

REPUBLIC OF KENYA



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Deputy Speaker	Mr. Joseph Ngunjiri
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TENTH PARLIAMENT – FOURTH SESSION - 2011

**REPORT OF THE
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY ON ITS FACT FINDING VISIT TO BURA &
HOLA DISTRICTS, 24TH – 25TH FEBRUARY, 2011**

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

AUGUST, 2011

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1.0 PREFACE

Mr. Speaker, Sir,

The Parliamentary Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No. 198 of the National Assembly and has executed its mandate in accordance with the provisions of the said Standing Order 198 (3), which mandates the Committee Members to, inter alia; *“investigate and inquire into all matters ... as they may deem necessary, and as may be referred to them by the House...”*

Mr. Speaker, Sir,

The Committee, according to Schedule II of the Standing Orders, examines the following subjects:

- i) Public Administration
- ii) National security
- iii) Internal Security
- iv) Immigration
- v) Prisons Service
- vi) National Youth Service, and;
- vii) Natural disasters

The Committee deals with the following Ministries and Departments:

- (i) Office of the President (Cabinet Office & State House)
- (ii) Office of the Vice President and Ministry for Home Affairs
- (iii) Ministry of Provincial Administration & Internal Security
- (iv) Office of the Prime Minister
- (v) Ministry of State for Public Service
- (vi) The Public Service Commission
- (vii) Ministry of State for Immigration & Registration of Persons

Mr. Speaker,

The following are the Members of the Committee:

The Hon. Fred Kapondi Chesebe, MP (Chairman)
The Hon. Peter Kiilu, MP (Vice Chairman)
The Hon. Cyprian Omollo, MP
The Hon. Danson Mungatana, MP
The Hon. Raphael Letimalo, MP

The Hon. Pollyins Ochieng', MP
The Hon. Mohammed Hussein Ali, MP
The Hon. Joseph Kiuna, MP
The Hon. Maison Leshoomo, MP
The Hon. Nkoidila ole Lankas, MP
* The Hon. Clement Kung'u Waibara, MP

*(The Member whose name is marked with an asterisk * has never participated in any Committee deliberations and so he is not part of the observations, findings, conclusions and recommendations in this report).*

Mr. Speaker, Sir,

The following are the Members of the Committee who undertook the fact finding tour to Bura and Hola:

The Hon. Fred Kapondi Chesebe, MP (Chairman)
The Hon. Peter Kiilu, MP (Vice Chairman)
The Hon. Maison Leshoomo, MP
The Hon. Cyprian Omollo, MP
The Hon. Raphael Letimalo, MP
The Hon. Mohammed Hussein Ali, MP

Mr. Daniel Mutunga and Mr. Ahmad Kadhi, Clerk Assistants, accompanied the Committee during the visit.

Mr. Speaker, Sir,

On Thursday 28th October 2010, the Deputy Speaker directed that the matter of shooting of Tana River residents by Police, be referred to the Committee on Administration and National Security for further investigation. The matter came to the floor of the House through a Question by Private Notice by the Hon. (Dr.) Nuh Nasir Abdi, MP, Bura Constituency. The Member sought to know from the Minister of State for Provincial Administration and Internal Security;

(a) Whether he was aware that Administration Police Officers in Hola shot dead Mr. Mahrus Muhamud Wario and dumped his body into River Tana in March 2006;

(b) Whether he was further aware that police officers from the regular Police and General Service Unit (GSU) shot dead Mr. Rashid Abdi Daran, Abubakar Madhohe Abdi and Adhan Jirrow Abdille of ID Nos. 25895202, 8267635 and 8266689 respectively, in Charindende, Bura Constituency in March 2009; and,

(c) If he could confirm whether an inquest file was opened for each of the two cases and, if so, what the status of the inquests was, so far, and when the culprits will be apprehended.

The Assistant Minister did not give satisfactory answers to the House prompting the Deputy Speaker to rule that the Minister brings a more adequate answer to the House after two weeks. The question was also referred to the Committee on Administration and National Security to further investigate the matter and file a report.

The Committee therefore set out on a fact finding mission to Bura and Hola on 24th and 25th February, 2011 and was able to conclude its business in two days. During the visit, the Committee held meetings with the stakeholders in the areas such as the District Security teams, the local leaders, the Provincial Administration and local residents.

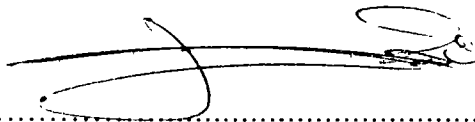
Mr. Speaker,

The Committee is thankful to the National Assembly for the logistical support which enabled it to conduct this tour successfully. The Committee is also grateful to the Ministry of State for Provincial Administration and Internal Security for facilitating the various meetings with the Ministry's personnel on the ground as well as the District Security Intelligence Committees.

Mr. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 181 (3), it is my pleasant duty to lay on the table of the House the Report of the Committee on Administration and National Security on its visit to Bura and Hola, for deliberation and adoption.

Signed.....



Date 17/05/11

Hon. Fred Kapondi Chesebe, MP

Chairman, Departmental Committee on Administration and National Security.

 Report of the Departmental Committee on Administration and National Security on its fact finding visit to
 Bura and Hola: 24-25th February, 2011

2.0 MEETING WITH RESIDENTS OF CHARIDENDE

The Chairman introduced Members of the delegation to the local residents and briefed the latter of the objectives of the visit.

After the preliminaries, witnesses were called to give testimonies to the Committee regarding the alleged killings.

First witness

He informed the Committee that incidences of insecurity had long troubled the residents of Charidende particularly during the times of drought; where many cases of conflict were reported as people travelled far and wide looking for water and pasture.

The incidents involved a confrontation at a gypsum mine at Dukanotu sub – location, where police fired at a group of protesters, during which two persons, Madowe Abdi and Jiro Abdille were injured. The two were present at the meeting and confirmed the shooting to the Committee. The victims who were present, had visible gunshot wounds and one was aided by a pair of crutches to walk.

The conflict involved a private company which had mined gypsum in the area, leaving open pits which caused environmental degradation and loss of livestock which occasionally fell into the open pits and died.

Most residents of the area were not happy as the sites had not been rehabilitated and were protesting and demanding compensation for the destruction of their habitat and loss of livestock.

During the protest, the mine owners called in the General Service Unit (GSU) officers and the Police who allegedly attacked the protesters by using live bullets.

Second witness

He testified that insecurity and instability had been caused by the clan fighting in the area. The Government had neglected the area by failure to provide adequate security as well as compensation when locals were affected as it had done to the IDPs of the post election violence.

Third witness

He referred to an agreement between the local community and Yamata Mining Company, which as part of its corporate responsibility was to build a school and rehabilitate the area after mining the gypsum.

There had been a previous standoff where the army had been called, but upon arrival they found the demands of the locals genuine and declined to intervene. However

when the police were called in, they came with reinforcement of the GSU and shot at the residents claiming for their rights; during this incident the witness speaking was also injured and he displayed the scarred bullet wounds for the Members to see.

The committee sought the following clarifications after hearing the witnesses:

- Whether the people demonstrating were armed.
- If the police had taken statements from the witnesses after the demonstrations and complaints.
- Whether the family of the complainants had taken any official report to the authorities.
- Whether those injured suffered gunshot wounds.
- Whether the agreement with Yamata Mining was a formal undertaking.

In response, witnesses informed the Members that:

- The only complaint lodged was through the area MP, as they had no faith in the Police who had attacked the protesters.
- A group of detectives from Hola CID had visited the area to record statements but no subsequent action had been taken.
- The protesters comprised all members of the community including elderly men and women, children and youth who were unarmed.
- There existed a formal agreement with the mining company of which a copy was believed to be in custody of the area Chief of Nanige location.

The Committee Members thereafter visited the abandoned Dukanotu area where they saw mine pits that had been left open. They also saw the area where the alleged shooting of protesters by police had occurred.

3.0 MEETING WITH LOCAL LEADERS (BURA COUNCILLORS AND CHARIDENDE CHIEF)

During a meeting with the Committee, the Chief of Charidende location informed the Committee that there was a formal agreement with the Mining Company, though he was not privy to the contents of the contract, as the then Chief had not surrendered to him the aforesaid agreement.

Members heard of the tensions between the Orma and Wardei which are heightened during the drought spells. One incident involved torching of 600 households leaving the community devastated.

The local councillors lauded the area DC who had tried tirelessly to bring peace and security to the area.

Members impressed upon the local leaders to work with the Government and their neighbouring communities to restore peace and tranquillity in the area as infighting between clans was retrogressive and against the law.

The Committee thereafter resolved to summon key witnesses and the DCIO to a meeting in Nairobi to adduce evidence over the alleged killings in Bura and Hola.

4.0 MEETING WITH THE WITNESSES FROM BURA

First witness

In his testimony, he informed the Committee that he was in Garissa when he received a telephone call informing him that Mahurs Wario had been attacked by Administration Police and jumped into the Tana River for fear of his life. That news prompted the witness to return to Hola to find out the whereabouts of the deceased. He learnt that 15 other persons had been arrested for creating public disorder and that the deceased's body was recovered a few days later from the river. The retrieved body had been mutilated and supposedly half eaten by crocodiles.

Later the witness was notified by the Hola Court about the death of the deceased. No action had been taken on the police who had attacked the deceased.

The Committee Members were also informed that the Police who attacked the youth were armed.

Second witness

He informed the Committee that he was in the company of the deceased Mahrus Wario at the time of the confrontation by the Police.

They were about eight people at the scene, which was common for the locals to wash by the riverside. He and the deceased were having a haircut.

He said that there was commotion and shouting coming from a distance. As the Police officers approached, the youth they started hurling sticks at them.

The duo tried to escape by the riverbank but they fell into the river whose current was heavy.

He further said he tried to swim to safety but kept being pulled downstream by the gushing waters. Finally he managed to get to safety by clinging onto a log. The deceased was swept by the raging waters and drowned. His body was found five days later.

The witness was later arrested and accused for attacking a police officer. By the time he was released the deceased had been buried.

After taking evidence from the witnesses, the Members raised the following clarifications;

- If the intention of the police attacking the youth was known to the witnesses.
- Whether they had caused a disturbance before.
- How many police officers were at the scene?
- How long the second witness was in custody, and on what charges?
- What was the occupation the deceased and his age?
- What compensation was sought from the government for the deceased?

The witnesses responded as follows:

It was believed that the police were hunting down a criminal who had escaped from custody thus their motive for the operation.

The deceased and his friends had not caused any disturbance to warrant such police action. There were roughly Police officers.

The second witness was jailed for two months for the count of attacking a Police officer with intention to avenge the death of his friend. The deceased was 20 years of age and was a painter, making signs for shops in the area.

There were other youths also arrested for various offences such causing nuisance and disturbance.

No assistance/compensation was given, thus the local community petitioned the area MP to intervene on their behalf. The deceased had no prior confrontations with the police.

5.0 MEETING WITH BURA DISTRICT CRIMINAL INVESTIGATION OFFICER (DCIO)

The Officer informed the Committee that he was aware of a case pertaining to Mr. Mahrus Wario, who was allegedly shot dead by Administration Police in Hola and the body dumped in Tana River.

The Committee was informed that Julius Sang and Fataha mining company were the major players in the saga involving the mining of gypsum and the violence in Bura. The particular incident involved a standoff during which the OCS and GSU commander were injured.

The other case involving the death of Mr. Wario was presumed to have occurred on 17th July 2007. One Corporal Mutunga who was patrolling the area confronted Ramadhan Abubakar Ali and Mr Wario. They both fled from the police and the former managed to swim across the river, whereas the latter did not make it.

The body was later recovered from the river and positively identified as that of the deceased, by a Mr. Salim from Mikindani area.

The committee noted that despite the claim of machines worth millions of shillings having been destroyed at the Mine in Charidende, they had not seen any evidence on that claim when they visited Bura Constituency.

The witness informed the Committee that he was assigned to the area as at January 2011 and based his report on the statements of other officers in the area. The OCS was said to have received instructions from the OCPD to go and find out what was happening at Charidende. Not knowing that there would be resistance, he tried to persuade elders to calm the protesting residents.

Members raised the following concerns:

What action the police had taken regarding persons who had incited the Members of the public.

What action would be taken to avert such occurrences repeating themselves considering that the mining activities were to go on.

What the motive could have been towards the death of Mr. Mahrus Wario; and whether he was a targeted suspect or had any criminal record to prompt him to flee away from the police officer on patrol.

The Officer informed the Committee that,

The Complainant went to report the incident of disturbance at the mine to the OCPD. When the police arrived at the mine the number of protesters had risen from 30 to about 300. It was reported that an individual who had an interest in the mine was paying the youth to riot.

He further informed the Committee that an inquest file had been opened and there are ongoing court hearings where Members of the public were giving information. It was expected that once the process was complete the culprits would be arrested.

The witness believed that Mr. Mahrus fled from the scene and jumped into the water as he may have been taking drugs when he was confronted by Police. However he could not verify that claim as no evidence was found.

The Chair therefore declared that the witness was unable to satisfactorily clarify the issues sought by the Members and directed that he consults widely and submits to the Committee a more conclusive written reply to the issues raised.

6.0 COMMITTEE OBSERVATIONS AND FINDINGS

1. The open mine pits at Charidende posed a threat to the residents of the area and their animals.
2. The alleged destruction of mining machines could not be verified as the Committee did not see evidence at the scene.
3. Police had indeed attacked Members of the public during the demonstration though only one death of the alleged three was confirmed.
4. The unrest and mistrust between the Communities in Bura and Hola is politically motivated. The clans are usually incited against each other by politicians.
5. The circumstances leading to the death of Mr. Mahrus Muhamud Wario remained unclear.

7.0 RECOMENDATIONS

After deliberations, and based on proceedings of the meetings during the visit, the Committee made the following recommendations;

1. The Government should fast track Police reforms to ensure citizens rights are protected as enshrined in the Constitution. In the same manner, excessive use of force in quelling protests should be curtailed.
2. Persons and families of those killed or injured by Police in Bura/Hola should be compensated.
3. The Government should send adequate security personnel to provide and maintain peace in Bura and Hola; which are highly volatile areas due to tribal mistrusts.
4. The Yamatta Mining Company should be held accountable for environmental degradation of Bura and be called upon to fill in the mine pits and compensate the herders whose stocks had perished in the open mines.
5. The Police should make conclusive and transparent investigations into the conduct of any officers alleged to have acted in contravention of the laws of the land, followed by disciplinary procedures.
6. A thorough and conclusive investigation should be carried out by the Police regarding the death of Mr. Mahrus Mohamud Wario.

MINUTES OF THE 53RD (B) SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON WEDNESDAY 9TH FEBRUARY, 2011 IN THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

The Hon. Fred Kapondi, MP - Chairman
The Hon. Peter Kiilu, MP - Vice-Chairman
The Hon. Danson Mungatana, MP
The Hon. Joseph Kiuna, MP
The Hon. Mohammed Hussein Ali, MP

ABSENT

The Hon. Cyprian Omollo, MP
The Hon. Raphael Letimalo, MP
The Hon. Maison Leshoomo, MP
The Hon. Polliyins Ochieng', MP
The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Ahmad Kadhi - Third Clerk Assistant

IN ATTENDANCE - BURA WITNESSES

Mr. Geoffrey G. Kahiro - DCIO, Hola
Mr. Mahmud Wario - Deceased's father
Mr. Ramadhan Abubakar - Deceased's friend

PRELIMINARY

The Chairman called the meeting to order at 10.20 am after which prayers were said. The agenda of the day was read and adopted. The Chairman welcomed the witnesses to the Meeting and briefed them about the matter of Bura killings. The witnesses thereafter had the oath of affirmation administered to them. The Chair invited the first witness to make his submission.

MIN. NO.188/2011(j): SUBMISSION BY BURA WITNESSES

Mahmud Wario

In his testimony, he informed the Committee that the deceased was his son. On that fateful day, he was in Garissa when he received a telephone call informing him that Mahurs Wario had been attacked by Administration Police and jumped into the Tana River for fear of his life. That news prompted the witness to return to Hola to find out the whereabouts of the deceased. He learnt that 15 other persons had been arrested for creating public disorder and that the deceased's body was recovered a few days later from the river. The retrieved body had been mutilated and supposedly half eaten by crocodiles.

Later the witness was notified by the Hola Court about the death of the deceased. No action had been taken on the police who had attacked the deceased.

The Committee Members were also informed that the Police who attacked the youth were armed.

Ramadhan Abubakar

He informed the Committee that he was in the company of the deceased Mahrus Wario at the time of the confrontation by the Police.

They were about eight people at the scene, which was common for the locals to wash by the riverside. He and the deceased were having a haircut. He said that there was commotion and shouting coming from a distance. As the Police officers approached, the youth they started hurling sticks at them.

The duo tried to escape by the riverbank but they fell into the river whose current was heavy. He further said he tried to swim to safety but kept being pulled downstream by the gushing waters. Finally he managed to get to safety by clinging onto a log. The deceased was swept by the raging waters and drowned. His body was found five days later. The witness was later arrested and accused for attacking a police officer. By the time he was released the deceased had been buried.

After taking evidence from the witnesses, the Members sought the following clarifications,

- If the intention of the police attacking the youth was known to the witnesses.
- Whether they had caused a disturbance before.
- How many police officers were at the scene?
- How long the second witness was in custody, and on what charges?
- What was the occupation the deceased and his age?
- What compensation was sought from the government for the deceased?

Mr. Abubakar responded as follows:

He believed that the police were hunting down a criminal who had escaped from custody thus their motive for the operation. The deceased and his friends had not caused any disturbance to warrant such police action. They were roughed Police officers.

He was jailed for two months on the count of attacking a Police officer with intention to avenge the death of his friend. The deceased was 20 years old and was a painter. There were other youths also arrested for various offences such as causing nuisance and disturbance.

No assistance/compensation was given, thus the local community petitioned the area MP to intervene on their behalf. The deceased had no prior confrontations with the police.

Mr. Geoffrey G. Kahiro, District Criminal Intelligent Officer (DCIO), Hola

The Officer informed the Committee that he was aware of a case pertaining to Mahrus Wario, who was allegedly shot dead by Administration Police in Hola and the body dumped in Tana River.

The Committee was informed that Julius Sang and Fataha Mining Company were the major players in the saga involving the mining of gypsum and the violence in Bura. The particular incident involved a standoff during which the OCS and GSU commander were injured.

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The body was later recovered from the river and positively identified as that of the deceased, by a Mr. Salim from Mikindani area.

The committee noted that despite the claim of machines worth millions of shillings having been destroyed at the Mine in Charidende, they had not seen any evidence on that claim when they visited Bura Constituency.

The witness informed the Committee that he was assigned to the area as at January 2011 and based his report on the statements of other officers in the area. The OCS was said to have received instructions from the OCPD to go and find out what was happening at Charidende. Not knowing that there would be resistance, he tried to persuade elders to calm the protesting residents.

Members raised the following concerns:

What action the police had taken regarding persons who had incited the Members of the public.

What action would be taken to avert such occurrences repeating themselves considering that the mining activities were to go on.

What the motive could have been towards the death of Mahrus Wario; and whether he was a targeted suspect or had any criminal record to prompt him to flee away from the police officer on patrol.

The Officer informed the Committee that;

The Complainant went to report the incident of disturbance at the mine to the OCPD. When the police arrived at the mine the number of protesters had risen from 30 to about 300. It was reported that an individual who had an interest in the mine was paying the youth to riot.

He further informed the Committee that an inquest file had been opened and there are ongoing court hearings where Members of the public were giving information. It was expected that once the process was complete the culprits would be arrested.

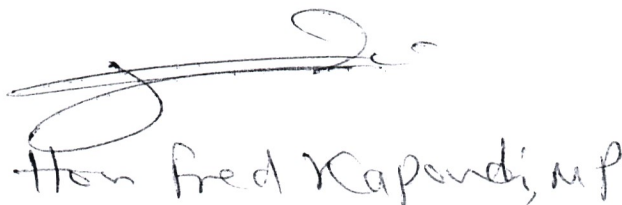
Mr. Kahiro believed that Mahrus Wario fled from the scene and jumped into the water as he may have been taking drugs when he was confronted by Police. However he could not verify that claim as no evidence was found.

The Chair therefore declared that the witness was unable to satisfactorily clarify the issues sought by the Members and directed that he consults widely and submits to the Committee a more conclusive written reply to the issues raised.

MIN. NO. 190/2011: ADJOURNMENT

There being no other business, the meeting was adjourned at forty five minutes after twelve o'clock. The next meeting would be called through notices to Members.

Signed:



Chairman.....

Date

17/05/11