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Implementation on Tuesday,
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REPUBLIC OF KENYA



NATIONAL ASSEMBLY
TENTH PARLIAMENT – THIRD SESSION

REPORT OF THE COMMITTEE ON IMPLEMENTATION
ON UNDERTAKING MADE BY AN ASSISTANT
MINISTER OF STATE FOR PROVINCIAL
ADMINISTRATION AND INTERNAL SECURITY (HON.
ORWA OJODE) ON TABLING OF REPORTS OF
COMMISSIONS IN RESPECT TO QUESTION NO. 182 BY
HON. MARTHA KARUA

OCTOBER, 2009

PREAMBLE

The committee on implementation was re-introduced following amendments to the standing orders adopted by the House on December 10, 2008.

The committee and its functions are provided under standing order 196 which states as follows:

- 1) There shall be a select committee to be designated the committee on implementation.
- 2) The Committee shall scrutinize the resolutions of the House (including adopted Committee Reports), petitions and undertakings given by the Government on the floor of the House and examine-
 - a) whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and
 - b) whether or not legislation passed by the House has been operationalised and where operationalised, the extent to which such operationalisation has taken place within the minimum time necessary.
- 3) The committee may propose sanctions to the House on any Minister who fails to implement the resolutions of the House.

The following are the members of the committee:

1. The Hon. Jamleck Kamau, MP - Chair
2. The Hon. Dr. Joyce Laboso, MP - Vice Chair
3. The Hon. Isaac Ruto, MP
4. The Hon. Gitobu Imanyara, MP
5. The Hon. Charles Onyancha, MP
6. The Hon. Benjamin Langat, MP

7. The Hon. Abdirahman H. Ali, MP
8. The Hon. Peter Gitau, MP
9. The Hon. Alex Mwiru, MP
10. The Hon. Daniel Muoki, MP
11. The Hon. Elias Mbau, MP

Let me take this opportunity to sincerely thank the members of the committee for their dedication to duty in undertaking the enquiry.

I also extend the appreciation of the committee to the Speaker and Clerk of the National Assembly for their support in facilitating its work that culminated into the production of this report.

It is now my honor and privilege to present and commend this report to the House.

Thank you

Signed:.....



(Hon. Jamleck Kamau, MP)

Chairman

Date:..... 10 - 11 - 2009

INTRODUCTION

The subject before the committee relates to Question No. 182 filed by the member for Gichugu, Ms. Martha Karua that appeared on the order paper on 4th June, 2009. The question was addressed to the Minister of State for Provincial Administration and Internal Security and read as follows:

- (a) what are the qualifications of each of the members of the newly created Taskforce on Police Reforms;
- (b) why the Taskforce was necessary considering that the Government had committed to implement the Waki Report on police reforms which was adopted by the House;
- (c) what became of the report of the National Taskforce on Police Reforms launched by the Ministry in 2004, the members thereof and their respective qualifications; and
- (d) how much money was spent in the 2004 Taskforce, the Waki Commission, and the amount budgeted to be spent by the new taskforce.

The question was answered by an Assistant Minister, Mr. Orwa Ojode. In a supplementary question, Ms. Karua sought to have the Minister table reports of other taskforces and commissions formed namely, Report of the Kiruki Commission on the Artur Brothers, Report of the Cockar Commission on the Sale of the Grand Regency Hotel, the Sharawe Commission Report and Prof. Alston's Report.

In response, the Assistant Minister, while declaring that the Government had nothing to hide, undertook to table, if so required through a substantive question, any report which has been received publicly by the appointing authority, but added that he could not lay a report which has not been received officially by the appointing authority.

The Chair then directed the Minister to table all the four reports that he had alluded to in his answer on Thursday, June 11, 2009. The Assistant Minister reiterated as follows:-

“... I want to be on record. If I am asked to lay on the Table any report which has already been received publicly by the appointing authority, I will do so.”

The matter was raised again in the House on 25th June, 2009 by Ms. Karua who sought the guidance of the Chair on when the four reports would be tabled as follows:

“On a point of order, Mr. Speaker, Sir. You will recall that three weeks ago, I had asked a Question relating to security and the Minister for Provincial Administration and Internal Security – and I can see Mr. Ojode here – was ordered and promised this House that he will table four reports of previous commissions of inquiry that have not been made public. One of them is the Kiruki Commission on the Artur Brothers. The others are the Cockar Commission on the sale of the Grand Regency Hotel, the Sharawe Commission on the Somalis of Kenya and finally, the Task Force on the Police Reforms of 2004. Maybe you could give us directions as to whether these reports which have not been tabled to date could be tabled next Wednesday.”

The Assistant Minister confirmed that his earlier undertaking was to table reports which have been publicly received by the appointing authority and did not include tabling a report which had not been publicly received and released by the appointing authority.

The Chair then enquired from the Assistant Minister why he had not complied with the undertaking made.

The Assistant Minister then undertook to table the reports as follows:

“Mr. Speaker, Sir, I undertake to do it next Wednesday.”

The Chair consequently directed as follows:

“It is so ordered! Table those reports without fail next Wednesday!”

Upon further interventions by Ms. Karua on the reports in question, the Chair guided the Assistant Minister as follows:

“Mr. Assistant Minister, you have given an undertaking to this House. The House is seeking compliance.....Mr. Assistant Minister; you will have to discharge your undertaking as made to the House without fail next Wednesday. Before that happens, your Minister, who includes the Assistant Minister will not transact any business in the House.”

The member for Gichugu again rose on a point of order and drew the attention of the Chair on 22nd July, 2009, and noted as follows:

“on a point of order, Mr. Temporary Deputy Speaker, Sir. This morning, the Hon. Assistant Minister of State for Provincial Administration and Internal Security tabled documents pursuant to an order by the Chair. However, I noticed that no one drew the Chair’s attention to the fact that the Chair had ruled very firmly that there would be no qualifications of the reports that should be laid on the table of the House, whether or not they have been made public. They have been made with public money and therefore, I wish to draw to your attention the fact that the earlier order by the Chair was not complied with this morning. We need the Report on the Artur Brothers, the Cockar Report on Grand Regency and the Sharawe Report on northern Kenya.”

The Assistant Minister responded that he had not, in fact, made an undertaking and added further that the Commissions of Inquiry Act (Chapter 102 of the Laws of Kenya) bars anyone from compelling the President, who is the appointing authority, to release a report from a Commission established under the Act.

The Chair undertook to study the Hansard and guide the House accordingly.

Subsequently, the Chair made a communication on 29th July, 2009 and, among other things, observed that:

“having found that under the law as it stands the President cannot be compelled to make public reports of commissions of inquiry subject to the Act, it is evident that the Minister made an undertaking to the House which he does not have capacity to honour. No interest will be served in holding the Minister to his word in a situation in which it is not legally possible for him to fulfill the undertaking. This House, as I have repeatedly said before, should not act in vain. I therefore rule that the orders made by the Chair on 25th June, 2009 requiring the Minister to produce the reports requested by the Hon. Karua and barring the Minister from transacting business in this House until the reports are produced be and are hereby vacated forthwith.”

The matter was consequently referred to the committee on implementation to investigate and report to the House within two months.

The committee wrote to the Assistant Minister inviting him for a meeting on Tuesday, 8 September 2009. However due to prior travel commitments, the Minister was unable to appear before the committee on that date. The meeting was rescheduled to Friday, 2nd October 2009 when the Assistant Minister appeared before the committee.

Arising from the meeting with the Assistant Minister and after examining the Hansard reports of proceedings specifically those of June 25, 2009 when the matter featured in the House, the committee made the following notes and observations:-

NOTES AND OBSERVATIONS:

1. The Assistant Minister indeed undertook to table in the House the reports of the taskforces/commissions;
2. The conduct of the Assistant in defying the directive of the Chair and in giving an undertaking that he had no capacity to honor was detrimental to the dignity or orderly procedure of the House; and,

3. The question of whether or not the House has power to compel the President to release to the public reports of taskforces established under the Commissions of Inquiry Act is a matter which is not within the jurisdiction of the committee.

RECOMMENDATION

Arising from the foregoing, the committee recommends that the action of the Assistant Minister be deemed to be disorderly conduct as provided under the provisions of standing order 97 (1)(j) and hence be ordered to withdraw from the precincts of the Assembly for two sitting days.

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