutes of the 78<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Peter E. O. Anyanga, MP respectively.
- Minutes of the 79<sup>th</sup> sitting - proposed and seconded by Hons. Peter E. O. Anyanga, MP and George Omari Nyamweya, MP respectively.
- Minutes of the 80<sup>th</sup> sitting - proposed and seconded by Hons. Peter E. O. Anyanga, MP and Benedict Gunda, MP respectively.
- Minutes of the 81<sup>st</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.

- Minutes of the 82<sup>nd</sup> sitting - proposed and seconded by Hons. Benedict Gunda, MP and George Omari Nyamweya, MP respectively.
- Minutes of the 83<sup>rd</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.
- Minutes of the 84<sup>th</sup> sitting - proposed and seconded by Hons. Peter E. O. Anyanga, MP and Benedict Gunda, MP respectively.
- Minutes of the 85<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.
- Minutes of the 86<sup>th</sup> sitting - proposed and seconded by Hons. Peter E. O. Anyanga, MP and George Omari Nyamweya, MP respectively.
- Minutes of the 87<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Peter E. O. Anyanga, MP respectively.
- Minutes of the 88<sup>th</sup> sitting - proposed and seconded by Hons. George Omari Nyamweya, MP and Benedict Gunda, MP respectively.

Confirmation of Minutes of the 59<sup>th</sup>, 65<sup>th</sup> and 70<sup>th</sup> sittings was postponed to the next meeting.

#### MINUTE NO. 377/2011: MATTERS ARISING

##### **Study Visit to United States Congress**

The Chairperson informed the Committee that the State University of New York (SUNY) and the United States Congress were willing to sponsor the Committee for a capacity building visit in the US Congress. The Chairperson undertook to revisit the matter with SUNY Kenya with the aim of fasttracking the study visit.

##### **Kenya Turkish Friendship group**

Members raised concern that the Kenya Turkish friendship group was dormant in spite the fact that it had been established. The members resolved to revitalize the friendship groups. The members further underlined the importance of establishing a fully fledged diplomatic Mission in Turkey due to the economic gains that will be realized.

##### **Inspection of modernization programmes**

The Committee directed that the inspection visit to military modernization programmes be expedited. The Committee resolved that the inspections should include the following projects:-

- (i) Air Force – inspect the 15 Fighter Jets purchased from Jordan

- (ii) Army – inspect AML’s and construction works at Lanet, Isiolo, Eldoret and Mariakani
- (iii) Navy – inspection of Naval ships

The Committee further resolved to visit the British Army military training grounds in Isiolo and parts of Samburu and hold public hearings on the alleged atrocities as a result of British military training in Samburu East.

**MIN. NO. 378 /2011: BRIEF BY THE MINISTER FOR JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL AFFAIRS**

The Hon. Mutula Kilonzo, EGH, MP informed the Committee that:-

- (i) The Ministry of Justice, National Cohesion and Constitutional Affairs is not aware of any policy of the Government of the Republic of Kenya permitting or allowing renditions. Neither the current nor the former Constitution allowed rendition of Kenyan nationals to stand trial in foreign countries.
- (ii) The Ministry of Justice, National Cohesion and Constitutional Affairs was neither involved nor consulted before the said Kenyans were transferred to Uganda to stand trial. He personally read about the rendition in the newspapers just like most Kenyans. Had his Ministry been consulted by other Government agencies they could have advised appropriately, that the Government follows procedures as stipulated in the in Cap 77 and Cap 76 Laws of Kenya. The matter however does not fall under the mandate of his Ministry.
- (iii) The Extradition (Contiguous and foreign countries) Chapter 76 and the Extradition (Commonwealth Countries) Chapter 77 Laws of Kenya guide and provide elaborate mechanisms for the extradition of fugitive criminals:-
  - The Minister must Gazette the order for extradition.
  - The extradition order must be laid before the National Assembly.
  - The order has to cite the treaties or agreements that provide for extradition.
- (iv) Rendition is a violation of the Constitution of Kenya, Article 2 of which requires that international law in the form of treaties or agreements must follow the Laws of Kenya. The manner in which the renditions were done violates Cap 77 Laws of Kenya and was unconstitutional.
- (v) Those who facilitated the rendition should be arrested for violating the Constitution and Laws of Kenya. The Kenyans detained in Uganda should be returned to Kenya to face the due process of Law. The Ministries of Foreign Affairs, East African Community, Provincial Administration and Internal Security and the Attorney General should liaise to ensure the return of Kenyans to face justice in the country.
- (vi) The matter of rendition was raised in the Cabinet by the Minister for Provincial Administration and Internal Security but the subject was adjourned to await the Attorney General who was then out of the country.

- (vii) He was surprised by the arrest and deportation of Kenya National Human Rights Commissioner, Mr. Hassan Omar, by Ugandan authorities while on a mission to visit Kenyans detained in Uganda.
- (viii) The Kenyans arrested and detained in Uganda can seek legal redress through the East African Court of Justice.

#### MINUTE. NO. 380/2011: ADOPTION OF REPORTS

The Committee adopted the following reports:-

- (i) Report on the disqualification of Ms. Gladys Jepkechei Tarus from Military training.
- (ii) Report on the familiarization visit to Kenya Embassy to Somalia.
- (iii) Report on the familiarization visit to Kenya Mission to United Nations Offices in Nairobi (UNON).
- (iv) Report on Diplomatic Appointments.

#### MINUTE NO: 381/2011: ANY OTHER BUSINESS

##### **Diplomatic passports**

The Committee deliberated on the matter of issuance of diplomatic passports to members of the Committee. The members noted that in other democracies members of the foreign relations committee are issued with diplomatic passports to facilitate and ease their performance of duties while overseeing Diplomatic Missions abroad.

The Committee resolved that the Chair takes up the matter with the Secretary to the Cabinet requesting that the members of the Committee be issued with diplomatic passports.

##### **Delegations to international trips**

The Hon. Kiema Kilonzo, MP expressed concern that the delegation that travelled to South Africa and Brazil did not reflect political party and regional interests. The Chairperson informed the Committee that the delegation was nominated on the basis of attendance and that some of the members originally nominated opted out due to party and Constituency engagements. They were thus replaced with those who undertook the visit as follows:-

- (i) The Hon. Charles Kilonzo, MP was replaced by the Hon. Peter E.O. Anyanga, MP
- (ii) The Hon. George O. Nyamweya, MP was replaced by Hon. Martin Ogindo, MP.

The Committee deliberated further on the matter and resolved that nomination for foreign travel will be determined by:-

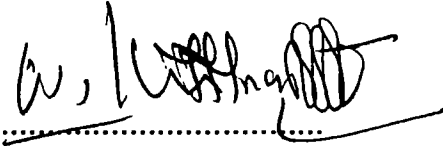
- (i) Attendance

- (ii) Participation in Committee meetings
- (iii) Competence/expertise in relevant field

The Chairman requested members to attend all meetings of the Committee in order to effectively contribute to issues before the Committee.

MINUTE. NO. 382/2011: ADJOURNMENT

There being no other business the meeting adjourned at Twenty Minutes past five O'clock.

Sign: 

Date: 5/5/2011

(Chairperson)

MINUTES OF THE 77<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD ON THURSDAY, 24<sup>TH</sup> FEBRUARY, 2011 IN COMMITTEE ROOM, 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

The Hon. Adan Keynan, M.P. – Chairperson  
The Hon. Benedict Fondo Gunda, M.P. – Vice Chairperson  
The Hon. Wilson Mwotiny Litole, M.P.  
The Hon. Jeremiah Ngayu Kioni, M.P.  
The Hon. Kiema Kilonzo, MP  
The Hon. George Omari Nyamweya, MBS, M.P.  
The Hon. Charles Kilonzo, M.P.  
The Hon. Peter Edick O. Anyanga, M.P

ABSENT WITH APOLOGY

The Hon. Eugene Wamalwa, M.P.  
The Hon. Martin Ogindo, MP

IN ATTENDANCE : NATIONAL ASSEMBLY

Mr. Nicholas Emejien – Second Clerk Assistant  
Mr. Sherrifsam Mwendwa – Legal Counsel  
Ms. Wairimu

MINISTRY OF FOREIGN AFFAIRS/PROVINCIAL ADMINISTRATION AND INTERNAL SECURITY

Hon. Prof. George Saitoti, EGH, MP - Minister  
Hon. Richard Onyonka, MP- Assistant Minister  
Mr. Patrick Wamoto – Ag. Permanent Secretary  
Mathew Iteere – Commissioner of Police  
Ndegwa Muhoro – CID Director  
Shadrack Mwadime – Senior Deputy Secretary  
J. K. Ndathi – Director Administration – MFA  
A. M. Kihurani – DPDS, MFA  
B. Khadiagala - Senior Chief Finance Officer  
W. M. Musau - SAD/HRM  
Matangwa Fredrick – PA to Minister, MFA  
Wilberforce Kilonzo – PA to Minister Provincial Administration & Internal Security

## PRELIMINARIES

The Chairperson called the meeting to order, and thereafter the meeting started with a word of prayer followed by brief introductions.

### MINUTE NO. 324/2011: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Confirmation of Minutes of previous sittings was postponed to the next sitting.

### MINUTE NO: 325/ 2011 – MEETING WITH THE MINISTER OF STATE FOR DEFENCE

Evidence was adduced as follows:-

#### Evidence by Hon. Prof. George Saitoti, EGH, MP – Minister for Provincial Administration and Internal Security/Ag. Minister for Foreign Affairs

##### **Welfare of Kenyans in Libya**

The Committee was informed that the situation in Egypt had stabilized and that the Government was working towards the air lifting of 87 Kenyan nationals from Libya. Kenya air ways had agreed to avail an aircraft to air lift the Kenyans from Libya. The government is monitoring the situation in Bahrain and will take necessary action for the well being of Kenyan nationals in the affected countries.

The Minister reiterated that the security of members of parliament and that of Kenyans in general was secure. The fighting between Al Shabab and Ethiopian forces was outside Kenya's territory however the Kenyan security forces were alert and ready to defend the country from any external aggression.

The Minister further informed the Committee that he was not aware of any Kenyans hired as mercenaries to fight in Libya. The Minister confirmed that plans had been made to evacuate Kenyans working at the Embassy and those in the construction industry.

##### **Rendition of Kenyans to face trial in Uganda**

After the July 11<sup>th</sup> 2010 Kampala suicide bombing where 76 people were killed and 96 others seriously injured, joint investigations by the Ugandan and Kenyan authorities was started. The Al Shabab leadership claimed responsibility for the attacks.

The investigations unearthed credible evidence implicating Kenyans and Ugandans in the bombing. This led to the arrest of 16 Kenyans who have since been charged in Ugandan courts. Out of the 16 Kenyans, 11 were arrested in Uganda and only 5 were arrested in Kenya.



The 11 Kenyans arrested in Uganda are:-

1. Hassan Abdu Issac
2. Isaac Gedi Godana
3. Hussein Aliwali Abdi
4. Abdul Aziz Abdi alias Matope
5. Abdulahi Mohamod Ahmed
6. Kenyoro Andrew
7. Osman Mohamed
8. Khalif Abdi Muhammed
9. Habib Suleiman Njoroge
10. Al-amin Kimathi alias Joe Kimathi
11. Omar Adua Omar

Kenyans arrested and handed over to Ugandan authorities

1. Idriss Magondu alias Christopher Magondu
2. Hussein Hassan Agade
3. Mohammed Hamid Suleiman
4. Mohamed Adan Abdow
5. Yahya Suleiman Mbuthia

The first three were handed over to Ugandan authorities on 27<sup>th</sup> July, 2010 and the other two on 14<sup>th</sup> and 26<sup>th</sup> August, 2010 respectively. They were arrested after technical telephone analysis conducted on a mobile phone handset found on unexploded device, revealed previous linkages to the five. All have since been committed to stand trial over the attacks.

The decision to hand over the Kenyans suspected of terrorist activities was a Government decision that was taken for the interest of the country.

#### **Condition and welfare of Kenyans rendered to Uganda**

The Kenya Mission to Uganda visited the Luzira upper prison and Luzira Women's prison on 16<sup>th</sup> and 17<sup>th</sup> August, 2010 to check on the terrorist suspects and other Kenyans held in the two prisons and established that they were being treated well. However request for official report on the Kenya terror suspect have not been responded to by the Ugandans.

The Kenya High Commissioner held a meeting on October 19<sup>th</sup>, 2010 with the Ugandan Commissioner of Prisons who assured that the Kenyans were being treated in humanely like all other prisoners.

Terror suspects in Uganda are held in separate safe houses which are not accessible for security reasons. The High Commissioner will be visiting the prisoners on a monthly basis.

## Treaties or agreements between Kenya and EAC partner states on extradition

The arrest and surrender of the suspects is pursuant to the provisions of Article 124 of the EAC Treaty. The Treaty has been domesticated and given the full force of law by the Treaty for the Establishment of the East African Community Act, 2000. Further the article 2 of the new constitution provides that any Treaty or Convention ratified by Kenya shall form part of the law of Kenya under the new constitution.

Kenya had a legally binding obligation to arrest and surrender the terror suspects to Uganda for prosecution. However in two rulings by the high court the judges held that the arrest and surrender to Ugandan of the suspects was a breach of the constitution and therefore illegal and unlawful. The Attorney General has lodged intention of appealing against the ruling. The matters are still before the courts and therefore subjudice.

Kenya will continue co-operating with regional and international actors on the issue of terrorism.

## Evidence by the Commissioner of Police

The Commissioner of Police, Mr. Mathew Iteere informed the Committee that:-

Before the terror suspects were arrested there were thorough investigations done by the Kenyan authorities in collaboration with the Ugandan, UK and US agencies. The person who transported the bomb vests was this week handed over to Uganda by the Tanzanian authorities.

There is a serious threat of terrorism whose cell is in Kenya. In 2010 Kenya experienced three attacks at Uhuru park, on a government vehicle belonging to Embakasi DC, two traffic police officers and in down town Nairobi at Kampala coach bus station. All these incidences are linked.

Many Kenyan youth have been lured and recruited to fight alongside Al Shabaab in Somalia. There is a foreign element in the terrorist activity in East Africa.

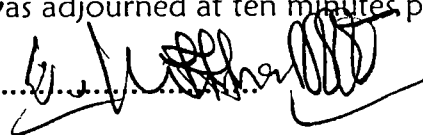
## MINUTE NO. 326/2011: COMMITTEE CONCERNS

- Measures by the Government to tackle acts of terrorism and the funders of the terrorist activities who have links in Kenya.
- The courts are questioning the constitutionality of the rendition
- Government is harboring individuals who are alleged to be sponsoring instability in Somalia.

MINUTE NO. 327/2011: ADJOURNMENT

The meeting was adjourned at ten minutes past two O'clock.

Sign: .....  
(Chairperson)



Date: ..... 18/4/2011

MINUTES OF THE 70<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD IN THE COMMITTEE ROOM, 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE , PARLIAMENT BUILDINGS ON TUESDAY, 25<sup>TH</sup> JANUARY, 2010 AT 10.00.A.M

PRESENT.

Hon. Adan Keynan, M.P - Chairperson  
Hon. Benedict Fondo Gunda, M.P - Vice - Chairperson  
Hon. Charles Kilonzo, M.P

ABSENT

Hon. Eugene Wamalwa, M.P  
Hon. Martin Ogindo, M.P  
Hon. Wilson Mwotiny Litole, M.P  
Hon. Jeremiah Ngayu Kioni, M.P  
Hon. George Nyamweya, M.P  
Hon. Mohamed Hussein Ali, M.P  
Hon. Peter Edick O. Anyanga, M.P

IN ATTENDANCE

Nicholas Emejen  
Salad M. Guyo

NATIONAL ASSEMBLY

Second Clerk Assistant  
Third Clerk Assistant

KENYA NATIONAL COMMISSION OF HUMAN RIGHTS

Hassan Omar	Commissioner
Fatuma Ibrahim	Commissioner
Fatuma Adan Dullo	Commissioner
Anne Munyiva Kyallo	Commissioner
Naema Ibrahim	Lawyer
Stella Wangechi	Lawyer
Ednah Nyaloti	PHRO RAD-KNHCR
Caitlan Daniel	KNHCR
Samson Omwopi	KNHCR
Paige Morrow	KNHCR
Bigambo javas	KHCR
George Morara	KHCR
Farouk Machanje	Co-convener-Muslim Human Rights Forum
Abusufyan Ahmed	Friday Bulletin

MIN. NO. 295/2011:

PRELIMINARY

The Chairman called the meeting to order and opened by a word of Prayer from Committee clerk.

MIN. NO. 296/2011:

CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of previous Minutes of previous sittings was deferred to a later date.

MIN. NO. 297/2011:

MEETING WITH KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

Mr. Omar Hassan laid the following papers;

- Statements of events of the arrest and detention
- Lists of arrested individuals

The Committee was informed that;

- a) The Government has been using extra legal means including renditions in the fight against terrorism. In 2007 Kenyans were rendered to Somalia and Ethiopia and were later returned to the country with no charges preferred against them.
- b) Eight Kenyan citizens have been illegally rendered to Uganda following the July 11 terrorists' attacks in Kampala. A number of suspects were handed over to the Ugandan authorities without any extradition proceedings taking place as required by law.
- c) They believe that the Head of Anti-terrorism unit, Police Commissioner, Minister for Foreign affairs and Minister of State for Provincial Administration and Internal Security may be in the know on how Kenyan Citizens were arrested and handed over to Ugandan Government.
- d) Lawyers and family members were denied access to those arrested
- e) Kenyans are held in cruel and pathetic condition in Ugandan prisons and that there is a likelihood of the Kenyans being rendered to a third country.
- f) There is need for accountability on the part of state officers for the illegal actions of rendition.

WAYFORWARD

KNCHR to prepare a comprehensive report as the Committee engages other stakeholders.

MIN. NO. 298/2011:

ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at ten minutes past twelve o'clock until Tuesday 1<sup>st</sup> February at 10.30 a.m.

Signed: .....  
(CHAIRMAN)

Date: .....

5/5/2011