

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 14<sup>th</sup> October, 2014

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATIONS FROM THE CHAIR

#### NON-COMPLIANCE WITH LAW ON PUBLIC COLLECTIONS

**Hon. Speaker:** Hon. Members, I have received a letter, Ref. EACC7/10/Vol. II (108), dated 17<sup>th</sup> September, 2014, from the Ethics and Anti-Corruption Commission (EACC), indicating that the Commission is concerned that some Members of the National Assembly have continuously engaged in public collections, contrary to the legal provisions governing public collections and *Harambee*. The Commission has requested me to bring to your attention the provisions of Section 18 of the Leadership and Integrity Act, 2012, which provides as follows:-

“18(1) A State officer shall not solicit for contributions from the public for a public purpose unless the President has, and by notice in the Gazette, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law.

(2) A State officer shall not participate in a public collection of funds in a way that reflects adversely on the State officer’s integrity, impartiality or interferes with the performance of their official duties.”

Further, Section 13 of the Public Officer Ethics Act, 2003 provides as follows:-

“13. A public officer shall not-

(a) use his office and place of work as a venue for soliciting or collecting *harambees*; or,

(b) either as a collector or promoter of a public collection, obtain money or other property from a person by using his official position in any way to exert pressure.”

Hon. Members this is, therefore, to bring to your attention the content of the said letter – which is self-explanatory – from the EACC and direct the Clerk of the National Assembly to distribute copies of the same to all of you for your information and necessary action.

Thank you.

*(Loud consultations)*

Hon. Members, what is important is for you to note that I am merely a conduit through which that letter and its contents were to be communicated. It is copied to, among others, the Director of Public Prosecutions. Since this is a matter on which hon. Members might want to say one or two things, I will allow a few comments. Please, be brief.

Yes, hon. Kaluma.

**Hon. Kaluma:** Hon. Speaker, this matter is so serious that it requires a bit of time for us, as hon. Members, to speak to. The Constitution requires us, as Members of Parliament, to deliberate on and, of course, resolve issues of concern to our people. If I may tell my colleagues what necessitates our interventions by way of what I call “fundraisers”, the best school in my constituency is Homa Bay High School. In the last one month, three dormitories were burnt down. In fact, Form Two and Form Three students have been away. They have not even sat for their end-year examinations. We do not have enough money. Who is better placed to mobilise the community to raise funds for us to have new dormitories before the new term begins? So, I was going to say that, in as much as the document has come to all of us, really, the EACC needs to appreciate and fully understand the roles that we play. The Commission should not be focussed on petty issues at the expense of the serious issues of corruption facing this country.

Thank you, hon. Speaker.

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

**Hon. A.B. Duale:** Hon. Speaker, your direction is very clear but we need to make it clearer. In the last Parliament, we spoke as to when a Member of Parliament or a State officer; governor or senator is barred from conducting *Harambee*. A timeline of eight months to a general election has been provided.

Secondly, your Communication talked about soliciting funds, where a Member of Parliament moves round offices looking for money. The law does not bar us from raising funds by calling people together. I can call upon hon. Mbadi, hon. Gumbo and others to contribute towards a good course. I presided over a successful *Harambee* for hon. Gumbo the other day. I expect him to reciprocate and preside over one in Garissa, the communication notwithstanding. That is for clarity.

The EACC have serious issues to deal with in our country. There are issues of accountability. They know that we even conduct fundraising for funerals. Even today, at the rise of the House, Members of Parliament are expected to grace such occasions at a number of places, including the Professional Centre. That is an opinion. We should not go and solicit for money but if there are *Harambees*, please, invite us. We will contribute. Some of us believe in giving. The Quran and the Bible say: “Give and you will get more.” We build mosques and *madrassa*. We pay bills for the sick. *Harambee* is based on the African culture.

Hon. Speaker, I thank you very much because you said you are just a conduit, or conveyor belt. You just gave what the EACC said but my colleagues should not shy away from contributing to fundraisers. Even today, if there is a fundraiser for a family that has lost one of their own, let my colleagues pass by my office. I will look at my wallet and share with them what I have. Hon. Kaluma, we are supposed to raise funds to build a mosque in Homa Bay Town. I will be the chief guest of the planned *Harambee*. Do not be deterred. We will go to Homa Bay together and build the mosque.

**Hon. Speaker:** Hon. Members, as I said, I am merely a conduit. I will give a chance to a few more Members. Of course, the late Prof. Ali Mazrui – may God rest his soul in eternal peace – did indicate in his many writings that sometimes there is a thin line between soliciting and operating within what, in the African culture, is known as “reciprocal goodwill”. I am sure hon. Olago Aluoch wants to expand on this matter.

**Hon. Aluoch:** Hon. Speaker, the communication from the EACC was directed to you but since you have brought it to the Floor, give us a chance to ventilate on it.

In my view, the whole of that letter is based on a wrong interpretation of the law. The fundamental word that flows through all the sections in the letter is “solicit”. Hon. Members do not solicit. Other people solicit from us. That is a fact. It should be understood that the EACC is supposed to be concerned with economic crimes and anti-corruption matters. Helping a church is neither corruption nor an economic crime. To that extent, therefore, may we make it clear to the author of that letter, and all those who think like him, that we are disobeying it.

*(Several hon. Members stood up in their places)*

**Hon. Speaker:** Hon. Members, I have told you that I am merely a conduit. I am the conveyor of that information. I would be failing in my duty if I do not bring such information to your attention. That is why I directed the Clerk to distribute copies to each one of you. You do not shoot the messenger. I agree with you, hon. Olago Aluoch. It is, really, a matter of interpretation.

Yes, hon. Kamama!

**Hon. Abongotum:** Hon. Speaker, the *Harambee* concept is contained in our Coat of Arms. Just above your head, we have our Coat of Arms. Below it, it is written “*Harambee*”. Even on the Coat of Arms behind hon. Members’ seats, it is written “*Harambee*”. It is a concept which was conceptualised by our forefathers – previous leaders like Tom Mboya and others. It is an African socialist spirit of assisting one another. I know that a committee which was chaired by hon. Koigi wa Wamwere collected views across the country and recommended that *Harambee* should be stopped. However, we must draw a line between soliciting for money and donating money. In our case, we donate. We do not solicit. So, let the EACC look for those people who solicit. As Members of Parliament, we donate to funeral fundraisers to bury our brothers and sisters who have left us, and pay medical bills as well as contribute towards church building. The *Harambee* spirit is too African to be interfered with. We want that spirit to continue because we are Africans. We are not Europeans.

Thank you.

**Hon. Speaker:** Yes, hon. Wanga.

**Hon. (Ms.) Nyasuna:** Hon. Speaker, I know that there are some hon. Members who were saying: “I can now tell my constituents that the law has barred me from conducting *Harambee*.”

As it has been said, the *Harambee* spirit is the spirit that we live on. Some of us have gone through school on the basis of people contributing to our cause. What the EACC should deal with is where the process of *Harambee* is misused and corruption perpetrated through it. It should not be that we stop making contributions. We hardly

solicit for money. Our constituents are the ones who constantly solicit for money from us. We constantly contribute to *Harambees*. Truth be told, sometimes you find that there are too many *Harambees*. Some people just decide to conduct a *Harambee* today, tomorrow and the day after tomorrow. This is where we must come in to provide in the law mechanisms for planning *Harambee* in a manner that does not expose hon. Members to too much pressure that may force them to seek other ways of raising money to keep on contributing to *Harambee*, or push them to a point of soliciting for money. That is how we should resolve the issue. It is not so much as to not give money at fundraisers. We will continue doing so because even if we do not, those who want to run against us in the next general election are all over, distributing money all the time. Our constituents will say that those are the people who help them, and not the sitting Members. This letter is a way of ensuring that we do not get re-elected to this House during the next general election.

**Hon. Speaker:** Hon. Members, I hope that you will take copies of the letter. You had better look at its content because it is important. We are not saying that hon. Members are using their positions to solicit for funds. To the extent that anybody may be alluding to that, they are totally mistaken. I do not think the Leader of Majority Party uses his position to solicit for *Harambee* from hon. Members.

Yes, hon. Kajuju.

**Hon. (Ms.) Kajuju:** Hon. Speaker, I appreciate the fact that you are saying that this letter was just brought to you for notification. It is not an order. Neither does it require you, as the Speaker of the National Assembly, to go beyond its content. Therefore, we can even afford to treat it with the contempt it deserves.

There is what we call the “letter” and “the spirit of the law”. You cannot use the “letter” to destroy “the spirit of the law”. The EACC is supposed to tell us what is unethical about us assisting our constituents. To the extent that they do not do so, their letter does not hold any water. Neither is it worth the paper that it is written on. Hon. Members of this House conduct what we call “corporate social responsibility.” In the course of representing my people, I cannot be told not to help them with the little that I have. They are actually saying that we do not use our salaries to help the people. We use the little that we earn to assist our people out of all manner of problems.

As a matter of fact, this coming weekend – on Friday and Saturday – I will be visiting Homa Bay and Migori County because my colleague, the area county representative, has not been to her county since the day she was involved in an accident. She has invited me to accompany her to Migori County and to be with her. If I take a little money out of the salary that I get from Parliament and contribute to a worthy cause, what will be wrong with that? So, the letter should not be taken by this House to be of any legal significance. We should continue to assist our people, as expected of every elected Member of this House.

**Hon. Speaker:** Very well. But remember, Members, my business is to communicate.

*(Laughter)*

Yes, hon. Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Speaker, I think most of what I wanted to say has been said. However, I have a problem with the idea that when we refer to State officers, we always try to narrow down to Members of Parliament. I think that is discriminatory. State officers, as far as I know, include the President, the Deputy President, Cabinet Secretaries and even members of county assemblies (MCAs). In so far as that advisory has not been issued to those other bodies, I think it is discriminatory.

Secondly, as has been said eloquently by my colleagues, I think the word “*Harambee*” is synonymous with the name “Kenya”. You cannot try to destroy a good cause merely because of one or two instances of people misusing the same.

As has been said very well by my colleague, hon. Florence Kajuju, we should be told when we give for a worthy cause what is unethical, or what is corrupt about it. As long as that cannot be said, it is impossible. In fact, I will say that, that advisory definitely must be in vain. This is because it is not implementable. We come across emergencies all the time and if we have to rush to the President to give us an authorization, we will not be doing anything else.

So, I agree with my colleagues that that advisory is in vain; it is the sort of advisory that we collectively, as a House, must ignore.

I thank you, hon. Speaker.

**Hon. Speaker:** I quite agree with you, hon. Gumbo to the extent that even that letter – and I want you to look at it – purports to only address Members of the National Assembly.

**Hon. Members:** Yes, *toboa!*

**Hon. Speaker:** It is selective in application. So, the only State officers who conduct *Harambees* are Members of the National Assembly!

Hon. Members, this was not the business we wanted to transact today. This was merely to communicate and welcome you back from the long recess. That was information about what it is that has been passed on to me for onward transmission to yourselves and for your consumption. I think we can proceed with the other business that is available.

**Hon. Cheboi:** Thank you, hon. Speaker. I come from a KANU background where contributions were, and still are the order of the day. I am quite concerned with that advisory or letter, that has been conveyed to us through you. Some of us being very strong Christians, first have absolutely no choice but to contribute to our churches in terms of tithes. We do not even call them *Harambee* contributions; we call them in our own language *sadaka maalum*. That will be totally unacceptable to some of us because it will actually attack our own faith.

Hon. Speaker, it is good to differentiate between soliciting and contribution. We are contributors and the people who solicit are our constituents, who elected us. Those people are not State officers. If this goes beyond what it is, we might have to consider removing ourselves constitutionally from being State officers, so that we can continue with nation-building through contributions. I think that is in very bad taste, and I thank you for making that communication at the earliest opportunity so that we can attack it through all legal avenues.

Thank you, hon. Speaker.

**Hon. Elmi:** Thank you, hon. Speaker. I just want to contribute to this debate which is very good, so that we can know where this came from. A whole committee of this House went round and came up with a law which this House passed. The letter is very clear. If you are not soliciting or not doing what the letter is saying, you are not being told not to give. Nobody stops anybody from giving. So, when a constitutional commission created by this House is doing its work, it is wrong in my view to say that the ink used in writing the letter is not worth that. Let us be sober and read the letter. If we think the law is wrong and times have changed in Kenya, we should change it.

Hon. Speaker, there was a time in this country you could not get an identification card (ID). You had a *Harambee* book at the door. There was also a time you could not see your Member of Parliament without him asking for a contribution to a *Harambee* he was attending. So, this country has seen the worst of *Harambee*. If we want to return it there, let us state exactly what we want to do. If we want to change the law, let us change it. We should not have the Commission as the scapegoat for dealing with it.

Hon. Speaker, for your information, hon. Duale talked of six months. The six months were put in by the last Parliament. Members complained that it was illegal to conduct *Harambees*, yet our competitors were conducting *Harambees*. So, a clause was inserted to read “six months before elections”. If you want to vie for a seat, you cannot conduct *Harambee*. That was how that provision was brought up.

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, that provision is in the Elections Act of 2011, for your information. It was passed by the Tenth Parliament. It is true that, that provision is in the Elections Act: You do not conduct *Harambees* eight months to the date of the election.

**Hon. K.K. Kinyanjui:** Thank you, hon. Speaker. The fact of the matter is that even the Bible and the Quran state categorically that the hand that gives is the one which is blessed. The writer of this letter wants the entire House to be under the curse of our Heavenly Father. Why should we accept a curse when we are seeing it?

Secondly, this is a scheme for getting us out of this House. Our competitors are all over the constituencies. They are touring 290 constituencies conducting *Harambees* here and there, or left, right and centre. It is for this reason that we are also supposed to help our constituents. For example, when there was no Constituencies Development Fund (CDF), if you ask in the history of Nyandarua County, K.K. in particular was the “CDF” of my constituency. I was the one doing the primary schools, secondary schools, churches and health centres from my own resources. It is for that reason that I was elected unanimously. About 90 per cent of the voters said that this is K.K.’s time because he has given all he had or 90 per cent of my wealth had gone to the public. I would like to say that 90 per cent of my salary goes to my constituency.

How on earth would somebody tell me not to contribute? One of my competitors passed on. It is unfortunate that Bishop Methu passed on and he was not in a good financial position. We laid him to rest in Lang’ata cemetery last week. The family did not have anything. They looked upon me as their leader to give some money for hospital bill and lay him to rest at Lang’ata cemetery.

Honestly, if somebody tells me that I will look at my brother, my competitor and my constituent suffering when I am endowed with resources, definitely that is a curse from my Heavenly Father, which I am not ready to suffer.

I am prepared to fight with the Ethics and Anti-Corruption Commission in a court of law, but I will not watch my constituents suffering, or dying, and fail to help them when I am endowed with resources. I will not be a leader worth living when I am endowed with enough resources to make sure that my constituents are comfortable, yet I do not help them. This is completely unacceptable; it is inhuman and I do not even know what I can call it. I would like to get professionals to come up with a better term that can be understood. However, I defy this and I will request the drafters to draft a Motion before the end of the day to be brought before this House, so that all of us stop being State officers, so that we can conduct our business the way we know.

**Hon. Speaker:** Hon. Members, those who are endowed and those who are not endowed, you will express yourselves.

Yes, hon. Dennitah Ghati.

*(Hon. Simba stood up in front of hon. (Ms.) Ghati)*

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

**Hon. Speaker:** Hon. Simba, allow me to see hon. (Ms.) Ghati.

**Hon. (Ms.) Ghati:** Hon. Speaker, I am at the back here. I am equally concerned about the communication. We have grown to know *Harambee* in this country. *Harambees* are synonymous with Kenya and we have been educated through them. I have been educated through *Harambees*. We give to churches. I am concerned why this communication applies to Members of this House, and does not apply to other people out there. That is where my concern is. I know even you, hon. Speaker, has been involved in many *Harambees*. Those of us who are blessed in a certain way to contribute whatever you have to build a church, a school, or even uplift a women's group, that is not soliciting. It is helping.

*Harambees* have been in this country for quite a long time. We have known *Harambees* to be the order of the day and so I am concerned. As my colleague, hon. (Ms.) Kajuju, has said, for the very first time since I had an accident, I am going to hold a *Harambee* for a women's group in my county. This is something that I am concerned about; it will apply to a selected group of people when other people like our competitors are doing *Harambees*. That will not be in order.

**Hon. (Ms.) T.G. Ali:** Hon. Speaker, I think *Harambees* are very important to our community. I know that after elections and the campaigns, quite a number of people were elected on the basis that they had done a lot of things for their communities. We know that we do not have enough even after devolution, or *pesa mashinani*, at the county level. We do not have enough health facilities; we do not have enough schools or enough bursaries for everyone. So, most of the time, different people approach those who are kind to support them. I think the Ethics and Anti-Corruption Commission needs to concentrate more on where people use the taxpayers' money to attend *Harambees*. I have a case where in some counties we have governors moving around in big vehicles with a whole contingent of their officers and using taxpayers' money.

The issue of individuals giving their contributions should be allowed, so that they can help communities to alleviate poverty and help them to move to the next level, the way they have helped us. I support that hon. Members should be allowed to contribute

their money to *Harambees*. If other State officers out there who are not Members of Parliament hold *Harambees* and they happen to be our competitors, they should be stopped if they are using their offices, Government machinery and money.

**Hon. Onyura:** Hon. Speaker, thank you for allowing me to add my voice to the debate on this matter. I am thoroughly baffled by this communication. I have heard it said that the law is an ass. So in this case, I do not know whether this law is the one that is an ass, or those who drafted this note are. I am very careful; it is not the one who was sent to communicate to us. It may not be a simple matter as it looks on the surface; this is something that all Kenyans engage in all the time to support their children, churches or many other activities. It is not something that can be wished away like this. If it is going to be, I would like to call upon the champions of “*Okoa Kenya*” and “*Pesa Mashinani*” to include this question in the referendum, so that Kenyans can decide whether they want us to continue the way we have been doing. In any case, this will be a very difficult law to enforce and I support that we disobey it.

**Hon. (Ms.) Leshoomo:** Mhe. Spika, naungana na wenzangu pia kuhusu Harambee. Kwa kweli, Harambee zinasaidia Wakenya ambao hawajiwezi. Hii ni kwa sababu sisi kina mama wa kaunti tunatumia mifuko yetu. Hatuna ndururu katika CDF ama pesa za kaunti; kwa hivyo, Harambee ziendele ndipo kile kidogo tulicho nacho kisaidie wale ambao hawajiwezi. Tuna watoto mayatima; tuna watoto hawajiwezi; tuna watoto wanafukuzwa shuleni. Kwa hivyo, nimeungana na wenzangu kusema ni muhimu tuendele na Harambee.

Kwa kweli pesa ambazo zinatoka CDF kama *bursary* na za kaunti hazitoshi. Hospitali zina wagonjwa na hawana pa kuelekea na ni lazima wawe na Harambee. Tukifunga Harambee, hao wagonjwa watasaidikaje? Watoto ambao hawajiwezi wataenda wapi? Kama kuna njia ya kuwa na sheria ya kuwasaidia wasiojiweza Harambee iondolewe. Ninasema Harambee itaendelea. Kama kuna sheria nyingine, wale wasiojiweza pia watafutiwe njia ya kujisaidia.

Kuna mambo mengi. Kuna mwenzangu ambaye ameongea kuhusu “*Pesa Mashinani*” na sahihi za watu; haiwezekani kuhusisha Harambee na hizi sahihi. Hakuna haja ya kuongea kuhusu jambo lililopita kitambo na kulihusisha na Harambee.

**Hon. Speaker:** Hon. Members, I appreciate that there are so many of us who want to contribute to this but we must put an end to it.

**Hon. Mwadeghu:** Mhe. Spika, naomba nitoe mchango wangu kuhusu Hoja hii. Kitu cha kwanza, hata huenda ikawa wengi wa Wabunge ambao wako hapa, walisoma kupitia michango ya harambee. Ninajua kwamba ndugu yangu, Chris Wamalwa, alisomeshwa kwa Harambee. Hata ndani ya hili Bunge leo, tuna wageni ambao ni wanafunzi. Nimewaona huko juu kwa *gallery*; wengi wao wanasomeshwa na fedha za Harambee.

Wabunge wamejitoa muhanga ili kusomesha ndugu zao, watoto wa dada zao ama kaka zao. Kwa hivyo, kusema kuwa kuweko kwa Harambee kunaua ule moyo wa kutoa wa wananchi wetu si sawa; ninakubaliana na msemaji wa hapo awali. Alisema hata juu ya kichwa chako kuna neno “*Harambee*”. Sisi ni nani tuanze kusema hatutaki Harambee?

Ningeomba niisome hiyo barua kwa kina na niielewe. Inasema tusitoe Harambee ama tusiombe pesa za kutoa katika Harambee? Vile nimeielewa, anaomba tusiende kutafuta hela huko nje za kutoa kwenye michango; lakini kama mimi binafsi nina hela

zangu, nina nia ya kumsaidia mtu fulani, nani hapa nchini anaweza kunizuia kumsaidia mtu fulani? Hata Jumapili ijayo, Rais atakuwa katika sehemu yangu ya uwakilishi Bungeni, na atakuwa anachangisha pesa. Mnataka kuniambia nisiende nikachangie shule? Mimi naye tutapelekwa kortini?

Kama vile mwenzangu amesema, ni kweli kuwa hiyo barua ina ubaguzi. Imelenga Wabunge peke yao; imeacha watu wengine. Naomba tuangalie hilo jambo vizuri; ikiwa Wabunge wamejitolea kutoa mchango wao kusaidia wagonjwa, shule na kadhalika wasiwekewe vikwazo na mtu yeyote. Naomba ndugu yetu wakati huu aanze kufikiria mwenzake. Alianza kuzozana na Wabunge katika Bunge la Kumi na kilichompata kilikuwa ni kuondolewa kutoka kazi yake. Singependa twende njia hiyo; inafaa tuwe na tahadhari.

**Hon. Speaker:** Very well. That was merely communication. I know that there are so many requests. There are over 50 requests; therefore, it is not possible, hon. Members. Every hon. Member contributing is saying the same thing. I think the message is clear to all hon. Members who need to hear. A communication has been read out to you and it has been given to you. What you have said are your reactions to that communication. In order for us to transact more business--- I am sure you will be able to contribute to the rest of the business.

#### INTRODUCTION OF DELEGATION AT THE SPEAKER'S GALLERY

Hon. Members, before we proceed to the next Order, I wish to recognize seated in the Speaker's Gallery, a delegation of Members of the County Assembly of Nyeri, from Nyeri County. Also to be recognized are the following institutions:-

1. The P.C.E.A Education Centre, Ongata Rongai, Kajiado County
  2. Kinyago Dandora School, Nairobi County.
  3. School of Tomorrow Oaks Academy, Nairobi County.
  4. St. Charles Uvuoni Secondary School, Yatta Sub-County.
  5. Gathungururu Primary School, Murang'a County
  6. Gikurene Secondary School, South Imenti
  7. Kambwera Academy, Nairobi County
  8. Changina Primary School, Emurua Dikirr
  9. They are all welcome to the debate and proceeding of the National Assembly.
- Next Order.

#### MESSAGE

##### RECONSIDERATION OF STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Speaker:** Hon. Members, I have the following message from His Excellency the President on the Statute Law (Miscellaneous Amendments) Bill, 2014.

Hon. Members, you may recall that during the month of August, 2014, the National Assembly passed the Statute Law (Miscellaneous Amendments) Bill, 2014. Thereafter, I presented the Bill for assent to His Excellency the President on 14<sup>th</sup>

September, 2014; in accordance with the provisions of the Constitution and our Standing Orders. However, on 23<sup>rd</sup> September, 2014, His Excellency the President, by way of a memorandum, referred the Bill back to the National Assembly for reconsideration, pursuant to Article 115 (1)(b) of the Constitution.

Hon. Members, I have on two previous occasions guided this House on the manner of considering a Bill which has been referred back to the National Assembly by the President. Just as reminder, Article 115 (4) of the Constitution provides the following, and I quote:-

“Parliament after considering the President’s reservations may pass the Bill a second time without amendment or with amendments that do not fully accommodate the President’s reservations, by a vote supported –

(a) by two-thirds of the members of the National Assembly.”

Standing Order No. 154 requires the National Assembly to consider the President’s reservations within 21 days. Since the memorandum was submitted at the time when the House was on recess, the time started counting today, the 14<sup>th</sup> October, 2014, being the first day of this part of the session and it should be concluded on or before November, 4<sup>th</sup> 2014.

Hon. Members, therefore, in that connection, I now direct the Departmental Committee on Justice and Legal Affairs to examine the reservations by His Excellency the President, with a view to guiding debate when the reservations are considered by the House. The Committee should table its report on or before Thursday, 23<sup>rd</sup> October, 2014, so that the Bill can be tabled for consideration in the Committee of the whole House during the week commencing 28<sup>th</sup> October, 2014.

Hon. Members, I wish to remind the House and the Committee that only clauses of the Bill that have reservations will be considered. I also direct the Clerk to circulate the memorandum from the President to all hon. Members, so that they can familiarize themselves with its contents.

Thank you.

## PETITION

### EVICITION OF TWIGA FARM RESIDENTS

**Hon. Speaker:** Hon. Members, Standing Order 225(2)(b) requires that the Speaker reports to the House any petition other than those presented through an hon. Member.

I, therefore, wish to convey to the House that my office has received a petition regarding citizens allegedly evicted from Twiga Farm, LR No. 9312, LR No. 9313 and LR No.3760, Juja Constituency.

The Petition, which is signed by more than 600 members of a group referring to itself as Twiga Farm Evictees, is praying that the House:-

1. causes the carrying out of a thorough audit to determine the bona fide owners of the Twiga Farm, as aforesaid;
2. explores ways of causing compensation and repatriation by the State of those petitioners and their families;

3. recommends investigations to be carried out by the Criminal Investigation Department (CID) on the culpability of all State/public officers involved in the eviction of the petitioners.

Hon. Members, this Petition, therefore, stands committed to the Departmental Committee on Lands for consideration. The Committee is requested to consider the petition and report its findings in accordance with Standing Order 227 (2).

Thank you.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table:-  
Presidential Address delivered on 6<sup>th</sup> October, 2014, pursuant to Standing Order No. 24(5)

The National Cohesion and Integration Commission (NCIC) Annual Report for the period 2012/2013, in accordance with Section 41 of the NCIC Act, 2008.

The Power of Mercy Advisory Committee's Annual Report for the Financial Year commencing 1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014, in compliance to Section 29 of the Power of Mercy Act, 2011.

The Ethics and Anti-Corruption Commission Report for the period from 1<sup>st</sup> October, 2013 to 31<sup>st</sup> December, 2013 in accordance with Sections 35 and 36 of the Ethics and Anti-Corruption Act, 2003.

The Kenya Wildlife Service (KWS) Annual Report and Financial Statements for the year ending 30<sup>th</sup> June, 2013, and the certificate of the Auditor-General therein.

The Annual Report and Financial Statements of the National Crime Research Centre for the year ended 30<sup>th</sup> June, 2013, and the certificate of the Auditor-General therein in accordance with Section 17 (10) of the National Crime Research Centre Act.

The Annual Report and Financial Statements of KASNEB for the year ended 30<sup>th</sup> June, 2013 and the certificate of the Auditor-General therein.

The Annual Report and Financial Statements of the New Kenya Co-operative Creameries Limited for the year ended 30<sup>th</sup> June, 2013

*(Loud consultations)*

**Hon. Speaker:** Order, Members! The consultations are too loud. I know you have just come from your recess, where you may not have been to consult in low tones in the villages.

**Hon. A.B. Duale:** Hon. Speaker, I will continue with the laying of Papers.

The Annual Report and Financial Statements of the National Social Security Fund (NSSF) for the year ended 30<sup>th</sup> June 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya National Highways Authority (KENHA) for the year ended 30<sup>th</sup> June 2013 and the certificate of the Auditor-General therein.

Thank you.

**Hon. Speaker:** Hon. Peter Shehe.

**Hon. Shehe:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today Tuesday, 14<sup>th</sup> October 2014:-

The First Report of the Committee on Privileges regarding absences and conduct of Members of the National Assembly.

**Hon. Speaker:** Very well. Next Order.

### NOTICES OF MOTIONS

#### ADOPTION OF FIRST REPORT OF THE COMMITTEE ON PRIVILEGES

**Hon. Shehe:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the First Report of the Committee on Privileges regarding absences and conduct of Members of the National Assembly.

**Hon. Speaker:** Very well, Leader of Majority Party.

#### THANKS FOR EXPOSITION OF PUBLIC POLICY

**Hon. A.B. Duale:** Hon. Speaker, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Standing Order No.24(6), the thanks of the House be recorded for the exposition of public policy contained in the Address of the President delivered on Monday 6<sup>th</sup> October, 2014 laid on the Table of the House today Tuesday, 14<sup>th</sup> October, 2014.

**Hon. Speaker:** Next Order.

### STATEMENTS

#### APPEARANCE BEFORE COMMITTEE ON GENERAL OVERSIGHT

**Hon. A.B. Duale:** Hon. Speaker, I need to make a Statement regarding the Committee on General Oversight that met this morning.

Hon. Speaker, as you are aware, the House amended the National Assembly Standing Orders to operationalise Article 153(3) of the Constitution, and allowed the appearance of Cabinet Secretaries before the Committee on General Oversight as required by Standing Order No.170E. I prepared and availed the agenda of the Committee meeting last week. Indeed, the Committee had its first meeting today, Tuesday 14<sup>th</sup> October, 2014. However, because of communication breakdown, and possible problems of perception towards the operations of the Committee, two CSs who were scheduled to respond to Questions did not appear. I wish to assure the House that the two Cabinet Secretaries will have to avail themselves in the subsequent meetings of the said Committee.

Hon. Speaker, one of the greatest challenges to the operations of the House is the failure to understand parliamentary proceedings. In fact, many, including the technical

officers who accompanied the Cabinet Secretaries, were surprised by the absence of the Mace and the usual strict procedures associated with the plenary of the House. This is, therefore, to tell all Members of Parliament that we should be united in promoting the values of the Constitution and constitutionality.

Hon. Speaker, I want to make it very clear that the Committee on General Oversight is like any other committee of this House and this morning we even had a chance to sit at County Hall, which can accommodate more than 150 Members of Parliament. What we did this morning was the same. Amendments were made to the Standing Orders when we allowed, under a presidential system of Government, the Cabinet Secretary for the National Treasury to come to the House every June 15<sup>th</sup> or thereabout and present the Budget.

Hon. Speaker, that begs the question why Mr. Nyachae and many others did not raise a question when this House amended the Standing Orders and allowed Cabinet Secretary, Henry Rotich to come and present the Budget of the whole nation in a Committee of the whole House?

Hon. Speaker is mandated by the House under Standing Order 170E. I will ensure that by the end of the day a schedule of next week's meeting will be ready for dispatch to respective Cabinet Secretaries in good time.

Hon. Speaker, today we had Cabinet Secretary, Charity Ngilu and I want to apologise on behalf of her two colleagues, and say that next Tuesday they will appear before the Committee of the House and answer questions.

Hon. Speaker, I think it is time that the likes of the Chair of the Commission for the Implementation of the Constitution (CIC), my very good friend, Charles Nyachae, knew that he is not the only one who went to a law school. He is not the only one who can read the Constitution. He cannot threaten people that if they do not go his way he will go to court. Courts belong to Kenyans. Courts do not belong to the CIC. They do not belong to Charles Nyachae. They do not belong to other people, but belong to the people of Kenya.

Hon. Speaker, I rest my case and assure the House that today we had a good session with Mrs. Charity Ngilu. We should look at the day from the presentation made by Mrs. Charity Ngilu and treat the other two Cabinet Secretaries the way we treat other members of the Executive who fail to appear before various committees after being summoned. What do you do when they do not come? They give a reason and they are given another opportunity. So, I want to urge my colleagues that there is nothing that has been lost and that we will continue and we expect that the Committee on General Oversight, just like the Public Accounts Committee (PAC), the Public Investments Committee (PIC) and all other committees, will operate within the provisions of the Standing Orders.

Thank you, hon. Speaker.

**Hon. Speaker:** Well, hon. Members, while we were in the Committee I promised that when we sit in plenary as a House, I would allow, after getting the communication from the Leader of Majority Party, as many of you as possible to say one or two things about that process. Let me give the hon. T.J. Kajwang the first opportunity to make his contribution.

**Hon. Kajwang:** Thank you, hon. Speaker for allowing me to add my voice to the debate on this matter. I want to welcome sincerely the statement and the forthright information given to us by the Leader of Majority Party concerning this; I want to urge Members that we need to treat these Cabinet Secretaries in such a way that we will all move together towards the new dispensation that we are trying to create.

I want to think that what we saw this morning must have been the teething problems we have with understanding the Standing Orders and procedures of this House. These are new amendments that they will have to live by if they have to live in this country. This is because there is only one country with one Constitution and these Standing Orders have been prepared pursuant to that Constitution.

I was also going to say that even if the officers vanished, I think next time the best way to handle an officer who is errant is to invoke Standing Order No.125 and bring an officer here under summons. This morning Charity Ngilu did not appear before us on summons; but should there be a reason for invoking Standing Order No.125, there should be no single Cabinet Secretary, or anybody else, who will want to take the orders of this House lightly.

However, hon. Speaker, allow me to congratulate you and also congratulate this House on behalf of the Procedure and House Rules Committee. I have the authority of the first Chairperson to say this on behalf of the members of the Panel; that we are grateful that a baby that we midwived has now come of age.

Hon. Speaker, we need to congratulate ourselves since we have implemented the Constitution.

Article 153 is, therefore, fully implemented and we can now have full and regular reports coming from the Cabinet Secretaries before the National Assembly, whether in Committees or otherwise, so that we are able to do what Article 94(4) expects us. Article 94(4) says that we should not only discuss but resolve issues of national concern. There is only one way in which we are going to resolve issues; if we are able to discuss and have a conversation with the people who implement the things that we pass here--- Ours is to oversee. Ours is not to implement, but we need to tell them so that they know how to implement.

Having said that, there are two people in this country whose advice we need to be very wary of. One is the Attorney General. The way he is going, he is becoming a very bad advisor to the President. The amendments came before this House and were fully debated. Another set of amendments were again proposed before this House, fully debated and approved. Any conscientious Attorney General follows the proceedings of the National Assembly. If he does not follow them, then he is not an Attorney General of this country. So, he must have seen us agonizing and debating these issues and presenting them before the country; the 290 Members and the other Members who make the National Assembly agree that this is the way to go. For the a person who advises the President to engage in correspondence which flagrantly abuses the integrity and the dignity of this House, I found that to be reprehensible.

Hon. Speaker, I do not advise you, but these are people whom the Speaker's Office must never talk to directly. The Attorney General should talk to the Clerk of the National Assembly and some of those officers. The Speaker is the head of this institution. I find it a little abusive of the integrity of this House that an Attorney General should

think that he should use privilege to discuss directly such issues with the Speaker of the National Assembly in the media rather than through the normal course of business. If there is a problem that the Attorney General--- If it is a question of intellectual prowess that the Attorney-General wants to show us in this National Assembly, then we will discuss with him within the confines of the Constitution.

The second person is the fellow known as the CIC Chairman. I even forget his title because his term is almost spent. I suggest that the Chairman of the CIC comes before us; I am talking about the Departmental Committee Chair. I plead that the Departmental Committee Chair should bring to this National Assembly an audit of what these people are doing. These people should have finished their business. Now, they are left to speak about everything and anything in the Constitution. We need to know what they have done. We need to audit what they are about to do, so that we can clean these guys off and remain with people who are serious with this country.

This is very important and if the Chair of the Departmental Committee is not going to find a way of bringing this Motion to us, then we, as parliamentarians, are going to sponsor a Motion in this House, so that the House will resolve certain things. When a House resolves certain things, those things must be implemented irrespective of anybody in this country.

Hon. Speaker, I want to thank you for taking us this direction. Looking at the mood of the House in the morning and in the afternoon, this is the only way we can now responsibly come to this Assembly and believe that we are doing something that my people of Ruaraka will find relevant.

Thank you.

**Hon. (Ms.) Kiptui:** Thank you, hon. Speaker. I also want to contribute to this debate. I am a very disappointed Member because I woke up today at 4.00 a.m., in Baringo to be in time to receive the answer to Question No.008 of 2014. Unfortunately, the Cabinet Secretary for Interior and Coordination of National Government failed us. He did not turn up and neither did we get a reason as to why he did not come. Our time was wasted, time which we would have used on other important issues to serve our constituents.

I also want to comment on the Press releases that we saw touching on the request that Cabinet Secretaries come to the National Assembly to answer Questions. According to me, we are all Kenyans. We are here to serve *wananchi* of this country, whether we are in the Judiciary, Legislature or the Executive. Whenever a reason arises for us to put our heads together and address certain issues, every person in Kenya should take responsibility. I am at least happy that they will come next Tuesday. We want to tell Kenyans that when we, as parliamentarians, summon Cabinet Secretaries to come to the National Assembly, we do not break any law. We can create any committee under the sun. This is the only House that is mandated to create committees. So, when we create a committee such as the Committee on General Oversight, people should respect it.

To that extent, I want to believe that my question will remain valid until it is answered next Tuesday.

Thank you.

**Hon. Wakhungu:** Thank you, hon. Speaker. Today was a wonderful day, but I got disappointed when the Cabinet Secretaries did not show up. It is very clear from

Article 153 of the Constitution that Cabinet Secretaries shall appear before the Parliamentary Committees to answer any questions concerning their Ministries.

It is high time that people knew, including Charles Nyachae, that when we sat here today, we were a committee. We were not in a plenary. That is why we did not have the Mace and your dress code was totally different. It was not plenary sitting. As far as the constitutionality of the issue is concerned, there was nothing unconstitutional about it.

It is in the media that a letter was written by the Head of the Public Service, Mr. Kinyua. We also want a clarification, maybe from the Leader of Majority Party, on the capacity in which Mr. Kinyua wrote that letter. We know that the Cabinet Secretary is none other than Mr. Kimemia. So, is it true that Mr. Kinyua wrote the letter to advise the Cabinet Secretaries not to appear here or what is the issue?

Last time when the issue of Mr. Kinyua came to this House, we wanted to vet him and we were told that he is a Personal Assistant to the President and not the Cabinet Secretary. It is my humble request that the Leader of Majority Party gets some clarification to, at least, explain this to us, so that we do not have this confusion.

Before we started the session, we were told that Prof. Kaimenyi and Mr. Ole Lenku were within the buildings. After hon. Ngilu finished, how they vanished, I do not know. This is a House of decorum. It is not a House to lynch any Cabinet Secretary. This is the best opportunity for the Cabinet Secretaries to showcase the policies of the Jubilee Government. Indeed, Article 1 of the Constitution talks about the sovereign power of the people as exercised by the people or through their democratically elected representatives like the hon. Members who are seated here today.

I want to thank hon. Charity Ngilu. She appeared before the Committee and did very well. Hon. Members were very happy about it. In fact, Members tried to forget the current land saga because of the way she answered questions.

As they come, they must come with an explanation on why they did not appear and we were told they were around this building. What happened to warrant their absence? We should not entertain this, hon. Speaker. In line with Article 125, we can summon anybody anywhere to appear before the Committee. What I am requesting and the Leader of Majority Party in particular is to whip your Cabinet Secretaries because we want accountability. Devolution is about equal distribution of resources, I was here because hon. Wafula from Saboti had raised a wonderful question concerning Mr. Ole Lenku. We have constituencies which were split, which were disadvantaged, they were not districts. Last time when they were recruiting policemen, Trans-Nzoia County particularly Saboti and Kiminini constituencies, we were disadvantaged in terms of the positions of recruitment for the police. That is why we want to know when this constituency is going to become a district, so that all constituencies are not disadvantaged but can enjoy equal opportunities like other constituencies.

I want to thank you for this issue of general oversight. Mr. Nyachae needs to be told this: You do need to go to law school to understand the Constitution. So long as you understand basic English, you can read and understand, you can be able to interpret the Constitution. I want Mr. Nyachae to go back and read Article 153 of the Constitution, but if he wants to go back to activism, he should resign from that position and give it to many Kenyans who can be able to perform. We have so many constitutional Bills which did not come to the Floor of this House in time just because the CIC was sleeping on its

job, it could not manage to look at those constitutional Bills to be tabled here on time. Unless Mr. Nyachae understands his proper job description, he will continue to have a lot of pending work. He must pull up his socks. If he wants to be the Governor of Kisii County, he should resign and concentrate in politics and the issues of activism.

Lastly, we have so many issues with the Attorney General, he should also appear before this House to answer questions. He is the legal advisor of the Government and he has been misleading His Excellency the President. Remember last time you appointed the former presidential candidate to be the Chair of the Constituencies Development Fund Board, and yet he was not vetted. It is because of his wrong advice. I am sure His Excellency the President is watching. We must be able to evaluate the Attorney General and see whether he is giving the right position or he is misleading His Excellency the President. We know His Excellency the President means very well for Kenyans. We are happy about this. We will not allow the few elements to come and confuse His Excellency because of their selfish interests.

Thank you hon. Speaker.

**Hon. Waiganjo:** Thank you, hon. Speaker for also giving me an opportunity to make a very short comment. Although my request was for a debate of a different Motion, I think our side of the coalition has the capacity to whip the Cabinet Secretaries and show them the importance of appearing before the House to answer questions that have been answered by Committee Chairpersons. In any event, it is derogatory for the Cabinet Secretaries to completely disregard the Committee on General Oversight when they know that we are working collectively for the success of the Government. It is also untenable for the CIC to comment or threaten to move to the court. What they would probably do is to proceed very expeditiously and move to the court, and then the matter will be decided on its own merit but not to play rhetoric to the Press. I am of the view that the House must put its foot down led by you, hon. Speaker. We cannot be creating situations for ourselves and then they are disregarded. We will finally appear to be toothless. This is an opportunity we must take. Put our feet down and proceed with what we did in the Committee of the whole House. I thank you.

**Hon. (Ms) Ombaka:** Thank you very much hon. Speaker for giving me this opportunity. I also want to add my voice to the debate on the failure of Cabinet Secretaries to turn up at the Committee on General Oversight to answer questions. This must be condemned in the strongest terms; it is going to be a habit; every time they will be called upon to appear before the committee, they will not be coming because the first ones have not turned up. It is important that we tell them that they have a right to explain certain things that we need to know. It makes us wonder whether most of them know what they are supposed to do. Not appearing can also be interpreted in different ways. It may mean they do not know what they are coming to say in answer. It may also mean that they are too shy and they are occupying positions that they are not able to manage and that is why they are not able to turn up to answer questions before committees. I would like us to engage them, and make them know that they are breaking the law and that is going to be a trend all over. We are going to lose control if Cabinet Secretaries do not turn up. Now everybody is just not going to be turning up. It is going to be a culture; we are going to have a situation where we cannot manage the country; we will have no answers to questions. I, therefore, feel that more education is required. They need to be

informed that we pass Bills here and that is part of nation building. How do they expect to build this nation if they do not cooperate with us?

Coming to meet the Committee does not necessarily mean they are going to be challenged; it is not fault-finding; it is a matter of explaining a situation, and if they do it well, we will understand and work well. But they look as if they are threatened, or are too shy to come, or they may not know what they are coming to say. That is giving us a very negative impression of them. They must now know that if they do not turn up for questions in this House, their image will also be dented. That is my stand on that.

**Hon. (Ms.) Seneta:** Thank you, hon. Speaker. I also join hands with my other colleagues to express my displeasure with those who never turned up this morning. I was here very early in the morning from Kajiado. I wanted to get answers from the Committee on Education to which I am a Member. I was expecting answers to questions which were raised through the Committee by different citizens of this country.

I am of the opinion that the Cabinet Secretaries should appear before the Committee of this House. Some of them are used to our Committees. They are familiar with Committee Chairs and Committee Members; when they are asked a question by a Committee, they even do not search for the answer properly. They just give half baked information. When they appear in this House, they are going to prepare themselves, just as was portrayed by the Cabinet Secretary for Land, Housing and Urban Development, Mrs Ngilu, whom I congratulate. I am of the opinion that they should not only come on Tuesday, but should also apologize to those of us who travelled from our counties very early in the morning expecting answers from them and they never appeared.

I am also urging the Chairman of CIC to get to understand the Constitution. This Commission seems to be misinterpreting the Constitution instead. They seem to be misleading Kenyans because in the Constitution, Article 153, the oversight role of this Committee of this House is well stated. Therefore, they should not mislead Kenyans. The habit of communicating to this important House through the media--- Information was in the *Star Newspaper* and every other media house that we were not supposed to meet the Cabinet Secretaries. In my opinion, they should know how to communicate to this House. This is because this is a very important House. All these Members are representing citizens of this country and they need to be respected. I, therefore, agree with my colleagues that we should continue to hold such sittings.

**Hon. Mulu:** Thank you, hon. Speaker for giving me this chance to also contribute to this important debate. I am a bit disappointed with the Statement from the Leader of Majority Party. Despite the Leader of Majority Party saying that the Cabinet Secretaries will appear next Tuesday, he has not given any explanation why in the morning they disappeared from Parliament. When we came in - I remember we kept on responding to Mrs Ngilu's response - there was this push to summarize and conclude debate to allow the other two Cabinet Secretaries to also come in. All of a sudden, we were told that they had vanished. I was left wondering as to how somebody who was already in Parliament could vanish without giving reasons as to why they disappeared. My expectation was that the Leader of Majority Party would actually tell this House why the Cabinet Secretaries disappeared.

We have read a lot in the newspapers that the Leader of Majority Party is part of the kitchen cabinet of the Jubilee Government. I expected that he would go to the small

room here and call whoever needs to be called and be told why the Cabinet Secretaries had to disappear. I also see hon. Sakaja who is the the National Alliance Chairman. I think that was not strategic. This House is giving the Jubilee Government the chance to showcase what they are doing, and then it is running away from this golden chance. If CORD was in power, we would have embraced this chance and explained to Kenyans what we were doing. This was evident from what Mrs. Ngilu was doing. She comes from my constituency; when I sat here I was very happy hearing one of my voters telling this House what is happening in the Ministry of Lands. She did extremely well and I was proud of her because Kitui Central has given that kind of a person to this country.

*(Applause)*

What I am saying is this, it is very clear in the Constitution and we have said this very many times, that when we look at Article 95, our mandate, as a House, is very clearly stated and is a constitutional mandate. If we do not really accomplish our constitutional mandate, any Kenyan can go to court and request dissolution of this House; we must guard against that possibility. When you look at Article 124, this House has the authority to form committees. As a House we need to be firm on the position that this House is not going to run away from its responsibility in terms of demanding accountability from the Government, and how the Cabinet Secretaries are performing. At one point, I was asking myself--- You know when Chairs of Committees of this House respond to our questions, we have a lot of doubts, a lot of questions, and hanging points which have not been addressed, but when Mrs. Ngilu this morning responded to questions, everybody was able to say they were satisfied with the response.

I was wondering if it could be that our Chairs are not given all the information, so that they appear incompetent in what they do. When I compared the amount of details in the response--- Hers was very detailed and to the point. When the Chair of Lands Committee speaks here, at times he has to indicate that he will go back to the Ministry and ask for information. If I were Jubilee Government, I would actually use this opportunity to send the Cabinet Secretaries to this House, so that we are able to see what you are doing; it would even give you mileage in terms of what the Government is doing. My wish is that you continue the way you want to continue, so that you disappear from the scene.

As I conclude, you know when these people were being appointed, I remember the Committee on Public Appointments had a hectic time discussing these individuals in terms of their performance and academic qualifications. Even after doing their work, most of these Cabinet Secretaries kept on calling Members here, pleading with Members to be appointed. Now, when we demand that they come here and provide accountability on what they are doing, they run away from this House. I want to remind them that tomorrow is not far. Another day will come when we will require them to come here for appointment. I can tell you this House has the power to mobilize and do justice in terms of proving this is a House which is independent; although we are all independent, we can make decisions and live by those decisions.

Thank you, hon. Speaker for giving me the chance.

**Hon. Limo:** Thank you, hon. Speaker for this opportunity. From the outset, the issue of whether the Constitution supports the action which has been taken by the House should not be there. I really wonder how some people are reading the Constitution. The Constitution is very clear; if you allow me to read Article 125, it is very clear. It says either House of Parliament and there is a comma. When there is a comma, what follows is different. It says 'Either House of Parliament, and any of its Committees'. That means that there is no possibility that Parliament has no power to call anybody; it has power to summon anybody. So, it does not say who; it says anybody in this country.

It is very bad that people of the calibre of Nyachae interpret the Constitution--- They only serve on whatever side they want to please. There is no way Mr. Nyachae does not understand that it is in order for the House to call anybody. This is a House of decorum and some people should not go round saying that they will be bullied in Parliament. There is no time somebody has appeared in a committee and complained that Parliament has no respect. We want to demystify the belief that some people are saying, that they will be wasting time. I know time is very important and we should save it. In the spirit of saving time, there is no need of a Cabinet Secretary appearing in a committee and then the chairman comes and reads the same Statement in this House. What we have done is actually in the spirit of saving time, so that when a Cabinet Secretary appears before Parliament, they do so once, answers all the questions raised in the Statement request and we save time.

On the issue of separation of powers, when people talk of separation of powers, even if we do not understand--- If there is a question which is supposed to be answered by the Executive, are we saying that when a Member of Parliament in the name of the Chair comes here and talks on behalf of the Executive, there is separation of powers? It is very clear that even when you ask somebody who has not gone to school what separation of powers means, and I come here and talk on his behalf--- Is that separation of power? The separation should be very clear; they should come here and talk for themselves; the Executive should speak for itself. It is actually separation of powers; what we have been doing, allowing them to speak through us, has actually been contravening separation of powers. I want to urge that this House stands its ground because we want to serve our people; we want to articulate issues which affect our people and we get it right today. I like what Mrs. Ngilu said; she said "I am here and I am firmly in this House," so that she does not leave any doubt that she will come another time. She will be coming. I want all the Cabinet Secretaries to learn from her. In fact, I was saying that if I was the Cabinet Secretary, I would actually watch television in the morning to see how hon.(Ms) Ngilu articulated issues and learn from her.

Thank you.

**Hon. Speaker:** Hon. (Prof.) Nyikal

**Hon. (Prof.) Nyikal:** Thank you hon. Speaker for giving me this opportunity. First of all, I want to thank this House for establishing the Committee on General Oversight. For somebody to come and want to slight that--- I disagree with the Chairman of the CIC. He is either being narrow on purpose or being too narrow so as to really hold a position like that one. Let me ask: Where is he when the Transition Authority (TA), in my mind, performs so dismally? The law that put the TA in place actually indicated that the CIC should also assist and guide it in implementation of devolution. This is

something we cherish so much, but it has had so many problems just because we did not go by the Transition to Devolved Government Act. Mr. Nyachae was there and yet we have never heard him make a statement on that. I think that has hurt the country a lot more than the issue of an Executive standing in this House, which shall have transformed into a Committee, to give facts.

Hon. Speaker, I would like to take this platform to ask all the people involved in the implementation of the Constitution to be pragmatic and look at the welfare of the country and how we can move forward and implement this Constitution instead of being narrow and actually pulling us back in areas where we have made progress.

With regard to the Statement given by the Leader of Majority Party, I think that in principle he has done a good job. However, I disagree with him because he has not given us the kind of details we were expecting. I do not think he expects us to believe that Cabinet Secretaries who have come to the House to make a Statement will suddenly walk away without telling anybody. I think that is slighting this House. Something must have happened! We are aware that there have been Press statements which have indicated that the Executive is not clear on its position on this matter. I think that is what the Leader of Majority Party should have addressed. I was expecting him to say: "There are statements or letters that have been written by the Executive that have caused confusion, but now we are going to correct that matter". Indeed, that would be the honest position to take, but to tell us that there was a misunderstanding and so they disappeared mysteriously, I think the Leader of Majority Party needs to do a bit better than that. For the performance this afternoon, I found lack of transparency on the part of the Jubilee Government - He has not done them service.

Finally, let me take this opportunity to thank Mrs. Charity Ngilu. I think she performed well. On this one, I may thank Jubilee Government because they picked somebody they knew would do a good job at the beginning of this exercise. They should just continue to pick Cabinet Secretaries that are capable from the beginning so that we establish this thing properly.

Hon. Speaker, with those remarks, let me say that we should allow this to go on. We should not back-track even an inch. Thank you.

**Hon. (Ms.) Emanikor:** Thank you, hon. Speaker. To begin with, hon. Ngilu has done the women leaders of this country proud. This shows how serious women take their duties.

Today, the people of Turkana and I were going to be beneficiaries from the responses by the Cabinet Secretaries and in particular the Cabinet Secretary for Education, Prof. Kaimenyi. There were urgent issues which I consider of emergency nature and critical in the education sector. There is a looming strike organized by the Kenya National Union of Teachers (KNUT) and we would have averted that if only the Cabinet Secretary turned up.

In Turkana County, this year alone, we have lost 24 teachers to natural attrition. Another 24 teachers joined the county governments and politics and yet they have not been replaced. What is critical in the education sector is the fact that the Ministry itself has admitted that it has a shortfall of 85,000 teachers. This translates to 3.8 million pupils missing out on proper tuition as is required. What is happening in the education sector in

this country is an injustice. It is a violation of children's rights and gross abuse of Article 53 of the Constitution of this country.

Previously, we have actually relegated our chairpersons to the positions of messengers because they have not been able to answer supplementary questions. They have only been answering the main question and whenever we had supplementary questions like those answered by Ngilu today, they could not answer them. I think the Cabinet Secretaries should take the new system positively because it is time effective, less cumbersome and cost effective. They do not live in Parliament as they have reported to the Executive. In fact, this system could elevate them by giving them an opportunity to be in the national limelight and showcase whatever they are doing.

What happened today was unfortunate for the counties suffering in terms of education. I raised an issue in my question which was not even answered. The issue is that Turkana has a shortfall of 2,200 teachers. The county was given 90 teachers only; this is a drop in the ocean. I think the reason the Cabinet Secretaries did not turn up is that the answers they had given us were inadequate. Mrs. Ngilu was actually prepared. This should be a lesson to others that we do not harass people; rather we respect them. Today, everyone saw what Parliament did to Mrs. Ngilu. We actually appreciated her. We hope that the rest of the Cabinet Secretaries will borrow a leaf from her.

**Hon. Speaker:** Before we go on, hon. Members, let me recognize pupils from the following institutions who are in the Gallery: Kapking Primary School from Marakwet East Constituency; Kitalakapel from Kapenguria, West Pokot Constituency and Kaloleni Primary School from Makadara Constituency.

*(Applause)*

**Hon. (Eng.) Gumbo:** Hon. Speaker, I thank you for giving me this opportunity. I personally think that the Committee on General Oversight is an excellent idea which should be supported by all. Those opposed to it are probably doing so largely for personal reasons other than legal reasons. It may also be out of ignorance on the way Parliament works. In my mind, the question of competence and confidence must also be at play here.

Hon. Speaker, you will recall that some of the Cabinet Secretaries whom we have today had no notable experience in the management of public affairs prior to being appointed to those positions. It is a fact that some of them did not know better than to lead small time NGOs comprising no more than 20 people prior to getting to these high offices.

In my mind, the omission here was that there was no sensitization to prepare them for the demands of these exalted public positions. This may explain why those opposed get frightened at the prospects of facing prodding questions from the representatives of the people of Kenya.

Hon. Speaker, Article 153(3) makes it obligatory for Cabinet Secretaries to attend Committees of the House when required to do so. It does not in any way give exemptions. Any attempt to stop Cabinet Secretaries from honouring invitations by the House would, to my mind, be unconstitutional.

I also think that it is wrong to hide behind the misunderstanding of the operations of Parliament and its Committees to address Members and the Speaker in a condescending manner, as has been done from some quarters.

Hon. Speaker, I have seen it here before and I want to say it again that there is no school or university which teaches experience. It is something that you earn on account of doing what you are doing over the passage of time. Therefore, it is utter vanity for anybody to claim to be an expert at something they know nothing about. I find it superfluous for Mr. Nyachae, for instance, to claim to be an expert on the functions of oversight and representation when the fact is that in his life, he has never even been elected a councillor.

However, if there are some problems with our Constitution, I think one of them has to be the manner in which Cabinet Secretaries are appointed. I think the idea of the President nominating Cabinet Secretaries and then Committees of the House to vet them and bring them here overlooks certain very important aspects.

If you saw the performance of hon. Charity Ngilu clearly, she was drawing from her past experience as a representative of the people. Therefore, I think as we embark on this exercise, perhaps the bigger question to ask is, indeed, why or what will be very wrong if Cabinet Secretaries sat in this House as Members of Parliament?

Hon. Speaker, I think the other problem with our Constitution is that it has created offices – and I have said this before – which are littered with overpaid and badly underworked individuals. Some of these individuals are paid millions of shillings per month for doing absolutely nothing. Nothing can change that. When you are doing nothing, you are doing nothing. It does not matter even if you form the habit of occasionally taking full page newspaper adverts of lyrical recitals if nothing meaningful is lifted directly from the Constitution.

As I conclude, I want to say that it is not personal but sometimes the conduct of these Commissioners, particularly Mr. Nyachae makes him look like he considers himself the Governor-General of Kenya. I think someone has to tell him that he is not the Governor-General of the Republic of Kenya and I choose to be that someone.

Hon. Speaker, I thank you with those remarks.

**Hon. Bowen:** Thank you, hon. Speaker. I want to join my colleagues to congratulate Madam Charity Ngilu who appeared before us this morning. I have two issues to seek clarification on from the Leader of Majority Party and you, hon. Speaker.

First, we have agreed and seen Cabinet Secretaries appear before the Committee of this House. Could they also appear in other Departmental Committee meetings? Secondly, and this has been a big issue is that Article 95 of the Constitution gives this House the mandate to resolve issues pertaining to the people of Kenya and more so the national issues. The Cabinet Secretaries are also called by the Senate to clarify the same issues which we have called them to address in various Committees of this House. This is an issue that you need to engage with your colleague in the Senate or this House needs to address so that we do not duplicate roles.

I know the Constitution is very clear and there is a lot of idleness in the Senate. That is why they are even calling the Cabinet Secretaries to appear before them on issues that do not touch on them. I remember almost two weeks ago, some of the Cabinet Secretaries were complaining that they were summoned to appear before the Committees

of the National Assembly and also the Committees of the Senate on the same issues. I think we need to come up with a clear policy so that we do not waste a lot of their time. This is because apart from coming to address some issues here in Parliament, Cabinet Secretaries also have other issues out there to implement. This is especially on the manifesto of Jubilee.

I am happy with the response by the Leader of Majority Party that maybe the Cabinet Secretaries had emergencies this morning. I am aware that the Kenya National Union of Teachers (KNUT) had issued a strike notice beginning today. I am told that was one of the issues why Prof. Kaimenyi left here hurriedly this morning. However, we also need to check and get reports from our Committee on Implementation so that we can see how to deal with a Cabinet Secretary who is supposed to appear before this House but does not. Maybe, we need to initiate the process of impeaching them.

Hon. Speaker, we are here on serious matters. If issues have to be addressed like the way the Cabinet Secretary, Madam Charity Ngilu addressed this morning--- You saw all the Members were satisfied with the answers she gave. We also want to see areas of security and those pertaining to national development being addressed well by other Cabinet Secretaries.

*(Hon. (Dr.) Shaban consulted with hon. (Ms.) Mbarire)*

Otherwise, we need to check on those two issues. The Leader of Majority Party is not in. However, I can see the Deputy Leader of Majority Party, Dr. Naomi Shaban is very busy engaging with Cecily Mbarire and yet I am asking a very serious question. Maybe I can repeat the question.

I was seeking clarification from hon. (Dr.) Shaban. When we call the Cabinet Secretaries to appear before this House every Tuesday, do they also need to appear in other Committees? Secondly, Hon. Speaker, are the issues this House is addressing being addressed at the same time by the Senate? How are you going to resolve that with the leadership of the Senate?

**Hon. Ng'ongo:** Hon. Speaker, sometimes I think that probably we were too generous to the Cabinet Secretaries before we understood that this was a serious commitment for them in appearing before the Committee on General Oversight but this worries me. I say this because I know you are a lawyer of repute in this country and I have no doubt about that. I have also listened to a number of lawyers including hon. Kaluma who is also a very polished lawyer. I have also listened to hon. Kajwang' who is one of the lawyers who made me have an interest in law - although I did not do it - when he was a student. I thought I could serve Kenyans in a different line and I think I am doing very well there. However, what worries me is the interpretation of some of the lawyers; some of whom should guide this country. I am particularly concerned when communication comes from the Attorney General to the effect that what we have done by creating the Committee on General Oversight of the House is unconstitutional. It makes me read Article 124 of the Constitution which says that each House of Parliament, and I believe this is one of them, may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees. I was trying to check where we share that responsibility of making Standing Orders with

someone called Nyachae and I do not see it. In fact, we do not even share it with the President. This is solely the responsibility of the National Assembly to make amendments to Standing Orders and create committees as we so wish so long as that would result in orderly conduct of business in the House. Therefore, I ask myself where this notion; this position taken by the Attorney General and the CIC that when we create the Committee on General Oversight we are acting unconstitutionally, is coming from.

It again takes me back to a period in time last year when we were worried that we were approaching June when we expected the Government Estimates of revenue and expenditure to be presented to the people of Kenya. The concern was how it would be done. Was it going to be done at the KICC? Was it going to be done at Uhuru Park or would it be done at the National Assembly? The practice across East Africa is that the Ministers of finance in the other countries read the budget before Parliament. So, we were going to be unique yet again in our Constitution we had committed ourselves that we would cooperate with the rest of the East African Community. So, we had to look for a solution. The Treasury approached some of us including me and I promised them that I would raise the matter on the Floor of the House and you allowed me to raise the matter. We looked for a solution and I thank and congratulate the Committee that is responsible for making our Standing Orders or making amendments. They came up with the perfect amendment where we allowed the Cabinet Secretary responsible for finance, that even though he is not a Member of Parliament, to appear before a Committee of the whole House. We dissolved into a Committee of the whole House and he presented the Estimates before this House. No one raised concerns with regard to constitutionality or otherwise, including the Attorney General

Hon. Speaker, how then has the Attorney General since realized that what we did at that time and this one, although he is not talking about the Cabinet Secretary responsible for finance coming to the House, is not constitutional? He is only talking about this particular oversight and this then baffles me. The law is clear that Cabinet Secretaries under Article 153 would be required to come to Committees of Parliament, and those Committees are not specified in the Constitution, to answer to issues that relate to their dockets. I think that is what we have done. Let me say this as I conclude; for me, this House just needs to stand its ground and say that what we have done, and that is the truth, is a Committee. Probably, hon. Speaker, you should preside over one or two and allow your other team Members to preside over others so that they can know that this is a Committee. There are people who really do not engage their mind seriously like some of us. So, if they see hon. Kajwang' sitting there, maybe they will then take it as a Committee of the whole House. I think your presence there may be scaring some of them. They think it is a plenary.

Allow me to say one thing that I wanted to say: When I listened to Mr. Nyachae threatening to take Parliament to court, the first question I asked myself is who was going to pay for that cost. He is going to hire lawyers to represent him for no reason at all. So, it is time to hold Mr. Nyachae accountable for any expenditure that is incurred unnecessarily because whatever he is going to take us to court on is something that we should not allow him to do. So, if Mr. Nyachae spends public money to satisfy his ego – I do not know whether he has one – we need to hold him accountable.

Finally, I wish the Leader of Majority Party was here but his deputy is here. There was a time I raised a concern in this House with regard to the position which was created called the “Head of Public Service.” We cannot vet Cabinet Secretaries and their boss is not vetted. I raised this concern and at that time the Leader of Majority Party did not see my point. He thought I had issues with Mr. Kinyua. He is my friend; we have interacted a lot with him when he was at the Treasury but I felt that, that position would require some kind of accountability. We need to have vetted that position in Parliament so that he can have some respect for Parliament. When he goes out there or recalls the Cabinet Secretaries because I am sure he is the one who has done it – I have no evidence but I am convinced and unless I am convinced otherwise, that is the position I hold, that he is the one who recalled the Cabinet Secretaries who had appeared before us here because I saw Mr. ole Lenku somewhere here.

As I conclude, when we make appointments, we need to appoint people who have confidence. See what Mrs. Ngilu did. She has been a politician and she has confidence. She knows she can handle her docket very well. No one can threaten her. In fact no one can, as we say, *bwogo* her but when you bring someone like Mr. ole Lenku who thinks that it was a charity--- I think up to now he is not convinced that he is the Cabinet Secretary in charge of internal security. Such a person, if he receives a call from anybody purporting to have called from State House, even without knowing the voice, he would run away. So, that is the problem we have. Those who know and unfortunately those who know the Cabinet Secretary, Prof. Kaimenyi would also tell you a lot of stories. I worked with him at the University of Nairobi. Most of my colleagues were wondering how--- Anyway, I did not want to discuss him but with those many remarks, we need to stand our ground. Let us meet those Cabinet Secretaries we are going to meet but for the two Cabinet Secretaries, we need to invoke our rules of procedure. Now that they have failed to appear before us, we should invoke our rules of procedure. I can see the Chairman of TNA; in fact he would have done us justice if he went and reined in his Executive. He is the one whom they can listen. He can pretend that he spoke to the President even if he did not speak with him and give them some assurance so that they appear before us. Otherwise, for some of us they would not believe. Even if I tell them that I spoke with the President a few minutes ago, they would need to see it physically but for him, he can pretend that he spoke to the President. He should go and pretend that he spoke to the President and give them an assurance so that they appear here.

**Hon. Sakaja:** Hon. Speaker, I want to first disabuse this sentiment that is gaining currency quickly that the Government or a section of Jubilee is not interested in accountability and oversight by Parliament. That is not true. I want to state very categorically even if you look at the Manifesto of Jubilee, it was based on three pillars. The pillar is *Umoja*, which is unity of this country; the second one is *Uchumi*, economic empowerment and the third pillar is *Uwazi*. This is openness; it is transparency and it is accountability. What Parliament is doing is accountability and openness. So, if there is anybody who is interested in having a more open platform between the Executive and the Legislature, then it must be Jubilee.

I will take this opportunity first to applaud the ingenuity and innovation of this House of coming up with such a forum where we can have members of the Executive speaking to all Members of the House on issues of national interest.

I would also like to applaud hon. (Mrs.) Charity Ngilu. I would like to ask hon. Members to focus on the good. Let us focus on the fact that a Cabinet Secretary came on the first day and we had very good discussions with her. Let us not focus on the two who, for one reason or another, did not stay through the morning sitting. Those are issues we will deal with and we will find out what happened between the time they were here and when they were not; but let that not be the focus. Let the focus be the gains that we have made with respect to the Committee on General Oversight.

Hon. Speaker, the challenge we have is that we are dealing with the new dispensation. In this new dispensation, we have different organs of Government that must work together. They must find ways of getting to some form of equilibrium. This is a very innovative way through which, at least, we can legislate on issues of national importance. We are the ones who are most interested with it because for the two hours in a week the Government will talk about what it is doing for Kenyans. This is definitely cheaper than the advertisement we see every day on television from Government. When hon. Members ask questions they are not asking for themselves. That is something we must get right.

When hon. Kaluma stands up to ask a question, he does it on behalf of hundreds or thousands of people. This House represents the entire country. We are the best to give an exposition of the Government policy as representative of the people. Therefore, this is something I want to request you to support. Over the past few weeks there has been miscommunication on what Parliament wants to do. I will not say that it has been driven by the media, but there has been some thinking that we are going back to the old Constitution where we had members of the Cabinet sitting in the House. That is far from the truth. I was not here in the morning but I was following the proceedings. We must clearly set the ground rules.

I heard many hon. Members referring to the Chair as “Mr. Speaker”; which to me is wrong. In that sitting we should not refer to you as “Speaker” but “Chairman”; because it is just a committee of 349 hon. Members. Secondly, we must have a very clear distinction of the issues brought to the Committee on General Oversight.

Hon. Members should raise issues that are of national importance, not issues affecting a school or a small dam in their constituencies. They should be issues that are of interest to members of the public. Therefore, I would like to urge the House not to read ill motive from the Government side or from Cabinet Secretaries who came and left. Let us get some understanding on what happened. We stand for transparency and accountability.

Indeed, hon. Members have alluded to the fact that the Chairman of the CIC has been making comments that are uncalled for. Let us not use this platform to vilify an individual, but question the process through which the CIC comes up with some of these positions. Everybody is entitled to his expression and opinion. We feel very strongly that there is no performance in that institution. Let us do what Parliament does instead of standing here and ranting about an individual. If the individual’s interpretation of the Constitution is wrong, we have the right procedures to deal with that.

Having said that, there is this notion and it has become a habit that when you cannot find a provision in the Constitution--- Certain quarters in this country quote the spirit of the Constitution. It is as if there is a spirit that talks to a few people and not to the

rest of us. What is this spirit? I am not a lawyer, but I am a student of the law. I am sure hon. Kaluma will agree with me that the spirit of the Constitution can negate the letter of the Constitution. The spirit of the Constitution is not given to a few individuals who are more legal or spiritual for them to understand what the Constitution really means. Therefore, let us not have these games when you do not have a point; you say that the spirit of the Constitution does not allow Cabinet Secretaries to come to this House. This is a sitting of a Committee and we are not introducing Cabinet Secretaries to Parliament. They have been coming to committees of this House and they will keep coming. I hope we are clear on this.

Finally, I would just like to encourage the Clerk's office to give the rules and procedures that guide the operations of the Committee on General Oversight to all hon. Members, so that they can know how to transact business during the Committee sitting. But all in all, it is an innovation that has been brought about by this House for better understanding between the Executive and the Legislature.

I hope that going forward we can look at other platforms through which we can engage better. This is because everything we and the Executive do is ultimately for the benefit of Kenyans. Every hon. Member here represents people; even those who were elected through party lists; the ones you call nominated. There is no hon. Member here who is nominated. We also took the oath of being elected through a party list. We represent the youth and women, for example, hon. (Dr.) Oginga represents workers and there are issues that workers have that need to be heard coming from Cabinet Secretaries. I hope even those who are watching and who are not from this institution--- People from the Executive or the Judiciary must understand that Parliament has not done this to flex legislative muscle or to show that we are the bosses. This is for the interest of Kenyans; Parliament debates issues of interest to Kenyans.

Hon. Speaker, we have seen over the past one year frustration of this House when Chairmen of Committees do not give satisfactory answers on certain issues. That does not mean that the Chairs of Committees are not working. In fact, they are doing their best and they must be applauded. But on certain issues, not all hon. Members can attend the Departmental Committee on Administration and National Security. Let us sit here together as hon. Members and let the Speaker---

In fact, if an hon. Member refers to you as "Speaker" during that Committee sitting, kindly tell him or her that you are not the Speaker in that Committee. You are just the Chair, in the same way you chair the House Business Committee and other committees.

With those remarks, I want to stop here and applaud the Cabinet Secretaries who came today and especially hon. (Mrs.) Ngilu, who actually answered questions before the Committee on General Oversight. I want to assure the House that the rest will be coming from next week. I think you heard the communication from the Leader of Majority Party.

**Hon. Speaker:** Well spoken.

Hon. Members, even as we continue with this discussion it is important to note the point raised by hon. John Ngong'o, that Article 124 (1) of the Constitution is very clear. Each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

Therefore, this House has established the Committee on General Oversight and proceeded to make amendments to our Standing Orders, specifically Standing Order 170; for the orderly conduct of the proceedings in the Committee on General Oversight. The mere sitting of that Committee in this House or plenary is on account of lack of an alternative space where we can conduct our proceedings from. There is absolutely nothing wrong with having a Committee of the entire House. After all, when we are discussing Bills, we always have Committee of the whole House and we have never heard anybody complain because this is the normal thing that happens the world over. Those who may want to appreciate how Parliamentary proceedings are done, they better take some studies instead of spending public resources making advertisement in newspapers.

In fact, I suppose the Auditor-General will question them why they had to spend money that way when it was not within their powers to make this kind of wastage. We must be very clear on Article 153.

Article 153 (3) states as follows:-

“A Cabinet Secretary shall attend (it is coached in mandatory terms) before a committee of the National Assembly, or the Senate, when required by the Committee, and answer any question concerning a matter for which the Cabinet Secretary is responsible.”

When things are this clear, one does not even need to chair any of the 15 commissions to actually understand what this Article says. In fact, for the benefit of hon. Kangogo who has since left, once a matter has been resolved in the Committee on General Oversight, it is expected that that matter shall not be raised in any other committee by way of inviting a Cabinet Secretary to appear before the other committees. This is because the matter has been resolved before that Committee on General Oversight where all Members have an opportunity to cross-examine or seek clarification from the Cabinet Secretary. Of what use would it be to have to summon the Cabinet Secretary before another committee unless that committee directs that, that matter has not been conclusively dealt with and that further investigation is necessary by a specific committee of the House?

Otherwise, undertakings and commitments given by Cabinet Secretaries before the Committee on General Oversight will be then cascaded to our own Committee on Implementation for any follow ups that may be necessary. I am saying this because hon. Kangogo appeared to have some doubts about what happens in the Committee on General Oversight. That is what is expected to happen. This is a matter of trying to manage time and even to actually minimise the number of times that Cabinet Secretaries have to appear before various committees and the time they have to spend before our own committees. That is the general expectation and thrust by the Committee on Procedure and House Rules.

Hon. Wanyonyi.

**Hon. F.K. Wanyonyi:** Hon. Speaker, your ruling is very clear. I want to take this opportunity to congratulate you for standing your ground because this morning when I was coming to this House I was not sure whether the Cabinet Secretaries were going to come. I want to take this opportunity on behalf of this House to thank you for having taken that bold step and guided this House to where we are today. I know there were

these notions that Cabinet Secretaries were not going to come. Those who did not have the chance to come saw what the Cabinet Secretary, Charity Ngilu did here. Given the assurance of the Chairman of the Jubilee party we hope that we are going to have more of these Cabinet Secretaries coming.

Hon. Speaker, I think the position taken by the Attorney General and the Cabinet Secretary is a wrong one because the Constitution is very clear. I do not know what Constitution he is reading. I am not a lawyer but given the kind of Standing Orders we have and the Constitution that you and I passed in this country I think the two people – the AG and the CS – as you rightly say, are wrong and maybe given that they have been having some advertisement in the newspapers, we may have to ask the Auditor-General to find out whether they have spent that money correctly.

Hon. Speaker, I am also of the opinion that if the Cabinet Secretaries actually believe that they are actually very busy, maybe this House in its own wisdom should be able to have a position for an Assistant Cabinet Secretary who should come from this House. I am in the process of preparing a Motion to be brought to this House to see if we can have Assistant Cabinet Secretaries from within this House to be able to come and answer questions and as you can see, politicians are better placed to answer questions as you saw from hon. Ngilu. So, I am in the process of actually coming up with a Motion and I hope I will get the support of most Members seeing what Charity Ngilu did this morning. I think if we get Assistant Cabinet Secretaries from this House, maybe we shall be getting better answers.

Hon. Speaker, I also want to take this opportunity most sincerely to say that members of this Committee on General Oversight who are all of us, are doing a good job. In the past we have had cases where Chairmen of committees take us round and round and sometimes they come with half baked answers but what we are doing now is shortening the period of getting answers from various sectors of this country.

Hon. Speaker, for that reason I want to support and I hope and look forward to Cabinet Secretaries coming to answer questions in the best way possible, in the way I saw Charity Ngilu actually answering those questions.

Thank you so much.

**Hon. Speaker:** Hon. ole Kenta.

**Hon. ole Kenta:** Thank you, hon. Speaker. I would first of all like to commend hon. Ngilu for the way she handled the issues that were before the Committee today and I believe that is the way it should be. In fact, it is very worrying to see Cabinet Secretaries sneaking out like they were actually running from danger. I would like to advise them that there is no danger here. We are civilised and responsible people and I think they have realised today that we ask questions that matter and we are not here to harass anybody. I am sorry that hon. Mbadi has gone out. I think it is also wrong for us to actually keep on discussing people who are not before this House because the competence or incompetence of anybody is not for us to decide but for the appointing authority.

Hon. Speaker, when we talk about appointing or calling Cabinet Secretaries to come before us it is actually, as the hon. Speaker has said, to save on time and to ensure that we get the questions answered first hand. I believe they should know we are actually saving them time and actually saving a situation where we say that a chairman of a committee does not know what he has said. I believe we should actually encourage that.

In fact, if I was a Cabinet Secretary, I would be very happy to appear before this House and show that I can handle my docket effectively. Of course, I believe that today these people ran away because the communication from State House or wherever it came from was wrong. I believe there were better channels of passing that because when you go to the Press when people are supposed to appear tomorrow before the Committee, I think that sends wrong signals that there is a war between the Executive and Parliament, which is not the case. When Cabinet Secretaries run away just because they are between a rock and a hard place, I believe they are running away from their constitutional responsibility. They are called here as people who are supposed to answer and the Constitution actually mandates them to do that.

Hon. Speaker, hon. Kangogo raised a very important question. We have committees that comprise 29 members and we have got others that comprise 50 members. Is it that they are scared of the numbers? It is the same committee as far as I am concerned but the pertinent question is: How do you synchronise the presence of the Cabinet Secretaries in all committees of the House? I believe that we should actually synchronise the appearances so that we do not duplicate some of these things.

As far as discussing Mr. Nyachae is concerned, I belong to the Constitutional Implementation Oversight Committee (CIOC) and I believe that would have been the best route for him to pass. He has got access to Parliament through CIOC and these public pronouncements of Mr. Nyachae, I think he is not being fair to this House. I believe when the Ethics and Anti-Corruption Commission (EACC) talked about *harambees*, that should be the first person to be investigated because what does he keep on doing in *harambees*? Why does he go to *harambees*? Where does he get that money from? We are very worried. That is the question that Parliament must ask. This money must be coming from somewhere. If somebody is contributing Kshs10 million or Kshs15 million over a weekend, how much tax did he pay from that money? Where is the source of the money? Which company and we know people's salaries? Somebody like Mr. Nyachae should be looked at in that aspect. I believe that something might be found out.

My last point is that today, hon. Ngilu showed that politicians are the people who should run governments. It is time to rethink the issue of amending the Constitution to ensure that it is only Parliamentarians who become Cabinet Secretaries. This issue of bringing people from anywhere is not going to assist this country at all. I believe we have very competent people. In fact, I think this House is one of the greatest pools of educated people. I believe they can handle those issues.

Maybe we should excuse the Cabinet Secretaries today because they are really scared. When State House tells you that you should not attend a meeting, and that is the appointing authority, and then Parliament tells you to attend, they were definitely in a very peculiar situation. As the Leader of Majority Party said today, they will come on Tuesday. Thank you, hon. Speaker for standing firm. That is the Constitution and we can summon anybody. Nobody should go behind your back or back of this House to give other reasons or to prevent anybody from attending before us. Otherwise, you should call those people who did it to come and explain to us on what basis they did that.

**Hon. Speaker:** Hon. Members, before I hear the other Member, it is good as we proceed to continue drawing our attention to what, indeed, is contained in these Standing

Orders as mandated, especially if you look at Standing Order No.170C, (1) and (2). It provides that:-

“Pursuant to the provisions of Article 153(3) of the Constitution, a Cabinet Secretary shall attend before the Committee on General Oversight to answer any question concerning a matter for which the Cabinet Secretary is responsible”.

That is the way it is couched just to paraphrase Article 153(3). Then 170C (2) is crucial. It provides that:-

“Paragraph (1) does not preclude any other Committee of the House from requiring the attendance of a Cabinet Secretary before it, but not for the purposes of answering questions as provide for under this Part”.

So, that is not to say that Cabinet Secretaries will not appear, because Committees obviously have to deal with several other issues of policy that are mandated under our own Standing Orders. So, they will continue to appear but not to answer questions in the other Committees. It is important to make that clarification, but also to say that it is the business of the Executive to know how to deal with the issue raised by Kangongo about Committee of this House and Committees of the other House. That, I do not want to make a ruling on.

**Hon. Kaluma:** Thank you, hon. Speaker. I thank you for standing firm with the House on this matter. The business of establishing committees for this House, giving names to those committees, designating the functions of those committees and deciding how many of the Members of this House sit in such committees is the business of this House. It is not the business of any Government operative. It is not the business of the Attorney General or the CIC.

Indeed, even if we decided to establish a committee and designated it a committee of goats and sheep, it is all constitutional, so long as that committee would be discharging those functions of Parliament. When this important facility of the Committee on General Oversight was established, personally, I thought Cabinet Secretaries would take it up very quickly. In fact, I believed that the Government would encourage them to do so because this is a Government with a manifesto, a Government seeking to do so many things, which have never been done in the history of this country.

What a better platform to showcase what the Government is doing than before the leadership of the country; the Assembly of the nation here seated. So, it surprises when there are confusing thoughts around this. The General Oversight Committee is a committee to deal with those matters which, in my view, are cross-cutting. In the education sector, for instance, we have this issue relating to the teacher-student ratio and of course, the shortage of teachers across the country. How beautiful would it be for the Cabinet Secretary in charge of Education to come to this House and together with the Assembly of the nation here seated, proffer a permanent solution to that? I expected the Cabinet Secretary to say, if it is the problem of money, this is the House that budgets and appropriates money, could we have this amount of money? As the leadership, we proffer solutions to such matters at once.

The health sector, a critical life supporting sector is in crisis across the country. In fact, we are mulling over whether we need referral facilities in each county or in each constituency or what should we be doing. In asking specific issues around Homa Bay, if

it is that cross-cutting what better forum for the Cabinet Secretary of Health, to meet the elected representatives of the people here seated and just go over it?

We had the issue of security disturbing and concerning virtually all sections of this country a short while ago. You will remember the difficulties we had when a question was raised on the security situation in a section of this country, but of course, the Chair of the Committee could only say: "I am going back to the Cabinet Secretary and I will respond next time". In the long run, the sensitivity of the question is lost. Time is lost. Let me tell the country once again that hon. Charity Ngilu was in this House today; the Cabinet Secretary for Land, Housing and Urban Development, and in less than 45 minutes, issues affecting land laws and regime in the country were treated here. If we went in the manner we usually proceed, the Cabinet Secretary would have gone to the Committee on Justice and Legal Affairs, the Committee on Environment and Natural Resources and to the Committee on Lands. In fact, the Cabinet Secretary would have spent, in total, a whole week, moving from one Committee of this House to the other. I wanted to urge the Cabinet Secretaries seated outside there not to fear. We are elected leadership. We are not here to harass or intimidate anybody. We are here to have a conversation as the leadership of the country on how best we want the various sectors you lead to proceed to be governed to help our people.

Hon. Speaker, you have quoted several provisions of the Constitution, but let me remind Mr. Charles Nyachae, our senior colleague in the profession, Article 1(1) and (2) of the Constitution; the issue of the sovereignty of the people and how the people exercise it directly or through their elected representatives. Let me urge those people who contest this facility that we have created to be reminded of Article 95 of the Constitution that speaks to the roles of the National Assembly. These are the functions of legislation, oversight, representation and resolution of issues of concern to the people, Budget and of course, oversight of the Budget. Some of those issues cannot be executed if we just sat somewhere in a small committee. It is for the House to set how many of its Members to allow to sit in what type of committee to resolve those issues, so that the idea that we have created a committee that requires the entire Membership of the National Assembly to sit, is something very lawful. Nobody should worry that this is the plenary of the National Assembly.

Indeed, as the Speaker said in the morning, if we had an alternative venue, we could all sit there and of course, the facilities would be the same and we proceed. No wonder to the Kenyan people outside there, you never saw the Mace and you saw us throughout addressing the hon. Speaker as indeed, the Chair of the Committee. He was not dressed in the regalia of the House.

Every time I pass through Kisii County going to Homa Bay County, I get the idea that, that is one of the counties doing the few small things which we needed to do to our people. Level 5 Hospital in Kisii is the only hospital that everybody in the entire southern Nyanza from Homa Bay County, Nyamira and Migori go for treatment. That Governor is being distracted by the Chairperson of CIC who has chosen to be a fundraiser, instead of reading his law and leading the country. I am worried the Governor is being moved from executing those county government functions to fundraising. In as much as the Ethics and Anti Corruption Commission finds it within its mandate to write to the Assembly of these hon. Members about fundraising, I think some of these letters

ought to be targeted at somebody like Mr. Charles Nyachae. We need to begin interrogating the sources of that money. We need to focus on the functions that these commissions perform. We pushed the constitutional timelines for legislating constitutional Bills by nine months, a short while before we went on recess. Even after that happened, Mr. Charles Nyachae and CIC are busy talking about everything as if they are the oracles of law in this country. As hon. Sakaja said, anybody who is a well meaning Kenyan can read the Constitution and understand it. Let me remind those who care to read the Constitution about the provisions of Article 124(1) which hon. Speaker has read. It is on the power of this House to establish committees and decide their procedures. It is a constitutional power, it is already implemented and there is nothing you can do about it.

After Article 124(1), let me refer those who care to listen to Article 125 of the Constitution. Again, it is the power of this House to summon anyone to the House or to the Committees of this House. I do not know why somebody would advise a Cabinet Secretary not to come to the House. If any Cabinet Secretary is taking that advice, then let me remind the Cabinet Secretaries of the provisions of law under which they are appointed. In fact, none of them would sit there without the approval of this House. For avoidance of doubt, these are our appointees who again we oversee under Article 95. It will be made clearer that Article 125 enables us to summon them. I want to beg the Cabinet Secretaries outside there not to put us in a situation where we are summoning them by way of censure. That is not the direction as a leadership of the country you want to take. Let nobody mislead any Cabinet Secretary on a directive coming from anywhere.

Finally, let us all read Article 150(3) which you read a short while ago. This is the obligation of the Cabinet Secretaries and these other State Officers to attend the House when summoned, and of course the compulsory tone of those provisions is there. I do not know what happens, but I am seriously thinking that going forward - this is not debatable - we are going to expect Cabinet Secretaries to be coming. Going forward, I am thinking very hard about the need for security of tenure for the Office of the Attorney General. I know Prof. Githu Muigai, our Attorney General very well, he taught me law. Some of the things he says make me question what has become of the professor. I think the idea that the professor is not secured in his tenure could be a problem. We need to begin thinking whether it is the Attorney General who needs security of tenure, so that he can give independent and impartial advice to the Executive or it is the Director of Public Prosecution or both. We need security of tenure for the office of the Attorney General, my former teacher Prof. Githu Muigai. That gentleman is sharp, competent and erudite. You saw him in the International Criminal Court. He taught us professional ethics, criminal practice and other subjects. We were so proud. It was not new to us, but the idea that Prof. Githu Muigai could be giving these unconstitutional interpretations of the law is worrying. I think we should do something to secure him properly.

With those many remarks I would urge that we insist on proceeding in the manner we have established as a House. This is the best thing in terms of saving time. In fact, most of these questions we keep asking and going over and over and are cross-cutting; we can identify them and resolve them at once. Most importantly for the Jubilee Government, much as you are doing well, you need to exploit these platforms we create

so that the people outside there can know the good things you are doing. I thank you very much hon. Speaker.

Hon. Speaker: Well spoken. Hon. (Ms) Kanyua

**Hon. (Ms.) Kanyua:** Thank you, hon. Speaker. Allow me to also contribute to this discussion on appearance before the House by Cabinet Secretaries. Let me start by thanking the Assembly here for having allowed the Nyeri Members of the County Assembly to join and be part of the Speaker's Gallery and to watch this debate. Indeed, we are hoping that after this, the county assemblies will follow suit. The county executives will also have to go the same way that the Cabinet Secretaries are meant to go. When we start with the question of accountability as a national value, in the Constitution that we passed everybody is required to be accountable. It is, indeed, ironical that everybody is using the Constitution to escape accountability. The Constitution that was in itself meant to cause and increase accountability in our country, has become a tool for people to use to escape accountability. We have the case of governors and now we have the case of Cabinet Secretaries who want to escape accountability when it is a national value.

On the CIC, and many lawyers as well as everybody in the country knows it, the Constitution is not a text book at all. You cannot read the Constitution in black and white and say that "this is what the Constitution says and this what the constitution does not say". The Constitution is a framework law, a legislation that guides the country, a living document that you interpret and implement as you go along. Our Constitution is very young, just four years old having been passed in 2010. We cannot read it cover to cover the way CIC seems to be doing. A Constitution is a people's aspiration. It is a means to an end. It is not an end in itself. This Constitution must deliver us to development. We cannot read the Constitution and remain a poor country for the rest of our lives; we have to read this Constitution and move our economy and our country forward. How do we do that? We need to have purposive interpretation of the Constitution. We need to actually ask CIC to wake up and interpret this Constitution purposively. If you look at the question of Cabinet Secretaries coming to this House, we have raised Statements here before. I did raise a Statement on the question of sanitary towels and girls failing to go to school because of lack of sanitary towels. I received an answer from hon. (Ms.) S.W. Chege, my friend the Chair of Committee on Education, Research and Technology. I was in shock to hear that 23000 students from my own county have received sanitary towels. Nobody has seen those sanitary towels, nobody saw them arriving. I have never met a single beneficiary; I have never gone to a single school where they admitted that they had received those sanitary towels. I cannot push my friend, hon. (Ms) S. W. Chege to give further details on where the sanitary towels were delivered because she would not know. The only person who would be able to answer this question is the Cabinet Secretary in charge of Education, Prof. Kaimenyi. He is the one who can explain the issue. A Member of Parliament here, even though being a Chair cannot answer those questions. So, every time we raise a Statement here, it is not answered. Kenyans are not answered and the budget process will show that Kshs. 400 million has been spent on sanitary towels in this country. We want to ensure that whatever programmes Cabinet Secretaries have put in place, benefit our counties.

Allow me to address the question of national unity. We are a National Assembly. Allow me also to mention here that during the Commonwealth Parliamentary Association meeting that was held recently, the Continent of Africa did regret losing Dr. Shija from Tanzania. We send our condolences and regret that our great son passed on.

We discussed the question of Mandera and the issue of having a buffer zone or a security cordon in our country. We have got, as the National Assembly, to promote national unity and deal with that issue. It cannot be that Members from Mandera County go to queue at the Office of Cabinet Secretary, ole Lenku alone just because it is a Mandera issue. This is not a Mandera issue; rather it is a Kenyan issue. Even though I am from Nyeri, I am interested in an answer on why *Al Shabaab* are taking a walk in Kenya just as a person from Mandera County is interested. So, when the Cabinet Secretary comes here to answer a question concerning Mandera County, he will not be answering questions about Mandera; rather he will be answering questions about Kenya from all of us. We are all interested in that answer and it is not for Members of Parliament from Mandera. We have been subjected to an almost inhuman and degrading treatment of queuing at the offices of Cabinet Secretaries for hours waiting to be called in. Sometimes, a Cabinet Secretary leaves you there waiting and does not even address you when what had taken you there was not a contract or a personal matter, but a matter of security in your county. Let the Cabinet Secretaries come here on matters of national unity. Let us care. Those of us who are not from Turkana, when we hear that there is no food in Turkana, we need to care. We need to realize that, that is a Kenyan problem and not a problem for Turkana County alone. So, the Cabinet Secretaries will not be addressing just Members from Turkana or Mandera counties, but Members of the National Assembly and Kenyans.

Hon. Speaker, allow me also as a Jubilee Coalition member to note here that the President and the Deputy President and ourselves from Jubilee play in the same team. Our team is Manchester United. It is the team that has the cup. It is the team that wins. It is the team that has many goals. The CORD Coalition, I think, is the Arsenal team and the former Prime Minister has many times admitted that he is a fan of Arsenal. When it comes to Cabinet Secretaries, they must help us to keep the cup. They must help us to win goals. They must help us to explain to Kenyans what the Jubilee Administration is doing. The only way they can do that is by coming to the Floor and letting us know what they are doing. For the Jubilee members, since we will be required to tell Kenyans what we have done, that will serve us very well. They play and they have to remember that we play on the same jersey. When the whistle is blown for us to go back and look for votes, we will have to explain what we have been doing. The only way we can do that is by continuously showing that we are working for this country. We intend to keep the cup, as the CORD Coalition knows, until 2032 and beyond.

As I wind up, allow me to speak on the question of individual responsibility for the Cabinet Secretaries. Again, they will not share in the decision not to come to the House. Any Cabinet Secretary who is invited is invited for the docket for which we vetted them. They need not come here in unison or in a choir. We vetted each one of them individually and so individually, they will have to appear before the House to explain questions. They cannot hide under collective responsibility. On this matter, as and when the questions arise on their dockets, each one of them will have to come to

respond to the issues that are raised. They cannot, at any one point in time, fail to come. Each one of them will come here alone. Those who fail to come will then have to suffer the sanctions of that refusal on their own, including a possible removal process. Any Cabinet Secretary who does not come would be risking a removal process.

Hon. Speaker, allow me to differ with some of my colleagues in this House. I am one of those people who believe that having technocrats as Cabinet Secretaries is the best for our country. I would not favour a return to a situation when we had Ministers and Assistant Ministers who were politicians. I like the fact that the 349 of us here are members of equal rank. It will be sad to return some members of a senior rank here and then we have all manner of issues with senior colleagues who are in Cabinet and those who are not in Cabinet. Again, every time the President is appointing a Cabinet all of us become enemies of each other and everybody is waiting to be appointed or sending delegations. Some even part with some money and all manner of practices would go on to get Cabinet slots. It is good that we do not have that practice. It is good that those of us who are elected as Members of Parliament do serve as Members of Parliament. These technocratic Ministers, what they can do for everybody in this country is prove that, indeed, the Constitution is right. How do they do that? It is by taking their functions very seriously and by showing everybody that having a Cabinet Secretary who looks at health matters from morning to evening; 24/7 is better than having a Cabinet Secretary who is also a Member of Parliament. So, when we call them here we expect them to show us that they did not just go to school for papers, but those papers actually mean solutions to the problems facing our country. Those of us who still do not believe that technocratic Cabinet Secretaries are good; the platform that we are giving Cabinet Secretaries is unparalleled. It is like no other. It is great that a Cabinet Secretary would take the podium and show the country what the Ministry is doing and that, indeed, the country was right to invest in non-political Cabinet Secretaries. We will ask them to take this opportunity and show the country that it is right to have men and women who are committed 24/7 to delivery of key Government and national programmes. Do not allow us to go back to that temptation of having politicians as members of Cabinet.

Remember that we do not have an evaluation process of the work of Cabinet. Audits come very late. They are actually post mortem. By the time we come to audit, it is very late for programmes and projects. This is why when Cabinet Secretaries come here in real time we could allocate more money where funding had not been done properly. We could look at the choices that they are making on distribution of projects. We could also look at where matters can be corrected long before we wait for the audit to know that some things did not go well.

On the question of data, programmes, policies and national sharing, I think that would be useful. Allow me to speak as somebody from Central Province. It is becoming very unfair for our country that only one region of the country or two regions, that is, Central and Rift Valley are suspected to be beneficiaries of Government programmes. It is very sad because that is, indeed, not true. The only way we can disprove that is by showing the distribution of national projects and funds. We need to have a country where everybody can see where we have taken money for water, sanitary towels and roads. We should then ensure that national sharing and equity is being done. We should not load on

some of the provinces the sort of hatred that is loaded on my own county. The property in Nyeri is just like the property in any other county out there.

With those comments, allow me to encourage and urge Cabinet Secretaries to adopt a positive approach to this process. I urge them to adopt an engagement approach to this process and to rest assured that the Constitution has been followed. This House has followed the Constitution. As representatives of the people, we are entitled to ask the Cabinet Secretaries questions. They in turn have a duty and responsibility to answer those questions. There was no process of oversight written in the Constitution and so this process we have adopted is, indeed, the right one. We are a living House. We are a learning House. It is a living Constitution and so should there be need to change we will come together again to look at any issues that might need to be changed. As for now, the Cabinet Secretaries that skipped the hearing and session today must show up next time. They must answer the questions. The Cabinet Secretary in charge of security knows that the country is struggling with insecurity. If there is a person who should be coming almost every other week then it is him. The Cabinet Secretary for Education knows that education is the heart of our country. So, he must come here and engage Members.

Hon. Speaker, we thank you for the approach that you have taken and your leadership in this process *ya kuka ngumu*. Thank you.

*(Laughter)*

**Hon. Speaker:** Hon. Gideon Ochanda.

**Hon. Ogolla:** Hon. Speaker, a good reading of Articles 124, 125, and 153 of the Constitution indicates that you have been right. It justifies exactly what we are at as a House and we need to move forward with it. We have agonized over a period of time. This is, in fact, the second year. When one looks at the issue of separation of powers, we have been playing our role through Chairpersons of Committees. This is a role that needed to be played by the Executive. If the Cabinet Secretaries cannot appear in Parliament or before the Committees, then the person they are answerable to under Article 153(2)--- This is because each one of them, individually or collectively, is accountable to the President. If the Cabinet Secretaries do not appear then the President must indicate to this House who is to appear.

This is the message that needs to be indicated very clearly that somebody must appear to account for the actions of the Executive. Like I have indicated before, we have agonized when our colleagues are the ones who attempt to give responses to questions forwarded to the Ministries. Many times, they just read the responses. They cannot explain the background of all those statements. It has been very difficult to put a colleague in the same situation that you would want to put the Cabinet Secretaries.

The other thing is that you have done very well in terms of trying to socialize with the players. I think we are arriving at this through some kind of a process and the Speaker has done very well. Many actors are supposed to be in this process, but the Speaker has taken his time. My view is - if I am to read what we had last week or last week but one - that the Speaker has socialized players into this process. They have been alerted and briefed on what those things are all about. I think it is very much clear now. But when somebody comes to say that those people cannot appear at the eleventh hour, when the

Speaker has taken a lot of time in terms of briefing them, it is not in good faith. In fact, all of them agreed that it is something that needs to work and we should proceed with it. I think that must have been unfair to this House.

There are things that we talk about in governance, for instance, principles of independence of public institutions and separation of powers. What we raise in terms of independence of public institutions does not mean that the institutions stand alone. They do not stand alone. There is no way a public institution will even stand alone. If you look at what the Constitution provides in Article 6, in terms of inter-dependence and whether or not we have public institutions vertically or horizontally arranged, there has to be some level of where one institution relates to the other. There is a relational arrangement between institutions in as much as they are separate and in as much as we talk about independence. There is no way we can say that now that the Executive is separate from Parliament, then the two must stand alone. If we said so, then I think we will not be going anywhere. There is a connection between Parliament and the Executive. Parliament does the work of policy approvals, legislation and oversight. It can only do that when the Executive exists. So, there is that kind of a relational arrangement between those public institutions. So, there is no way we can insist and say that independence means that one must stop at one moment and another one goes to the other direction. That is mis-reading of the principles that we have in governance. It is clear that the Executive must account for its actions and it must be answerable to the public. The best way to be answerable to the public is through the representatives of the people and that is this Parliament.

The President has lamented over a period of time that we are in a situation where Cabinet Secretaries are summoned by Parliament many times. That is the time they needed to have looked at this thing seriously. They would have seen that the time the Cabinet Secretaries will take to appear here for the purpose of the Committee on General Oversight would be much shorter and more appropriate because many Members would be much more satisfied. When a Statement is read and is not satisfactory, you will call the Cabinet Secretary to appear before the Committee again. It becomes something that does not end. The best approach and opportunity that we have is when those Cabinet Secretaries appear in this kind of an arrangement so that they are able to answer and respond to supplementary questions that follow substantive issues.

Then there is the whole issue of contradictions that we have been seeing before. When we say that the Chairperson of a Committee comes before us and talks as though he or she is a Cabinet Secretary, that is something we cannot close our eyes on for too long. That is something that is not practical. We have reached a situation where it is important that it is considered.

Hon. Speaker, one of the institutions that is supposed to midwife the constitutional implementation process and the transitional arrangements is the CIC. Many times, the CIC has tended to be very reactive rather than offering solutions. They wait until individuals or institutions come up with certain actions and they run ahead to say that it is wrong. They do not come forward early enough to identify the transitional challenges that we have. This is the time when CIC needed to have offered advice instead of being reactionary. They are not supposed to constantly come out to say this or that is wrong or it cannot be done like this or that without providing solutions and suggestions in terms of how we should move forward. This is where we really want to fault the

Commission and not the person, in my view. The CIC is one of the “midwife” commissions that is supposed to take this country through the proper processes of implementing the Constitution. In my view, it has not done that very well. They are getting into certain things that sometimes bring in acrimony and are not very good for this country.

*[Hon. Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. Kajwang’) took the Chair]*

Imagine if we get to a situation where the Cabinet Secretaries do not appear. In my view, what the hon. Speaker has to do next is to tell the President. The President has to appear in Parliament for the constitutional time that he has to appear in Parliament and also come on behalf of the people who are accountable to him like we have it in Article 152(2). That is because all Cabinet Secretaries are individually and collectively accountable to the President. If they do not do that, then it means that the President himself must come to account to the public in terms of what exactly needs to be done.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, we still have a lot of requests coming in. Those of us who will get a chance to speak, please, let us keep our address to ten minutes. I can see that some of us are going beyond ten minutes and, therefore, will not give others an opportunity to ventilate.

The hon. Member for Kibra.

**Hon. Okoth:** Thank you, hon. Temporary Deputy Speaker. As I begin to comment, I wish to reflect about what is in our Constitution which clearly states that sovereignty comes from the people of Kenya, who then delegate to institutions and representatives like us here in Parliament to work for them and use that power for their benefit. What we have seen today in the process of inviting Cabinet Secretaries to attend the Committee on General Oversight is a challenge. Will the Office of the Speaker and Members of this House stand up to protect the power, integrity and sovereignty of Parliament?

In my view, there are some anti-progressive forces in this country which are out there to sabotage this House and make us look ridiculous. They know very well that they have been summoned, but only one of the three Cabinet Secretaries showed up. If I may speak to the Members of the Jubilee side, actually the Cabinet Secretaries that we have now are the Achilles heel of the Government. They are the ones who are the weakest chain in the link. Their delivery of programmes is questionable. Hon. (Ms.) Nyokabi has given an example in the education sector. There are other areas such as security. If those people have nothing to hide, why should they not honour summons from Parliament and come here to answer questions? They have an opportunity to listen to our concerns and take recommendations from this House for full implementation to the best interest of Kenyans. I think whoever was involved in sabotaging--- I will use that word very deliberately because we know that two of the Cabinet Secretaries were present around Parliament and they just disappeared. I do not think they did that with direct instructions from the President. I wonder who it is they are working for if we have a Jubilee President

in charge of the Executive and yet the people he has appointed to work for him do things that are contrary to his spirit. I think we really need to look into that.

Hon. Temporary Deputy Speaker, you should let those of us who are politically willing to deal with those people who are sabotaging our Speaker and our Parliament from doing their job. When you look at Article 124 of the Constitution, the power to run our business and affairs, including constituting our committees, does not belong to anybody else. That power neither belongs to the Attorney General nor any functionary in the Executive. So, for members of the Cabinet who were vetted and approved in this House upon nomination by the President to turn around and hide behind some writings and advice of the Attorney General or a functionary in the Executive, they are deceiving themselves. They need to remember who they are accountable to. That way, they will make sure that they come here to answer our questions.

Our Constitution is very clear that the work of Parliament involves three things. The first one is legislation. We are here to make good laws for our country. The second one is representation. We are here to make sure that the views of our people and their concerns are well heard. But the biggest value of all the purposes of Parliament is oversight. I think it is this oversight function that has really scared some of the Cabinet Secretaries. What is it they are trying to hide? We know that in a country of corruption where tenders are not awarded in the right way; in a country where audit shows that a lot of money is lost through Government spending and things like that, is there something we believe professional and technocrat would do to run their Ministries differently? Is it that they are afraid to come out and show that they are doing their jobs well and that where they are not doing their job well, they are ready to be shown, they explain and request to be supported to do their job well? However, oversight in my sense is the biggest value addition for this House and for the legislators.

I will give an example in the last Parliament where the Budget and some documents came in overly inflated. If the Members of this Parliament and its Committees did not read carefully through the Report and find out that typographical error – we were told it was a typing error or a computer error –it was going to cost hundreds of millions of shillings of taxpayers' money. That is what we call oversight and diligence.

When Members of this House do their job well, they add value to this country because they save money and wastage. They also save us from poor decision-making or delayed implementation of good policies that should benefit our people. I think we, as a Parliament, should insist on our oversight role. The Speaker and his team have done a great job in coming up with this mechanism to bring our Cabinet Secretaries here to answer questions.

It is not a new tradition. If you look at practices in a country such as France which has a presidential system and Cabinet Secretaries who are not Members of Parliament, you will find that they still go to the French Parliament to answer questions. If you look at a country such as Senegal and a few other jurisdictions, you will find that there is--- We cannot just be straight-jacketed to laws that exist and the Constitution in writing and say that separation of powers is the end. We actually have separation of powers. Calling Members of the Cabinet to Parliament to account does not in any way negate separation of powers. It does also not make them Members of Parliament or the Legislature. We are not calling them here to represent anybody; neither are we calling them here to legislate.

We are calling them here to account for the job they are supposed to do. To me, the separation of powers is very clear there.

However, if those intricacies and high handedness continue from some people in the Executive and the Cabinet Secretaries, I think it will really be a hard time for us. Perhaps, this should be a subject of a referendum. This country is ripe for a referendum my friends! We need a referendum to discuss very important issues such as the one-third gender rule. I would not belabor the point because we have already asked that it be discussed in the referendum. There are land issues and the powers of the National Land Commission (NLC). We also have issues such as the percentage of money to be allocated - about 40 per cent - to county governments in line with the functions that have been devolved to them.

I think when we talk about the referendum, I call upon all CORD and Jubilee Members of this House to think about not only how we will come up with a referendum that could address issues such as the one-third gender rule as well as on this issue we ask the Kenyan citizens---

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Member, I follow you, but just keep on the subject matter. The question of the referendum will have its day again on the Floor of the Assembly.

**Hon. Okoth:** Hon. Temporary Deputy Speaker, I really think I am not the first person to mention it. Maybe, we need to relook at this Constitution because it is a living document. As we went into the elections, we said that it was 80 per cent good and 20 per cent worth changing and improving. I think in that 20 per cent worth of improvement or basket of issues is the question of Cabinet Secretaries.

People of good intentions can share different positions. My friend, Pricilla Nyokabi has just said that she does not believe that we should have politicians as Members of the Cabinet and Members of Parliament as Cabinet Secretaries. Others have lauded Charity Ngilu, the Cabinet Secretary for Land, Housing and Urban Development for showing that she has nothing to fear and she understands the role of Parliamentarians as the voice of the people or the elected representatives of the people to play oversight role over her. She had no fear and she showed up here. That is why I brought up the issue of the referendum. This could be a serious referendum issue to be added there.

Last but not least, we need to hold people accountable. One of the things is that Parliament is granted the power similar to the High Court. When people refuse to honour summons to show up here, we should hold them accountable because that is contempt of the House. When you cannot show up before the House Committees, whether it is the Committee on General Oversight or a Departmental Committee, it is really an item of contempt because you are employed by the Kenyan people to work for the Kenyan people.

If you cannot answer to the representatives of the Kenyan people, then that is the highest form of contempt. We really need to look at those Standing Orders that have been proposed before and sanctions as high as, perhaps, I would propose Kshs500,000 be imposed. You refuse to show up and that is the first strike. I know some people have said that it is extreme to go to impeachment right away or commence removal proceedings of Cabinet Secretaries who decide not to co-operate with the National Assembly.

The first step is to declare those people to be outright in contempt and find a way to fine them and hold them personally accountable. Then, a second instance of contempt should automatically lead to a situation where we really proceed with removal.

Hon. Temporary Deputy Speaker, with those few remarks, I must say that this House is a serious institution for this country and our Cabinet Secretaries should find a way to organize themselves. I think it is very considerate considering the House is even giving them the questions before hand. It is a proper way to do it and I am proud that we have done it that way.

If I may put it on record, the questions that were to be put to the Cabinet Secretary for Land, Housing and Urban Development were just three. There was a question about something in Machakos Town Constituency on the Konza Techno-City land which she can address properly instead of a Statement to be read by a Committee Chair. She also came here to answer a question about issuance of title deeds to people in Sotik Settlement Scheme in Bomet County. She also had to answer a question about a property in Karen and Diani. Those were important questions and she answered them competently.

What is interesting is that the two Cabinet Secretaries who dodged today; the ones who, out of misguided information, advice or out of fear or whatever it is – cheap politics or incompetence or lack of confidence on their part--- They had questions to answer but they escaped in a very shameful manner. This is something that should go on their record as a day of shame for the Cabinet Secretary for Interior and Co-ordination of National Government and the Cabinet Secretary for Education--- The Member for Saboti had a question on the criteria used to determine what a sub-county is. This is a national matter. I come from Kibra Constituency which was hived off from Lang'ata Constituency. When will we get our own Kibra Sub-County and stop being part of Lang'ata Sub-County? That is a national issue. It was a very simple, non-political issue and we were not even asking about the incompetence at Westgate. But we were asking when he will realign district and sub-county boundaries to march constituencies so that it makes sense. That is because we have schools in my constituency which are considered to be in Dagoretti Sub-County while other schools in my constituency are in Lang'ata Sub-County. It is a whole mess. If you look at Nairobi County and other counties, you will find that there is a problem.

So, for good basic administration, security, provision of new police posts and police stations that we need to build in Kibra Sub-County which I represent, we have no police station. This is a matter that he would have come here to address. They are non-threatening and yet they are very important and he dodged. For that I say: "Shame on you ole Lenku."

I will wrap it up by saying that he was asked to come and address an issue of cattle rustling from 6<sup>th</sup> June. It was a very simple issue in Baringo County but he escaped. The Cabinet Secretary for Education, Science and Technology, Prof. Kaimenyi, dodged answering a question about certificates. This is a national issue. The young people who voted for Jubilee thinking that it will employ them were betrayed because the certificates are being held and they cannot get jobs. He was supposed to come and answer a simple question. He would have even addressed issues such as school fees that are being charged illegally against our Constitution.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you very much, the hon. Member for Kibra for those good observations. Hon. Members, this is the time that it calls for men and women with stamina because we have really stretched the debate. So, when you rise to speak, keep us a little excited. Avoid repetition and make it swift and to the point so that we find it exciting to be in the House at this last part.

Hon. Chief Whip, I can see you are there. Ordinarily, when you request, your request is always given but just allow one or two people to make contributions because, if you do that, you will also be speaking on behalf of the leadership. I can see that you are the only face of leadership in the House right now. So, just hold your horses and allow a few Members to say something.

The Chair of the Constitution Implementation Oversight Committee, a lot has been said about matters that touch on your Committee and I think it is fair that you put in your comments before others are able to say something.

**Hon. Baiya:** Hon. Temporary Deputy Speaker, let me take this opportunity to make a contribution on this. I am aware of what some hon. Members may have said about the CIC, but what is important for us to be clear is that the CIC is one of the independent commissions set up under the Constitution. They were not only appointed, but the House participated in approving their appointments. We are in the process of implementing this new Constitution which has created several institutions. It has set up several principals that, in themselves, are counter-checking each other and have entrenched the process of checks and balances across the board. The worst we can possibly do is to lock out views simply because we do not agree with them. So, I would say that I do not share the views by the CIC, but I would ask hon. members to ensure that we also uphold or respect their views as a constitutional institution which we have ourselves, as Parliament, approved.

What I also want to say on the substance of this debate is that I have no doubt in my mind that the National Assembly has every legal and constitutional right to summon Cabinet Secretaries even to constitute the Committee on General Oversight. That is perfectly legal and it is perfectly constitutional. But some of the concerns that are being raised - and I would not want to be dismissive of any - is this: In terms of effectiveness, those are issues that we are going to be dealing with, with time. If you look at the old ways of how we used to run Parliament, we had Question Time sessions. We used to call it the “comedy hour”. I was in this House and I can tell you that hon. Members possibly think that, that was a good time. But it was also very frustrating as you received answers from Cabinet Secretaries who were also Members of Parliament who were considered, at times, to be evasive. I recall one former Assistant Minister - unfortunately, he is no longer with us - the late hon. Ojode. He was rated by hon. Members as one of the most effective Assistant Ministers, but when you look at some of the assurances and promises he made, he did very little. He was accused of being very good at giving promises which he never implemented. That was the experience with Question Time.

Under the new Constitution, a situation where the National Assembly has 349 Members, it was considered that questions did not constitute business of the House. The real business of the House started after Question Time. Under the new system, we went to the Committee system. My understanding is that when we constitute committees, we are supposed to have people who have professional strength in the areas they will be supervising Government on. Those committees are supposed to be spending a lot of time

and you can be sure that as they are working, it is Parliament working. But when it comes to the comedy hour as they call it in the Congress, it is the Congress on show or Parliament on show. That window of Parliament on show is a very narrow window and it does not give us sufficient opportunity to play oversight role as we would do in committee levels where we have a lot of specialized competence from Members of the committee and who are going to build on those skills over time. That is my view.

Hon. Temporary Deputy Speaker, when you look at experiences in some of the other countries, we can see that this opportunity for the Committee on General Oversight where we will be interacting with Cabinet Secretaries--- If you look at the size of the Cabinet, that tells you that if it were in the Tenth Parliament where we had a Cabinet of almost 40 members, it does not give Parliament enough opportunity to exercise its oversight responsibility, more so because even when you are in the Committee on General Oversight, a Member who possibly is more skilled or exposed to a particular field will not necessarily have priority over any other hon. Member who may ask a question of concern to his own constituency. So, my view, therefore, is that we are in the process of implementing this system and we should be open-minded. Let the Cabinet Secretaries come. We will implement this and we will learn from it. In the process, we may decide whether it is helping us as Parliament to achieve more oversight effectiveness over the Executive or we may require revisiting the issue of the existing Committees. My view is whether we have this Committee on General Oversight, there is a strong case for insisting on us strengthening the Departmental Committees. This is basically because as Departmental Committee which has fewer Members, you can be sure they have the ability to build their own capacity to oversee Ministries than the Committee on General Oversight. I have no doubt about that.

The other important thing is that when we summon Cabinet Secretaries to come before the Committee when you know very well that some of them do not have a background in politics - I am not surprised that some changed course - they will require a lot of assurances for them to do it. It is no wonder that the one who managed to come and face this House happened to have been a former Member of Parliament, which means she can withstand the heat but for the others and this is not inferring that they have issues of credibility of competence, it is by virtue that they know they are coming to meet people who are basically politicians and who may possibly pull surprises. So, we need to appreciate that there is a level of intimidation that would apply at the Committee level. All those are our institutions of the new Constitution and we would be saying that we should interrogate all of them and be willing to run. I do not share the thinking that it is unconstitutional to go the Committee on General Oversight direction. My concern is about its long term effectiveness in overseeing the Executive on a narrow window of the overall Committee of Parliament because the new system recognizes that the Committee should be the focal point to oversee all those Cabinet Secretaries. In the course of time, if they improve and prove themselves effectively, they may attract the kind of publicity the Committee on General Oversight may attract.

With those few remarks, I beg to support.

**Hon. Anyango:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity. I am very happy because Parliament is becoming creative. This is surely a

very ingenious idea. Secondly, it is not unconstitutional, but it brings a new dimension in this country.

Hon. Temporary Deputy Speaker, when we were debating the decision as to whether to go presidential or parliamentary system of governance, I argued with Yash Pal Ghai when he said that a presidential system will create an “ivory tower”. It is not democratic and he agreed that it is not stable. Parliamentary system is democratic and more accountable. What Parliament is doing is to bring into account the Executive to remove the “ivory tower” kind of arrangement which we have been risking. You heard me complain before that the Leader of Majority Party was beginning to act like a Prime Minister of the Executive by promising the House things he has no capacity, nor power to implement.

Hon. Temporary Deputy Speaker, similarly, you have heard so many hon. Members complaining here that the reporting system by the Chairmen of the Departmental Committees was wanting. A lot is refined between what the Cabinet Secretaries presented to the Committees and what finally arrived before hon. Members in the House.

Hon. Temporary Deputy Speaker, I am personally persuaded that performance is a serious issue in the governance of our country. It is important that every person participating in any organ of governance in this country is not only accountable, but is able to be evaluated on his or her performance. Therefore, I fully support that the Cabinet Secretaries should come before the Committee on General Oversight and defend their actions. They should know very well that, if they do not implement the undertaking they give here, it would be misconduct in the eyes of the National Assembly; face to face on camera.

Hon. Temporary Deputy Speaker, we have to see the consequences of this very creative change. One, we have to separate the issues for which we shall demand that the Cabinet Secretaries come before the House. There should be issues that only require straight answers and an undertaking to implement thereafter. The other issue that would require investigations; detailed interrogation, multiple appearance before a committee of the Assembly should still go to the committees. In other words, we should not go back to the old Question Time where I would rise and raise a question about something of interest to my constituency in Rongo. There should be a committee under the Speaker’s Office that would scrutinize all questions directed to every Cabinet Secretary and refine the issues in a way that when the Cabinet Secretary come here; he or she gives straight answers on which we can act on thereafter.

Any questions hon. Members may raise as matters of interest and concern to their constituents; would then be handed over to the Departmental Committees. We must make this change. Anybody who comes out to tell us that it is unconstitutional, then that aspect of unconstitutionality is something we may have to look at strictly and line it up. This is because the Constitution we made is clearly neither British Parliamentary nor American Presidential. It is Kenyan and we are making it out of the Kenyan experience. We are making on the basis of the demands on Kenyans to perform and to be in competition with the rest of the world. Therefore, it is in order for Parliament to come out with this idea to make members of the Executive more accountable.

Hon. Temporary Deputy Speaker, I wish we were also able to find a way of making the independent commissions more accountable than what they appear to be doing now. If there is a way Parliament should look creatively in that other direction, to be able to hold all commissioners and all commissions equally accountable to the people by a way of reporting to the National Assembly or through the Departmental Committees---

Secondly, having been in Cabinet for so many years, a Cabinet Secretary knows a lot and can formulate policy on the spot, based on the interest conveyed by the hon. Members in the quality and content of a particular question. You do not expect Departmental Committees to be the same. Therefore, let them also be persuaded that coming before us will help them develop more appropriate policy and undertake and implement more useful service delivery issues that this country requires.

Hon. Temporary Deputy Speaker, on the face of it, the issue in contention is the separation of powers. Separation of powers yes, it may be there but what was the objective? It can only be there for purposes of enhancing performance and accountability. We are not in breach of the qualitative values in the separation of powers concept. Therefore, I am persuaded on the face of it. Somebody would argue that you are bringing Cabinet Secretaries into the House and you are doubling the Presidential system; it is now going to be mixed. Let us separate it and say; this one is Kenyan Government standards, practices and systems. If it will work for us, let it be so.

Finally, I want to say that we have been very lazy. If you go to the Departmental committees, you can hardly get 12 hon. Members sitting throughout the session. Therefore, even Cabinet Secretaries sometimes will also rate us. If we are going to demand more by way of accountability, they are also right as an Executive to demand quality contributions at the Committees and in Parliament and in all committees; including the Committee on General Oversight that has been formulated.

Hon. Temporary Deputy Speaker, I thank you and we should persuade the whole country to be equally creative with us.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you very much. Let us hear from the hon. Member for Teso South.

**Hon. (Ms.) Otucho:** Thank you very much hon. Temporary Deputy Speaker for giving me this opportunity. Actually, I have been queuing since 3.00 p.m. but finally, at least, I am lucky to catch your eye.

Hon. Temporary Deputy Speaker, allow me to add my voice to the contributions already made by my colleagues on the issue of the Committee on General Oversight and the behaviour that has been exhibited by our Cabinet Secretaries. I also want to register my disappointment. I left Teso South Constituency yesterday prepared to be here very early in the morning to seek clarification on areas of national importance on education, health and many other areas.

Hon. Temporary Deputy Speaker, a lot has been said about separation of powers. The importance of oversight must be over-emphasized. I want to applaud the leadership for taking the initiative to establish this Committee on General Oversight. This is because this Committee has a responsibility. Parliament has a responsibility to oversee government agencies. When we talk about oversight, we are talking about reviewing,

monitoring and supervision of Government agencies, programmes, activities and policy implementation.

Therefore, when Cabinet Secretaries fail to appear before a committee established by this House, that derives its powers from Articles that have been quoted, for example, Articles 124, 123 (3) and 125, we do not understand which Constitution Mr. Nyachae and his team are referring to or how they are interpreting the Constitution.

Hon. Temporary Deputy Speaker, many questions have been asked in this House with respect to the implementation of the resolutions and enforcement of the legislation made in this House. Most of the times, the answers we receive through the Chairmen of Committees are either inappropriate or insufficient. Therefore, the Chairmen of committees have no capacity or capability to answer further clarifications sought by hon. Members.

Hon. Temporary Deputy Speaker, I am the Vice-Chair of the Budget and Appropriations Committee and we appropriate resources for various functions of Government---

*(Hon. Member walked into the Chamber  
without bowing to the Chair)*

**The Temporary Deputy Speaker** (Hon. Kajwang’): Order! Just hold on hon. Ms. Otucho. That hon. Member who has just walked in laughing, can you go back to the Bar and do what you must do when you enter the National Assembly? Make sure that is the first time you are doing that.

Proceed, hon. Otucho.

**Hon. (Ms.) Otucho:** We have even just concluded a visit of several counties to get the views and opinions of the public before we begin reviewing and discussing our Budget. I want to tell you Members that the people we represent are very much aware of their rights. They are very much aware of the programmes with respect to development and they have questions. When Members place questions before this House, we do it on behalf of the people that we represent.

So, Cabinet Secretaries should therefore take it very seriously that when we summon them to appear before a Committee of this House, they need to honour and appear and give us clarifications and answers. This is because we have said many times that everyone has to be accountable. We, Members of Parliament, have to be accountable. Governors have to be accountable. Members of County Assemblies (MCAs) have to be accountable and everybody has to be accountable. So, what a better forum than this! I find this Committee a more structured means and way of actually carrying out the oversight mandate that we have as Members of this House.

Hon. Temporary Deputy Speaker, with those few remarks, I want to say that going forward we have to insist we must hold our ground that Cabinet Secretaries must appear before committees when summoned and they must give us clarifications. We must see the outputs because it is our mandate to oversee Government agencies.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you very much. I think ladies are better at keeping time. She has only done five minutes and she has presented everything she wanted to say. Member for Wundanyi.

**Hon. Mwadeghu:** Mheshimiwa Naibu Spika wa Muda, wacha nione kama ninaweza kufanya vizuri zaidi kuliko Mheshimiwa ambaye ametangulia. Ningependa kutoa maoni yangu kuhusu maswala haya ambayo yametokea kuhusu Makatibu wa Wizara kuja mbele ya Kamati ya Bunge – Kamati ambayo imeteuliwa ili kujihuzisha ama kuwahuzisha Wabunge wote ili waje waelezwe waziwazi yanayojiri katika Wizara zao.

Mheshimiwa Naibu Spika wa Muda, kabla zijaenda mbali naomba kuchukua nafasi hii kwa heshima yako nitoe rambirambi zangu kwa mwanakenya Professa Ali Mazrui ambaye ametuacha akiwa ni mtu mwenye sifa ambaye ameheshimika ulimwengu wote mzima na amepatia nchi hii sifa. Naomba mwenyezi Mungu aiweke roho yake pahali pema peponi.

Mheshimiwa Naibu Spika wa Muda, Spika ameeleza wazi kuwa kukutana na Makatibu Wakuu hapa hakumaanishi kuwa wanaingia Bungeni. Ni sababu tumekosa sebule kubwa ambapo tunaweza kukutana na wao vile wanavyokutana na kamati kila wakati. Tungekuwa tuko na nafasi kubwa hatungekutana hapa. Tungekutana pahali pengine lakini kwa sababu hiyo, imebidi waje hapa. Swala la kushangaza ni huu uoga umetokea wapi?

Kama Katibu wa Wizara, Mheshimiwa Charity Ngilu amekuja hapa akajieleza na wenzake wawili walionekana hapa basi kilichowafanya watoweke ni nini? Ni uoga ama nikutuheshimu Bunge ama nini kimetokea? Ndio maana nilikuwa naomba Kiranja wa Walio Wengi Bungeni na Walio Wachache--- Naomba nifanue, sisi mreno wetu mnatuita wachache hapa Bungeni lakini uko nje ndio tulio wengi. Kwa hivyo, Kiranja wa Walio Wengi ndani ya Bunge ningependa afafanulie Bunge ni nini kimewafanya hawa wenzetu Makatibu wakaondoka bila kuja kufafanulia Bunge yale ambayo walikuwa wameitiwa. Hata kama walikuwa wanaondoka wangeomba radhi. Wangeeleza, “mna mambo yametokea dharura na inatubidi tuondoke na tunaomba msamaha ili tuje wakati mwingine tujieleze yale ambayo yametuvika”. Wamepotea hivi hivi. Je, ni watu wenye nidhamu ama ni watu tuu wanachukulia Bunge kama ni kitu, ama ni watu wanakutana tuu kupoteze muda?

Mheshimiwa Naibu Spika wa Muda, ni ombi langu kuwa hawa waje tena wajieleze na wachukuliwe sheria za kinidhamu. Mwenzangu Mheshimiwa Nyokabi alisema kuwa Serikali hii ya Jubilee iko katika nguzo za uwajibikaji na uwazi. Nashukuru na ni vizuri. Kama iko katika nguzo za uwajibikaji na uwazi mbona watu wao hivi leo asubuhi wakaogopa kuja mbele ya kamati ya Bunge? Walikuwa wamepata wakati unaofaa waje wajieleze na waonyeshe kuwa Serikali ya Jubilee imefanya hili na inataka kutekeleza haya na hatufichi chochote lakini huu uoga umetokea wapi? Ni nini wanachoficha?

Nakubaliana na Mheshimiwa ambaye amesema hata hizi kamati za Bunge ambazo tumeziunda, wakati mwingine lazima ziwe zenyewe zina sifa. Wale ambao wamepelekwa kamati fulani, kama ni kamati ya sheria je tuko na wanasheria wangapi pale ili waweze kuingia kina cha kisheria na waweze kuwauliza hao maswali? Mara nyingi unakuta tumepeana kamati na yule ambaye amepolekwa kwa kamati fulani hana ufahamu, uwezo na majukumu. Anaenda tuu pale kujionyesha kisha anaondoka. Naomba

tuchukue nafasi hii hata hizi kamati nazo tuziangalia upya na tuone ni wapi watu wanaweza kuwajibika.

Mheshimiwa Naibu Spika wa Muda, nashukuru Mheshimiwa Ngilu kwa kuja hapa lakini wakati huo alipokuwa anajibu, yale yalikuwa yanakuja kwangu ni “Karen kuna utata”. Wao wenyewe wamesema hii ardhi ni ya mtu mwingine. National Land Commission imesema hii ardhi ni ya mtu mwingine. Ukweli uko wapi?

Wakati kama huu, vile Mheshimiwa amesema, ni mchache mno wakuweza kutoa maswala kama haya bayana yakabainika waziwazi kuwa yanaweza kujibiwa. Kwa hivyo, tunaomba, ijapokuwa muda huu umetolewa kamati pia ziendelee na kazi zao ambazo zinahitajika kufanya.

Mheshimiwa Naibu Spika wa Muda, tulikuwa na kikao hapa Jumatatu iliyopita ambacho kiliandaliwa na Mheshimiwa Spika. Makatibu wa Wizara wakaja wote na wakaelezwa kwa nini tumebadilisha sheria zetu za Bunge. Wanakuja kwa kamati andalizi ya Wabunge wote ili wajieleze. Wakafafanuliwa kila kitu. Jana na leo katika magazeti tunasoma kuwa mmoja wa Makatibu ambaye ni kinara wa Jubilee anawaomba hawa Makatibu wa Wizara wasije Bungeni. Yeye mwenyewe kwa nini awaelekeze? Kwa hivyo, kuna utata mkubwa ambao tungeomba Bunge iutatie. Inafaa wafahamu kuwa wakija hapa ni kujibu maswala ambayo Wabunge wangependa yafafanuliwe.

Kwa haya mengi Mheshimiwa Naibu Spika wa Muda, naomba kuweka tamati.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you. Member for Kipipiri. You may be the last person on this subject.

**Hon. Gichigi:** Thank you, hon. Temporary Deputy Speaker. I wish to start by saying that when this issue of our having changed the Standing Orders to accommodate the Cabinet Secretaries in Parliament was a public debate, I happened to have met at least two Cabinet Secretaries. I heard them being very confident and the two of them were actually happy that they will get an opportunity to come and address the nation in respect of matters pertaining to their dockets.

I can say without any doubt that it is only some few Cabinet Secretaries who are probably cowards or have something to hide who were afraid of coming to this place. They are the ones who must have tried to impress on the top leadership of the country to help them to fail to come. Some of them may have difficulties answering questions while others are merely afraid. So, it is not every Cabinet Secretary who did not wish to come to this place. Some are looking forward to appearing before this Committee on General Oversight.

I do not know why members of the Executive, both at the national level and at the county level are afraid of being accountable and having transparency in matters related to their dockets. If you were asked a question about, say, security incident somewhere, why would you be afraid to come to answer? If you were asked about the status of a certain title to a parcel of land, why would you be afraid to come and answer that question?

It is not going to be possible for every Wanjiku in this country to access a Cabinet Secretary. That is why the Constitution has arranged for the representatives of the Wanjikus to come to this House and relay to the Executive, the Judiciary and other arms of the Government. When I ask a question, I am not asking as Mr. Gichigi. I am asking as a representative of Wanjiku; as that Wanjiku. So, it is important that the Cabinet Secretaries see us as that. I was also having difficulties because of the conflict of interest

that Chairmen of the various Committees had. Under the Constitution, our role is oversight over the Executive. Then, here we are, answering questions on behalf of the Executive whom we are supposed to oversee. Certainly, if somebody had gone to court on that issue, it was a clear case of conflict of interest.

The Constitution is also very clear. If you look at Article 132, it says that the President is going to come to Parliament during the opening of Parliament. It also says that there are certain instances that he will come and make presentations to Parliament. It is actually mandatory. I am finding it very difficult to understand why the Cabinet Secretaries, who are his appointees would have difficulties coming to Parliament. Even the Cabinet Secretary in charge of Finance is known to come to this House. Our colleagues in the Ministries should know that we are working together. We are servants of this nation. We are not asking them to come here so that we can fight, but so that we can harmonise our duties and serve Wanjiku in a better manner. Please, Cabinet Secretaries, welcome. We are your friends.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you very much. Members, you will allow us to step into a few businesses that must be done before we wind up the proceedings this afternoon. I see the Member for Butula has been patient for a long time; Member for Turkana Central, Member for Vihiga and Member for Narok. Member for Bomet, you are just putting in your button right now. So, you have not been on the queue as many as those Members.

I just wanted to apologise profusely that we may not have reached you. You will get an opportunity to ventilate. But I also think that the Executive has heard the National Assembly here assembled, ventilate their feelings on this subject. I want to think that the Constitution being what it is, I do not see anybody who is going to diminish the authority of the National Assembly. The Speaker gets the feeling that Members now are understanding the amendments that we brought before the House and the constitutional references and we are able to interact with them every Wednesday and every Tuesday when those Cabinet Secretaries come before us.

With that apology, I beg to call the next Order.

## BILLS

### *First Readings*

THE IN-VITRO FERTILIZATION BILL

THE PHARMACY PRACTITIONERS BILL

THE BASIC EDUCATION (AMENDMENT) BILL

*(Orders for First Readings read - Read the First Time  
and ordered to be referred to the relevant  
Departmental Committees)*

### *Second Readings*

## THE BUSINESS REGISTRATION SERVICE BILL

**The Temporary Deputy Speaker** (Hon. Kajwang’): The Leader of Majority Party, take the Floor. Well, I have information from the Leader of Majority Party that it is his wish that this Bill be deferred. Therefore, I order that this Bill be deferred until such time that it will mature for the business of the House.

*(Bill deferred)*

## THE SECURITIES AND INVESTMENT ANALYSTS BILL

**The Temporary Deputy Speaker** (Hon. Kajwang’): Is the Chair of the relevant Committee in the Assembly?

**Hon. Gaichuhie:** Thank you, hon. Temporary Deputy Speaker. I beg to move that the Securities and Investment Analysts Bill, National Assembly Bill No.21 of 2014 be now read a Second Time.

On 3<sup>rd</sup> June, 2014, the Securities and Investment Analysts Bill, 2014, which was sponsored by our Committee, the Committee on Finance, Planning and Trade was read for the first time and thereafter, committed to our Committee for examination. The Committee consulted the National Treasury, the Institute of Securities and Investments Analysts, the Capital Markets Authority and the Nairobi Stock Exchange. While examining the Bill, the Committee noted that the principal object of the Bill is to provide for the establishment, powers and functions of the Institute of Certified Secretaries and Investment Analysts and for the registration of certified securities and investment analysts to facilitate realisation of accountability, efficiency, trustworthiness, securities and investment analysts in Kenya.

The Bill in Clause 5 provides that the expenditure of the institute shall be met by the funds generated by the institute and its bodies. It is not going to seek funds from the Exchequer.

However, there was no financial provision in the whole Bill, and the Committee is going to bring an amendment to make sure that all the finances that are collected by the institute are well accounted for in order for the members of the institute to have confidence in it. One of the major functions of the institute is to advise the Cabinet Secretary in charge of finance on matters relating to security and investment in all sectors of the economy.

Under Clause 12, the Bill provides for the appointment of the secretary to the council. We noted that although there is provision for appointment of the secretary to the council, the drafters did not specify if the secretary was going to be the Chief Executive Officer. After consultations, we agreed to bring an amendment to cater for the Chief Executive Officer of the institute.

The Bill also provides for registration of securities and investment analysts by the registration body, under Clause 13. One must have passed examinations issued by the Certified Securities and Investments Analysts Board. So, one has to sit for the exams and

pass before he can be registered. The Bill also provides that there shall be an ethics test that shall be conducted for one to be a member of the Analysts Investments Board.

Under Clause 17, the Bill provides for ways in which a member may be disqualified – a provision of major importance. The Bill also provides for a committee to vet all those people who will be registered. If one does not pass the ethics or integrity test, one shall not be a member of the institute. We also noted that, under Clause 20 of the Bill, the drafters introduced the word “financial”, which is inconsistent with other clauses in the Bill. We thought that it may interfere with other professions like accountancy. So, we will bring an amendment to delete the word “financial” from “investment and securities” to make sure that they only deal with securities and investments, and not the financial part, which is taken care of by the accountants.

The Bill also deals with disciplinary issues for the members of the institute. It provides for penalties and fines for anyone who may flout the institute’s regulations. Most importantly, the exact agency that will be taking care of them is the Institute of Certified Public Secretaries (ICPS). The Bill provides for protection from liability and financial provisions. In any entity established by law, financial provisions are very important as this goes a long way in creating confidence in the membership of the entity as well as promote accountability of its members.

The Security Investment Analyst Bill, 2014 seeks to provide for the establishment – and provision of powers and functions – of the Institute of Certified Securities Investment Analysts (ICSIA) as a body corporate; and regulate the securities and investment analysts profession.

According to international organisations for securities, the goal of securities regulation includes protecting investors, reducing systemic risks and ensuring that markets are efficient and transparent. Countries with vibrant security markets have effectively regulated and enforced institutions of the market. In Kenya, there is the Capital Markets Authority (CMA), which supervises the markets intermediaries including the securities and investments analysts who are equally important in terms of subjecting the regulation institution to meaningful accountability mechanism.

It is in this line that it is critical to bring out the role of security analysts and intermediaries in the security markets to ensure that there is a link between the investor protection and the capital formation. The role of the intermediary reduces intense burden on market participants and this encourages investors. The capital market industry in Kenya is regulated by various laws. There is the Capital Markets Act; the Central Bank of Kenya Act; the Retirement Benefits Act; and the Insurance Act. The legal framework for the industry has organized and strengthened the institutional framework of the capital markets in Kenya. However, this legislation does not provide a framework for regulation of the professionals in the capital markets industry. The professionals in this area work in pension funds; they are financial advisors in the stock exchange; they are investment advisors in firms listed in the Nairobi Stock Exchange; and they also manage other investments by insurance companies. We think that, as advisors, they should be regulated and that is why we are forming this.

The capital market, in the recent past, has been marred with challenges relating to professional ethics and integrity. We can recall that we had the Ngenye Kariuki Stock Exchange brokers and Nyaga Stock Exchange Brokers which went under due to poor

management and fraud committed by some of the professionals who engaged in malpractices. Such secret trading led to a lot of investors losing a lot of their money because there were no regulations. This institute is going to take care of that so that in future we do not have stock brokers going under with a lot of money from the investors who trust them.

There have been instances of lack of fiduciary responsibility among members of the board of some of the listed trading institutions at the Nairobi Stock Exchange. This has led to erosion of market confidence and low saving resulting to low capital formation. When people want to invest and the stock brokers are fraudulent then people stop saving. This actually affects the saving culture of Kenyans and makes our investments go low. There are existing similar institutions which are registered under the Societies Act, Cap.108 of the Laws of Kenya.

**The Temporary Deputy Speaker** (Hon. Kajwang’): How long do you have?

**Hon. Gaichuhie:** Hon. Temporary Deputy Speaker, five minutes or less.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Then allow me, before you go on, to extend the sitting of the House with another ten minutes. I mean up to 20 minutes to 7.00 p.m. Then you can finish in five minutes and then it can be seconded. The only reason is that I do not want to have a Bill which has not been seconded because then it does not become the business of the House. So, please, kindly, keep within that time.

**Hon. Gaichuhie:** Thank you, hon. Temporary Deputy. Let me move to conclusion. We also decided to check whether or not this is a new institution. So, we did some comparison studies and found that in South Africa they have such institutions. They have a body that is registered called the Investment Analyst Society of South Africa. In the United Kingdom there is a model which is the London-based Chartered Institute of Secretaries and Investments. We found out that in Japan there is the Security Analyst Association of Japan. So, this is not an institution that is going to be the first one of a kind in the world. Indeed, it exists. We have agreed that we should have this institution registered.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to move and ask hon. Shakeel Shabir to second.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Member for Kisumu East, you are seconding. Please, keep within the timelines so that we have a Bill which has been seconded for which Members then can debate later.

**Hon. S.S. Ahmed:** Thank you, hon. Temporary Deputy Speaker. I take your guidance on this matter.

The Bill is very timely because it captures the Vision 2030 whereby Kenya envisages to be, at least, the second hub of the capital and securities market in Africa. South Africa is way ahead of us. However, while we are aiming to do that, we need to have the right background. We need to put in place laws which will regulate the security investment analysts. My Chairman has said most of what I would have said and I do not wish to repeat for the sake of it.

This Bill is very important because it will raise the bar of professionalism in securities market. Under the market derivatives that we are talking about, we are talking about more complex products such as real estate, investment trusts, and exchange trade among

others. So far we have had a lot of quacks in the name of investment analysts. Some of them do not have the real qualifications. Some of them could have the knowledge, but they do not have an institute to regulate them. Kenyans are a very trusting lot and it is important that we have an institute that will ensure that industrial regulations are followed.

Hon. Temporary Deputy Speaker, this is a very worthy Bill and I beg to support. Thank you.

*(Question proposed)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, we have come to the end of today’s sitting. Therefore, this House stands adjourned until tomorrow, Wednesday, 15<sup>th</sup> October, 2014, at 9.30 a.m.

The House rose at 6.30 p.m.