

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 6th November, 2013

The House met at 2.30 p.m.

[Hon. Speaker (Mr. Muturi) in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table: -

The Consolidated National Government Investment Report submitted by the Cabinet Secretary, National Treasury, pursuant to Section 89 of the Public Finance Management Act.

The Quarterly Reports of the Commission for the Implementation of the Constitution for the period July to September, 2013

(By hon. A.B. Duale)

Hon. Speaker: Well, it is directed that the Report of the Consolidated National Government Investment from the Cabinet Secretary, National Treasury, be committed to the Public Investments Committee. Let us move on to the next Order. Is there any Member who wants to give notice of a Motion? There is none. Let us move on to statements.

Yes, hon. Susan Musyoka.

NOTICE OF MOTION

Hon. (Ms.) Musyoka: Thank you, hon. Speaker, Sir. I beg to give notice of the following Motion---

Hon. Speaker: But you are late. When we called out for Notice of Motion, you decided to sleep. If you sit on your right---

Hon. (Ms.) Musyoka: I am sorry, I did not hear that, hon. Speaker, Sir.

Hon. Speaker: You will give the notice tomorrow.

Hon. (Ms.) Musyoka: Thank you, hon. Speaker, Sir.

REQUESTS FOR STATEMENTS

Hon. Speaker: Let us now move on to requests for statements. Yes, hon. George Oner. He is absent. His request for a statement is dropped.

(Request for Statement dropped)

Is hon. Francis Mwangangi not here? He is also absent. He does not desire to be present. His request for a statement is also dropped.

(Request for Statement dropped)

The requests that are dropped must not be brought back to the House for a period of 30 days from the date of today.

(Applause)

Yes, hon. Christopher Nakuleu.

INSECURITY AFFECTING FISHERMEN IN LAKES TURKANA/ NAIVASHA/VICTORIA

Hon. Nakuleu: Thank you, hon. Speaker, Sir. Pursuant to Standing Order No.44(2)(c), I wish to request for a statement from the Chairperson of the Departmental Committee on Administration and National Security regarding insecurity affecting fishermen in Lake Turkana, Lake Naivasha and Lake Victoria. The fishermen are no longer safe while carrying out fishing in the deep waters of the lakes that I have mentioned.

Recently in Turkana, Ethiopian militia and police from the Southern Omo District collectively killed over 25 fishermen in a span of two weeks preventing fishermen from effectively utilizing the lake facility. In his statement, the Chairperson should report on: -

(i) The security measures that the Government has put in place to secure territories of our major lakes and more specifically Lake Turkana where the Ethiopian militia and State marines have constantly been attacking the Kenyan fishermen.

(ii) The plans the Government has to demarcate the lake to differentiate the safe fishing zones from the Government protected fishing areas.

(iii) When the Government intends to return the fishing equipment confiscated from the Turkana fishermen who were arrested in Kalokol and taken to Marsabit District.

(iv) The compensatory measures the Government has in place for those fishermen who lose their fishing equipment to the Kenya Wildlife Marines after being found in un-demarcated areas which is as a result of the Government's failure to differentiate the fishing areas from the non-fishing areas.

(v) He should also inform this House why the arrested fishermen are normally taken to Marsabit County for trials instead of Lodwar in Turkana County which is the closest jurisdiction for justice to be done to them.

Thank you, hon. Speaker.

Hon. Speaker: Yes, the Chairperson, Departmental Committee on Administration and National Security, hon. Asman Kamama.

Hon. Abongotum: Hon. Speaker, we intend to bring the report in two weeks' time. But I will also advise the hon. Member to liaise with the Governor of Marsabit, especially on small issues between the two counties. We will bring the report in two weeks.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Nakuleu

Hon. Nakuleu: Hon. Speaker, in as much as I agree with the sentiments of the speaker to deliver the response in two weeks' time, I would also wish to inform the chairperson that the issue of security is a national function and more than three times I have had contact with the Governor of Turkana over the same issue. He is not willing to resolve the two issues since he says security is not a county function; so, we get stranded when it gets there and the only place we can seek redress is this Assembly, through you.

Thank you

Hon. Speaker: Nevertheless, his commitment is that he will be able to give you a statement in two weeks' time.

Very well, hon. Waiganjo

STATUS OF INVESTIGATIONS INTO DEATH OF ERASTUS CHEMOREI

Hon. Waiganjo: Thank you hon. Speaker, Sir. Pursuant to Standing Order 44(2) (c) I wish to request for a statement from the Chairperson of the Departmental Committee on Administration and National Security, regarding the murder of a former senior General Service Unit officer. Mr Erastus Chemorei was shot dead on 19th February 2005 at his home in Kitale by about 45 of his colleagues in the service. Mr Chemorei, together with Mr. Lawrence Mwadime and Mr. Mathew Itere--- He was then in charge of a key to the store where the infamous Kshs6 billion cocaine haul was being kept.

In the statement the Chairperson should inquire into and report on the inquest and investigations into the murder of Mr. Erastus Chemorei, action taken and the directives of the Director of Public Prosecutions to two State agencies, that is the National Police Service Commission and the Independent Policing Oversight Authority to act against those suspected to have been involved in the murder. He should report on whether the two G3 rifles, serial No. 96927730 and serial No. 97085599, assigned to police Constable P. Kibor and Captain J. Cheruiyot on the day that Mr. Chemorei died, as stated by Silvanus Mwadegwa, officer in charge of storage, were ever found. Lastly is how the officers who allegedly went to arrest Mr. Chemorei on the fateful day expended their assigned ammunition for the day.

Thank you

Hon. Speaker: Hon. Abongotum.

Hon. Abongotum: The issue of this officer has been discussed in several fora, especially in the last Parliament; it was a big issue in Trans-Nzoia. So, we really need to get to the bottom of it. We will present the report in two weeks, hon. Speaker.

Hon. Speaker: Hon. Waiganjo.

Hon. Waiganjo: Hon. Speaker, the widow and the seven children of Mr. Chemorei have waited for eight years for justice to be done; they will wait for two weeks.

Hon. Speaker: It looks like hon. Kamama may have to relocate from this House to the offices of the Cabinet Secretary in charge of National Security, at this rate.

Hon. Nderitu.

ENCROACHMENT ON LAKE NAIVASHA RIPARIAN RESERVE

Hon. Ndiritu: thank you hon. Speaker. Pursuant to Standing Order No 44(2)(c), I wish to request for a statement from the Chairperson of the Committee on Lands regarding the encroachment and issuance of title deeds within the Lake Naivasha riparian reserve. Lake Naivasha is wetland of international importance, with over 300 bird species. Its economic contribution is of both regional and national importance. Destruction of the lakes in the riparian reserve would severely affect its ecological balance and hinder its environmental sustainability. In his statement, the Chairperson should inquire into and report on the number of title deeds that have been issued for land under the gazetted area within the riparian reserve and the ownership of the said title deeds. Two, he should report on the measures the Department of Lands and the National Land Commission are taking to cancel the illegal title deeds and reclaim the reserve and access roads to the lake that may also have been allocated to private individuals.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Mwiru

Hon. Mwiru: Thank you, hon. Speaker. The issue of encroachment into Lake Naivasha is a matter that has been in the public domain for long. It has been discussed in several journals and reports of different scholars and the Government. You have heard that the Questioner has alluded to the issue of bird species, ecology and environment. My Committee may be limited to only allocations. I may not dig deeper into the issues of ecology and bird population. As far as I am concerned, with the matter of allocations, we can get that in a very short time. I beg that he gives me two weeks to give the people and institutions which have encroached.

Hon. Speaker: Hon Mathenge

Hon. Ndiritu: I will accept the two weeks because once we have reclaimed the land that has been illegally issued then matters of ecology and environmental sustainability will have been taken care of.

Thank you, hon. Speaker,

Hon. Speaker: There is a Member raising---

Hon. Shimbwa: Thank you hon. Speaker for giving me this opportunity. I stand this afternoon to remind this House that I was supposed to receive a report on Kenya Petroleum Refineries Limited (KPRL) two months ago, but to date we do not know the fate of that report. There is a lot of anxiety among the workers of KPRL and the residents of Changamwe Constituency. I seek your direction on this matter.

Secondly, I also sought a statement from the Chair of Defence and National Security Committee on the matter of insecurity on the highways. I was supposed to have received his reply two weeks ago, but to date I have not received it. As I stand here, another driver by the name Alex Mwasia Muthui, ID No 2381573, was also hijacked and his lorry found in Tanzania. He was killed and left on the highway.

Hon. Speaker: On the first one, did you say the Departmental Committee on Defence and Security or you meant Administration and National Security?

Hon. Shimbwa: The Departmental Committee on Administration and National Security, chaired by hon. Abongotum.

Hon. Abongotum: Hon. Speaker, Sir, I have tried to expedite this matter because it is really urgent. Highway robbery has become too common in this country. The Office of the Cabinet Secretary for Interior and Coordination of National Government has actually not given this report.

I have reminded the office concerned and I would ask the hon. Member to wait for one more week. I will do the follow up and bring an answer in a week's time.

Hon. Speaker: Very well. I think the hon. Member has waited long enough. You should bring the statement in a week's time. How about the statement requested from the Chairperson of the Departmental Committee on Energy, Communication and Information, hon. Jamleck Kamau?

Leader of Majority Party, do you want to respond?

Hon. A.B. Duale: Hon. Speaker, Sir, on the issue of KPRL, you remember you sent it to two joint committees after I raised substantial issues of loss of money and investment. Hon. Keynan, the Chair of Public Investments Committee (PIC) and hon. Kamau were to start investigations next week.

Therefore, I request my good friend, hon. Omar Mwinyi to be patient, we can make sure that those two Committees as directed by hon. Speaker, will give the House a very comprehensive report on the whole saga of KPRL; your issues, mine and the rest that came.

Hon. Speaker: Therefore, there will be joint committee meetings of the Departmental Committee on Energy, Communication and Information as well as the Public Investments Committee.

Hon. Ichung'wah, your Committee will remain seized of this matter.

Hon. Ichung'wah: Yes.

Hon. Speaker: Then commence so that the hon. Member can get a response.

Hon. Ichung'wah: Thank you, hon. Speaker, Sir. It is true both joint committees of Energy, Communication and Information and the PIC are on the matter and we shall be having a meeting in the course of next week with other players that we had invited. I think letters have already gone out. So, maybe within another two to three weeks we should be able to report back to the House.

Hon. Speaker: Very well. There were some hon. Members who were putting in interventions. What is your intervention?

Hon. Kilonzo: Hon. Speaker, Sir, on 19th September, 2013, I had requested for a statement on the establishment of National Social Security Fund (NSSF) from the Chairperson of the Departmental Committee on Labour and Social Welfare but to date, I have not received that statement.

Hon. Speaker: In the meantime, which Committee are you chairing? This is because of where you are sitting. I gave directions and they must be obeyed. So, tell me which committee you are chairing.

Hon. Kilonzo: None.

(Laughter)

Hon. Speaker: I encourage hon. Members to regularly visit the Parliamentary website to see this. You do not have to walk physically to visit it.

Hon. Kilonzo: I am sorry, hon. Speaker, Sir. I am also ambitious; one day I will.

Hon. Speaker: That is not for those who have ambitions. It is for those who had them and they achieved. Nevertheless, as you relocate, your question was to which Committee?

Hon. Kilonzo: The Chairperson of the Departmental Committee on Labour and Social Welfare.

Hon. Speaker: Who is the Chair of that Committee? Who is the Chairperson of the Departmental Committee on Labour and Social Welfare? This is why we indicated that we want the Chairpersons of Committees to be sitting here so that we can now begin doing audit.

Where is the Chairperson of the Departmental Committee on Labour and Social Welfare? Can we have a Member of that Committee thereof? Is there a Member of that Committee who would wish to express himself on the issue raised by hon. Mwangangi, as he vacates? What is happening?

Hon. Sitati: Thank you, hon. Speaker, Sir. I want to agree with the hon. Member that the statement has delayed. But yesterday, we were with the Cabinet Secretary for Labour, Social Security and Services. We told him that those statements are urgently required and we agreed that by next week we will get all the statements and then we will be able to give advice.

Hon. Speaker: Let the Cabinet Secretary live by the promise so that next week, when hon. Mwangangi rises from wherever he is going to relocate--- Not where he is seated; he must move away from there. Hon. Mwangangi, move from there. I want to see the Chairpersons who are not in the House. Therefore, you are advised to observe this from today so that we can see who is working and who is not working. We want to know who wants to be in the House and who does not want to be in the House. This is because issues are going to be raised touching on your Committees and if you are not here to respond, it becomes a problem.

Hon. Ng'ongo: Thank you, hon. Speaker, Sir. I really sympathize with the Chair of the Departmental Committee on Administration and National Security, hon. Abongotum because he has so many requests. But I also have a request with regard to the issue of those Kenyans who were accused of selling drugs. That issue has been outstanding for quite some time, actually three weeks are over. Some of those people occupy senior positions in this country. I would ask that, that report be delivered so that we know whether they were cleared of these allegations or they still stand. I would like to hear from the Chairperson, although I sympathize because many of these requests go to his Committee.

Hon. Abongotum: Hon. Speaker, Sir, I plead with my good friend, hon. Member for Suba, to allow us to respond in a month's time because of the amount of investigations that is going to be commissioned. I want to request that he gives us another two weeks so that we will be able to come up with this report. It is going to be voluminous and also a hot one.

Hon. Speaker: I can see hon. John Mbadi nodding in concurrence.
Yes, hon. Robert Pukose.

Hon. (Dr.) Pukose: Hon. Speaker, in July, I sought a statement from the Chairperson of the Committee on Lands on an issue that touches on a co-operative society that was evicted by the Kenya Forest Service (KFS). Their land was acquired by the KFS without any compensation. Since that time, the Chairperson has been promising to bring the report to the House after every two weeks. I know that they have had serious issues for the last one week and this week, which they are about to dispense with. So, I seek the guidance of the House on how soon he is going to address that issue.

Two weeks ago, I also raised a petition on one Muganda, who is an ex-Army officer, who sustained injuries as a result of road traffic accident, following which he was dismissed from service. The petition was sent to the Committee on Defence and Foreign Relations but to-date, I have not gotten any direction from the Chair on how soon the issue of Muganda, who is my constituent and who has been patiently waiting, will take.

Thank you, hon. Speaker.

Hon. Speaker: Yes, hon. Muthengi Mhuri.

Hon. Mwiru: Thank you, hon. Speaker. It is true that the report was made but, given the circumstances in which we were, as a Committee, for the last two-and-a-half weeks, we could not do that particular work. In fact, I have been constantly in touch with the Member for Endebess. I have been telling him that we would tackle his problem. Indeed, he knows that we have tackled another problem in his constituency, and he was happy. So, let him, please, give me a week so that I can dispense with the matter.

Hon. Speaker: Hon. Pukose, do you want to give him a little more time?

Hon. (Dr.) Pukose: Hon. Speaker, I thank the hon. Member for the concern and the Committee for trying to address the issues but it would be in order if he could give me a period of time within which he will bring the statement. He could do it in a week or two weeks' time because these people have been waiting. They are actually suffering. So, it will be good if he can indicate to me the specific timeframe. I would not mind even if he tells me that he can bring the statement in two weeks' time. I will be comfortable.

Hon. Speaker: Yes, hon. Alex Mwiru.

Hon. Mwiru: Hon. Speaker, if the hon. Member was listening carefully, I had told him to give me a week to be able to dispense with the matter.

Hon. Speaker: That other one was to the Chairperson of Defence and Foreign Relations Committee. Hon. Gethenji, can you make an indication on the petition that was forwarded to your Committee?

Hon. Gethenji: Hon. Speaker, I need time to get the pending statements from the Clerk's Office. I had some ready for presentation last week but the Members were not in the House. So, I would request that I be given time to possibly next week, to make the statement.

Hon. Speaker: Hon. Gethenji, this is a petition.

Hon. Gethenji: Is it a fresh petition?

Hon. Speaker: Yes, it is a petition touching on one of his constituents who was dismissed from the military.

Hon. Gethenji: Hon. Speaker, give us three weeks because we are presently finalising the matter of the investigations into the Westgate Shopping Mall terrorist attack. So, I will be able to respond to the petition in three weeks' time.

Hon. Speaker: Yes, hon. Muthomi.

Hon. Njuki: Thank you, hon. Speaker. Three weeks ago, I requested for a statement from the Chairman of the Departmental Committee on Transport, Public Works and Housing on the condition of roads being tarmacked by the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KERRA), with particular regard to Chuka Town in Tharaka Nithi County. They promised to provide a statement within three weeks. Considering that yesterday you gave an indication that we will be breaking from Parliament on 5th December, 2013, it will be good if I get the statement within this time.

Hon. Speaker: Is there anybody from the Committee on Transport, Public Works and Housing?

Yes, hon. Eng. Mahamud.

Hon. (Eng.) Mahamud: Hon. Speaker, let me promise the hon. Member that I will follow up that request and get back to him in two weeks' time. We are sorry, we have been busy on other matters.

Hon. Speaker: Very well, in two weeks' time. The request is about roads in Chuka.

Yes, hon. Esther Murugi.

Hon. (Ms.) Mathenge: Thank you, hon. Speaker. In June, I requested for a statement from the Chairperson of the Departmental Committee on Environment and Natural Resources. I was indeed invited to attend the Committee sitting, but to-date I have not seen the statement. In July, I also requested for statement from the Departmental Committee on Health. Again, they invited me to attend the Committee sitting, but to-date I do not have a statement. I would like to know when I can have the statements.

Thank you.

Hon. Speaker: Chairpersons of Committees on Health and Environment, respectively, could you respond? Hon. Rachael Nyamai and hon. Amina Abdala, are you here? Are there any other Members from the Committees?

Yes, hon. Robert Pokose.

Hon. (Dr.) Pukose: Hon. Speaker, I remember that we called the hon. Member to our Committee sitting when we deliberated the issues she had raised. We had asked her to give her e-mail address to our Committee Clerk, so that the Clerk could send the report to her through e-mail. I do not know whether she gave her e-mail address to the Clerk or not. If she did not, we will provide her with a hard copy of the response.

Hon. Speaker: Hon. Murugi Mathenge, if you seek a statement on the Floor of this House, the House has a right to hear that response. If you make it confidential, through e-mail, it beats the logic of you raising the matter in the House. Can you comment on the issue of e-mail?

Hon. (Ms.) Mathenge: Hon. Speaker, first of all, they requested for my e-mail address so that the Director of Medical Services could know the issues that were at Nyeri General Hospital, but not so that the statement could be given to me. So, that was done. Since then, I have not been given anything. Secondly, I do not give my e-mail address to the clerk.

Thank you.

Hon. Speaker: Hon. Pukose, I understand you to say that there is a report already?

Hon. (Dr.) Pukose: Yes, we have a report, hon. Speaker.

Hon. Speaker: So, you will table it next week?

Do we have the Chairperson of the Committee on Environment and Natural Resources? Do we have Vice-Chairman or any other Member of the Committee?

Hon. Muluvi: Thank you, hon. Speaker. It is true that the statement has taken a while. We got the response from the Ministry. The Director of the National Environment Management Authority (NEMA) came. Unfortunately, when we invited the hon. Member, we agreed that the answer that had been given was not adequate, as a result of

which we requested for further clarification from the Director of NEMA on the same matter.

On behalf of the Committee, I undertake that we will give the report in two weeks' time.

Hon. Speaker: Hon. Murugi, is that okay with you? Are all hon. Members who have placed requests seeking to make reminders of statement requests asked by them?

Hon. Opiyo: Hon. Speaker, in July, I raised a petition on behalf of some employees of SONY Sugar Company who were dismissed irregularly and even after arbitration from the Ministry of Labour that recommended that they be reinstated, they have not been reinstated yet. Up to today, I have not received communication from the Labour and Social Welfare Committee. I would like to know when this reply may come.

Hon. Speaker: How many Members does that Committee have? Is the Chairperson present? I saw him a while ago. What about the Vice-Chairperson? Is there not even one Member who can make a response?

Leader of Majority Party and Leader of Minority Party, you need to look into this issue. It is not possible that Members have raised issues with the Committee on Labour and Social Welfare and yet the Chairperson, the Vice-Chairperson and even a single Member---

Hon. Sitati: Thank you, hon. Speaker. Just as I mentioned earlier, we had a meeting with the Cabinet Secretary yesterday and we also raised the concern of statements not getting to us in good time. We agreed with the Cabinet Secretary that we will get the replies to statements sought very soon. Therefore, this will be next week. I think that we will address all the statements that have delayed by next week. That was the commitment from the Cabinet Secretary as well.

Hon. Speaker: I can see there are a lot of Members who intend to remind Committee Chairpersons. I can see the names of hon. Gikaria, hon. Dawood, hon. Olago Aluoch and others. If you want to raise issues about statements that you requested and you have not received any responses, kindly get in touch with the respective Chairpersons of Committees to which the requests were directed. This is so that we can save time.

Next Order!

MOTIONS

REPORT ON IRREGULAR APPOINTMENTS IN LANDS MINISTRY

THAT, this House adopts the Joint Report of the Departmental Committee on Lands and the Select Committee on Delegated Legislation on the recent irregular appointments in the Ministry of Lands, Housing and Urban Development, laid on the Table of the House on Thursday, 31st October 2013.

(Hon. Cheptumo on 5.11.2013)

(Resumption of Debate interrupted on 5.11.2013)

Hon. Speaker: Hon. Mbadi was on the Floor. You have a balance of eight minutes.

Hon. Ng'ongo: Thank you, hon. Speaker. Indeed, I had started contributing to this Motion. Let me just repeat that I support this Motion. I started by congratulating the Committee for the work that it did.

Hon. Speaker, hon. Gitari and I had raised substantial issues regarding the manner in which the three Kenyans were either transferred or demoted in the Ministry of Lands. The law and the Constitution are very clear. The Land Registration Act is very clear on how to make appointments. The officers we are talking about, that is, the Director of Survey and the Deputy Director of Survey and Mr. Mabea were not junior officers in the Ministry of Lands. They were at the ranks of Job Group "T" and Job Group "R". At that grade, it is clear from the procedures of the Public Service Commission that it must not only be involved, but must also participate fully in the appointment of these individuals.

This country must be governed and guided by rules. I want to repeat that my objective of raising this issue was to protect innocent Kenyans who had arbitrarily been removed from office. This House has a duty to protect civil servants. If we are going to have a situation where after every five years civil servants are not secure in their jobs because they do not know who is going to be appointed a Cabinet Secretary or a Principal Secretary, we are not going to have a productive Civil Service or public service. Therefore, I am happy that the Committee found that the removal of one Boaz Owino and Mr. Murage from their respective positions of Director of Survey and Deputy Director of Survey and also the purported removal of Mr. Mabea was contrary to the law, that is, Articles 232 and 234 of the Constitution and even statutes.

This should be a caution to other Cabinet Secretaries that they should operate within the law and that there should be thorough consultations. If these Ministries do not have strong legal departments then they should have them in order to advise the Cabinet Secretaries so that they make decisions that are within the law. It is a shame that the Cabinet Secretary can blatantly and without due regard to the law break the law of this country. I am happy that we brought up this matter as it is going to protect these Kenyans who did not have a voice to stop their transfers which were done without any due regard to the law.

Hon. Speaker, the issue of land is very emotive in this country. We must be very clear about who should sign the title deeds and leases in this country. We cannot be a country which is left to guess which is the genuine and authentic signature in a title deed. This is because even banks will stop accepting title deeds as security and this economy is going to suffer immensely. This is why I am saying that this report needs to be adopted. We need to clarify that matter because it is one of the recommendations in the report. It should be clarified who is actually supposed to be signing this document.

Before I forget, and I raise this matter in good faith, if there is anyone out there who is purporting to go to some officers in this country telling them that they are brokers between those officers and hon. Mbadi, they should know that they are dealing with a different animal.

I want to say this because some of my friends have fortunately told me that some people are probably misusing my name out there. I want to tell those officers who probably were conned that they should know that those guys cannot reach me and they should demand a refund. I am very serious about this because I want to be speaking for what I believe in and I will always speak. Again, those who are taking advantage of my statement to settle political scores; those who are using my statement also to bring

another group of corrupt people in the system, stay warned. We will also catch up with you. If we finish with the people who are corrupt now and we find that you used me to bring corrupt people, we will also go for those corrupt people.

As a House, we will pass this report. I do not think this House should oppose or defeat this report. This is a good report and this is the way to go. If this House can hold the Executive to account, that is why we are here and why we were elected, especially now when there is separation of powers between the Executive and the Legislature. This House must play its effective role of oversight and we must oversee the Executive effectively.

Hon. Njomo: On a point of order, hon. Speaker, Sir. Hon. Mbadi has indicated that the change of signatories in the title deeds will cause confusion to the industry, especially in the banking industry. Is it in order for him to mislead the House that there were some titles that were signed by a different person from the person who normally signs? Mr. Kahuho, who was appointed to sign is my constituent and I have talked to him and he has told me that he did not sign a single title deed. So, there was no confusion in that industry.

Hon. Speaker: Hon. Njomo, that is not a point of order. Whether you have talked to some officer, how does that become a point of order? Unless you wanted to inform hon. Mbadi about that conversation that you had with your constituent, that cannot be a point of order.

Hon. Njomo: Hon. Speaker, Sir, I thought the Member was misleading the House.

Hon. Speaker: He is perfectly within his rights.

Hon. Njomo: Hon. Speaker, Sir, I have changed to a point of information.

Hon. Speaker: Hon. Mbadi, I am sure you have not acceded to the information.

Hon. Ng'ongo: Hon. Speaker, Sir, I would not have refused information. Hon. Njomo is a good friend of mine and I know he is speaking for his constituents. I would allow it because he is here courtesy of votes. However, I was saying that the Cabinet Secretary had gazetted Mr. Kahuho as the one to be signing the title deeds. The National Land Commission has come up with a different Gazette Notice and there is that confusion between the Ministry and the National Land Commission. That matter needs to be sorted out, so that Kenyans out there are sure and certain which is the authentic signature in the title deeds.

I was not blaming anybody. I am not even implying that the Member's constituent has done any wrong by signing anything. I am just talking about Kenyans being clear on who is supposed to be signatory. Basically, I was almost done with my presentation. I wanted others also to contribute, but I want to conclude by saying that this House must rise to the occasion and hold the Executive to account.

Thank you and I support.

Hon. Aluoch: On a point of order, hon. Speaker, Sir. It is on a different matter. You notice that in Order No.8, there is a report from the Committee on Justice and Legal Affairs on the removal of members of the Judicial Service Commission. There is a document being circulated in the House which is unsigned, but is headed "Highlights of Findings of the JSC on Investigation of the Chief Registrar of the Judiciary". I had a quick look at this document and it purports to be touching on the report that is supposed to be discussed. I suppose that whoever is passing this round intends to lobby. Is it the

proper way of communicating in the House? In my view, if this type of communication is allowed, then there would be lobbying on the Floor of the House through unsigned documents.

Hon. Speaker: Hon. Olago Aluoch, as a senior lawyer, you know that a document that has not come through the normal channels of the House is what it is, namely, just a piece of paper. You do not know who has scribbled things which are on it. It is of no consequence. No document has been tabled here other than the report of the Committee. So, if there are those documents that I see some of you waving around, you can treat them just like what they are, namely, papers, just like other papers including the ones which are in the ablation areas. So, treat it as that. Do not worry about it.

Hon. A.B. Duale: Thank you, hon. Speaker, Sir. I stand, notwithstanding hon. Olago Aluoch's comment, to support this report. From the outset, I want to make it very clear that the procedure of removing a Cabinet Secretary is provided in Standing Order No.66. Those going around saying that the report will ultimately remove a Cabinet Secretary are misleading people. If you read Standing Order No.66, it gives you the route. The Standing Order also provides how to remove a sitting President, Deputy President and Cabinet Secretary. I want to bring that fact to the Members.

Secondly, this report of the Committee on Lands and the Committee on Delegated Legislation, which I support, raises fundamental constitutional issues. I want my colleagues to rise to the occasion that we swore to defend the Constitution. We did not swear to defend our ethnic, clan and regional positions. If I speak for the Jubilee Coalition, it will implement its manifesto based on the Constitution and the laws that we swore to protect. I will never defend a position of the Government if it contravenes the Constitution. That is why I support this report.

First and foremost, a Cabinet Secretary creates a legal gazette notice, which is in this report without the due process of law. Every legal notice must seek the advisory opinion of the Attorney-General's office or the State Law Office. This Cabinet Secretary did not seek the opinion of the State Law Office. More so, on the face of this gazette notice, there is no provision either in the Constitution or in the Lands Act which has been cited creating a position which does not exist; appointing a civil servant to a position in whose creation due process was not followed. So, on the face of it, the Committee on Delegated Legislation saw that it was irregular. The same Cabinet Secretary panicked and revoked the same gazette notice. We are not in a banana state. We are in a country where in 2010, a new Constitution was enacted. That today, you create an illegality and tomorrow you go and revoke the illegality, it is not allowed. That is not the Kenya of today.

I am happy that the Committee, in its recommendation, has said that the advisory opinion of the Attorney-General's Office was not sought. Article 234 of the Constitution is very clear. It is this House that created the Public Service Commission (PSC). It is this House that vets the Commissioners of the PSC led by one Madam Kobia. The mandate of the PSC is in the Constitution. No Cabinet Secretary or anybody in the Executive, even the President, can usurp the powers of the PSC. This report has shown that the said Cabinet Secretary, apart from the powers given under Article 152 for Cabinet Secretaries, usurped the powers of the PSC. That is illegal and as a House, we will not allow it.

Hon. Speaker, again, it is this House that created a constitutional body called the National Land Commission. I had the privilege, with the support of the people of Dujis,

to serve in the last Parliament and played a role in the formation of the National Land Commission. Again, it is the Tenth Parliament in which I had the pleasure to serve, that approved the commissioners of the National Land Commission led by a very able chair, Professor Swazuri.

Hon. Speaker, again in this report, the Cabinet Secretary usurped the powers of the National Land Commission. It is unacceptable. The Constitution is very clear. Article 95 gave powers to this Parliament. Article 96 gave powers to the Senate. The Senate cannot usurp the powers of the National Assembly neither can the National Assembly usurp the powers of the Senate. That is why the Constitution gave borderlines.

Hon. Speaker, the Departmental Committee on Lands invited, and these are our minutes, the said Cabinet Secretary and if I quote the Deputy President when they were appointing the Cabinet Secretaries, he said: "We are not appointing politicians." So, if there are politicians in the Cabinet, then Kenya has changed. The role of the Executive is defined in the Constitution. The role of the Legislature is also defined in the Constitution.

So, hon. Speaker, if you look at this report by 38 members of this House led by the Chairs, hon. Alex Mwiru and hon. Cheptumo, some of us will stand to the last minute to defend the Constitution. When I was coming to the House, and I want to go on record, a Member of this House told me: "Hon. Duale, do not debate this matter because there is some adverse information about you." I want to challenge that and if you ask me to say who it is, it is hon. Maanzo. I told him: "I have a history. I have never been intimidated. I have never played a wrong card." Hon. Gitari was under attack because he is a quantity surveyor like hon. Olago Aluoch who is a lawyer. They are professionals who run their businesses while they are in this House. Hon. Kaluma is a very prominent lawyer and has a law firm.

Hon. Speaker, this morning somebody was saying that we are bringing to the House all the deed plans hon. Gitari signed in the last 10 years. He can sign them even today. He is a prominent surveyor. He can go and survey the expansive constituency of hon. Nkaissery. This country and this House will be divided. There will be those who will stand with the truth and defend the Constitution and those who will go with the laws of impunity.

Hon. Speaker, when hon. Wandayi brought an amendment yesterday people threatened him that he must withdraw it. We must defend this Constitution. If we defend this Constitution, Kenya will go very far.

(Applause)

Hon. Speaker, we passed a report of the Public Investments Committee (PIC). If you want to save Cabinet Secretaries, you should have saved John Waluke who was mentioned in that report since he is your own colleague. You did not save your own colleague. This 11th Parliament must rise above cheap money. It must rise above clan and ethnic interests. If the brother of hon. Duale in the Executive commits a crime, he must face the full wrath of the law.

Hon. Speaker: A point of order by Ken Odhiambo Okoth.

Hon. Okoth: On a point of order, hon. Speaker. Is the Leader of Majority Party in order to insinuate that a Member of this House who has not been named and has not been declared guilty to be named, can be sued?

Hon. Speaker: Proceed. Just ignore him.

(Laughter)

Hon. A.B. Duale: Thank you, hon. Speaker. Since I have taken the opportunity to be the third or fourth respondent to this, even the Government that I speak for here will leave at one time. They swore that before the Constitution. As hon. Mbadi said, the Executive is watching and the people to oversee the Executive are us. So, if we go back to our ethnic cocoons and very cheap money, Kenya will not move ahead.

Hon. Speaker: Another Member on a point of order called John Lodepe.

Hon. Nakara: On a point of order, hon. Speaker. Is the Leader of Majority Party in order to declare before this House that some Members get some cheap money from somewhere? Can he tell us where we get that cheap money from because I am new in this House?

(Laughter)

Hon. A.B. Duale: Hon. Speaker, that is obvious and I do not believe in cheap money.

Hon. Ng'ongo: On a point of information, hon. Speaker.

Hon. A.B. Duale: Hon. Speaker, I want hon. Mbadi to inform me.

Hon. Ng'ongo: Hon. Speaker, I just want to inform hon. Duale that he is not wrong. Actually, I do not think he should be asked to substantiate because there is this talk. I have just spoken about it. Why did the hon. Member not challenge me? People talk about these things here and I think it is high time we addressed it. If we do so, the better. We should address this issue of money exchanging hands and what have you so that this House maintains its dignity.

Hon. Speaker: Proceed.

Hon. A.B. Duale: Hon. Speaker, as hon. Mbadi has said, the dignity of the House should be maintained. I think as a young 11th Parliament, we want to set the rules of the game so that as a country we will know Parliament will stand with dignity. If you look at this report, as I said---

Hon. Speaker: There is yet another point of order from hon. Peris Tobiko.

Hon. (Ms.) Tobiko: On a point of order, hon. Speaker. Is the Leader of Majority Party in order to impute improper motives on Members of this House who intend to debate this matter? He is actually trying to preempt and stifle debate on this matter.

Hon. A.B. Duale: Hon. Speaker, I will not go into that but I am sure Kenyans out there who are watching me will even look at the people who are asking me questions and they will judge for themselves and their history.

(Laughter)

Hon. Speaker, if I may finish---

Hon. Simba: On a point of order, hon. Speaker.

Hon. Speaker: There is still another point of order from hon. Simba Arati.

Hon. Simba: Thank you, hon. Speaker. I have a point of order related to what hon. Mbadi has said. Do we deal with rumours in this House and not facts? I would ask that you lead us in that direction.

Hon. Speaker: Hon. Simba, if you want to contribute you do not just claim to stand on a point of order.

Hon. Angwenyi: On a point of order, hon. Speaker.

Hon. Speaker: What is your point of order, hon. Angwenyi?

Hon. Angwenyi: Hon. Speaker, I rise on a point of order to seek clarification from you whether we can give blanket condemnation in this House without substantiation and, therefore, inhibit free and factual discussion of issues. I would like hon. Mbadi and the Leader of Majority Party to state clearly who has received money and if so, have those people been investigated by the agencies concerned? Otherwise, we are putting this House into disrepute by peddling blanket rumours in this House. Was hon. Mbadi given money to raise this question?

(Applause)

Hon. Speaker: Hon. John Mbadi and the Leader of Majority Party, you have a responsibility to state where this cheap money you are talking about is. Some Members have indicated that they would want to know where it is. I do not know the purpose but it is important to also explain the source of this cheap money.

(Laughter)

Hon. A. B. Duale: Hon. Speaker, Sir, if they were listening to me and I am sure if we print the HANSARD it will bail out both hon. Mbadi and I, we have only offered a cautionary statement. Your conscience will set you free. If I continue, the report is saying that a Cabinet Secretary will go to a Ministry and---

Hon. Speaker: Time out! Time out!

Hon. Mwiru: Thank you, hon. Speaker, Sir, for giving me this opportunity to support this report. I want to start by saying that there has been talk in the grapevine saying that yesterday the Chairman of the Committee on Lands could not be in the House because probably he had developed cold feet and he had left his baby on the road for the cars to trample on. I want to assure this House that I still own the report only that I had an accident the previous day and I know it was announced yesterday. I thank this House and those Members who have been sending me messages of encouragement and quick recovery.

I want to say right from the start that what has been done by the said Cabinet Secretary is totally wrong, if she was to be a defender of the Constitution of Kenya.

(Applause)

Indeed, we have a duty and responsibility as Members of Parliament to check on the excesses of the Executive. If we cannot do it, then the 11th Parliament shall leave no trail of any good thing that they have done. Others have said that maybe the Committee Members or even the Chairman of Lands Committee will be defending someone or some

people. I want to state that I have no interest, I am defending the law. I want to defend the Constitution because of the responsibility that you gave me as a House and the Committee that I Chair. Indeed, none is my relative, but even though they were my relatives, I would have gone the same way. I am supporting this report because quite a number of statues and laws including our Constitution have been breached. How have they been breached? Someone cannot wake up from his or her house, get to their office and decide to look at the colour, height or sex of another person and transfer or demote them. Indeed, the worst aspect of this is where an officer is transferred from an office or one ministry to another where there is no responsibility or work that they can carry out by virtue of their training.

We have a case where an officer was transferred to the Ministry of Petroleum and he was a surveyor. We have these records, hon. Members and unfortunately that particular officer was rejected because that ministry said they had no vacancy for him. Thereafter, the officer, a Mr. Owino, was transferred to the Ministry of Fisheries, where I do not believe you need to survey fish. What I am saying in this is that Government is losing taxpayers' money, by paying officers who are not working.

One thing I should point out is that despite the officers being qualified---

Hon. Speaker: Yes, what is your point of order?

Hon. Kinyua: Thank you, hon. Speaker Sir. I stand on a point of order. Is it in order for us as a House, since we are defending a report, to almost lose objectivity and mislead the House that surveying is all about land? I am a surveyor and I want to inform the Member and the House that survey is not all about surveying land, it is about Geospatial Information Systems (GIS), and even a colleague can also---

Hon. Speaker: Hon. Mwiru, is that a point of order?

Hon. Kinyua: When you say we do not have surveyors in the Ministry of Fisheries or any other ministry then it means---

Hon. Speaker: Hon. Members, when you rise and claim to be on a point order and I find you are not on one, I will just switch you off so that you do not waste Members' time.

Hon. Mwiru: Thank you hon. Speaker, Sir. I do not want to dwell on that because I am also an expert on land management, but all I know is that you cannot survey fish, you can only count them and those kinds of things. It is important to note that these particular decisions the Cabinet Secretary was making, she did not involve the authorized officer, who is the Principal Secretary in the Ministry. Indeed, by law she is appointed by the Public Service Commission. Therefore, for any particular transfer, posting or even creation of a post or position, the authorized officer is supposed to request for the approval from the Public Service Commission and not the Cabinet Secretary.

It is important to note that and this is attested even verbatim by the Chair, Public Service Commission. Therefore, there was wrongdoing in that particular thing. It should be noted that there is no witch-hunting here because tomorrow or the day after it will be someone else. Indeed, we must check the Executive or else they will run amok and they are not going to manage this country.

When the Cabinet Secretary was asked whether what she did was in consultation with the National Land Commission, which is actually an institution created by the Constitution of this country, in Article No.67 she said "yes," but before the Committee the National Land Commission said "no". Therefore, the only thing I can recommend as

we move in future is that we also need to harmonize the operations of the main Ministry and the National Land Commission so that they can move in the same direction.

Two wrongs cannot make a right. For now, it is wrong and we know an issue on the National Land Commission is already before a joint Committee which was brought forward by hon. Munyao. As the Leader of the Majority Party told this House earlier on, it is not an issue of the clan or the region where you come from but it is an issue of responsibility or trying to be able to safeguard the interest of this country from whichever position you hold, however small or big it is.

Hon. Speaker, Sir, at one point, and it is very important to note this because it is in the HANSARD of the Committee, when the first statement was sought by hon. Mbadi, we called the Cabinet Secretary to the Committee. I want to tell this House what the Cabinet Secretary told the Committee. She said that she would transfer and sack more, so that she is called to the Committee several times. Indeed, I took that to be arrogance.

Hon. Member: You are inciting the House!

Hon. Mwiru: Hon. Speaker, Sir, protect me from the hon. Member who is saying that I am inciting the House. These are hon. Members and I cannot incite any of them.

The position is that she was disrespectful to the Committee, although this is a matter that could not be brought forward because we were able to deal with it at the Committee level. It is important that we move forward. Some of the people we have approved as Parliament have become too arrogant to Members of Parliament.

(Applause)

It is important that we tame them, so that they can respect the institution as well. Indeed, we have seen that in other areas. Just because they fly a flag, they will push a Member of Parliament without remembering that these are the people they appeared before for their employment.

Hon. Speaker, Sir, we need to rein in this impunity. I support the Motion.

Thank you.

Hon. Aden: Thank you, hon. Speaker, Sir, for giving me this opportunity. I rise to support the adoption of this report. As I do so, I also take this opportunity to congratulate the Chairman who has spoken before me very eloquently on the good work that his Committee has done. It is time, as hon. Members of this House, we stood firm and protected the very Constitution which we swore to defend and protect. We should stand firm.

If you look at this report, you will find that there was clear violation of the Constitution. This is particularly Article 232(2). The Cabinet Secretary went ahead and performed functions which are not within her domain. She did this with total disregard of the advice of the Chairman of the National Land Commission, Prof. Mohammed Swazuri. The Chairman had advised her against her decision, as it is written in this report.

The Public Service Commission whose function is stated under Article 234 to be the body that is supposed to carry out transfers and promotions of Government officers at that level has said very clearly that it was not consulted on this one. I think that the Chairman and, indeed, the Committee that did this report was very lenient. If you listened to both the Cabinet Secretary and the PSC, you would see that the Cabinet Secretary

actually lied to the Committee while under oath. She must have been the first to give her evidence before the PSC gave its evidence.

From the report, she had earlier on said that she had the approval from the PSC, but the Commission clearly denied this. The Committee was very lenient when it did the report. The gazette notice which did not go through the proper procedure was vaguely worded, very general and did not refer to any article of the Constitution or any existing law. This is a clear indication of something that was done hurriedly and without any regard to the due process of the law.

Hon. Speaker, Sir, I rise to strongly defend the Constitution against violation by any person. We must guard this Constitution very jealously. I have noticed, after going through the report and the Constitution, that soon after meeting the Committee, the Cabinet Secretary beat a retreat and revoked that gazette notice without realizing that for the second time she was contravening another article of the Constitution. When she revoked the gazette notice, she contravened Article 234(2)(b) which says that it is only the PSC that has the authority to deal with promotions and transfers at that level.

Hon. Speaker, Sir, I do not want to take a lot of time but I really want to commend the work that has been done by this Committee. It has taken a lot of time to compile this very detailed report.

I think there is a gap in Recommendation Nos.1, 2 and 3. This House must put its foot down and show that it has got power to check anybody who tries to contravene the law. I feel very encouraged to hear the Leader of Majority Party say very clearly, despite representing the Jubilee Government, that he will never allow anybody to contravene the Constitution and break the laws that we protect dearly.

I support the adoption of this report and encourage the other Members to do so.

Thank you very much.

Hon. Angwenyi: Thank you, hon. Speaker, Sir. While I commend the Committee for having taken over this matter and tried to resolve it, I want to raise concern about the indulgences of this House in the other branches of the Government. I would like to know when this Cabinet Secretary contravened the law, was the matter reported to the Cabinet? Did the President and the Deputy President know about that contravention or are we doing the work of the President?

This House will deviate from its purpose and objectives if we micromanage the Government. We will expose ourselves to ridicule if we interfere with every matter that happens in the Government of Kenya. The President campaigned the same way we campaigned. He proposed the people who were appointed Cabinet Ministers. He should have power to discipline them. When an incident happens, he should know and take action. It is upon this House to play its oversight role if the President fails to take action. We will not be able to do any work in this House if we indulge in promotions and transfers of officers in the Government.

Hon. A.B. Duale: On a point of order, hon. Speaker, Sir. My conscience tells me that I cannot sit and listen when my very good friend and a man I respect a lot, hon. Jimmy Angwenyi violates the Constitution.

Hon. Speaker, Sir, it is this House under Articles 152 and then 153 of the Constitution that gave the procedure as to how a Cabinet Secretary will be appointed, nominated by the President and approved by the House. Again, the same Article 153 and our Standing Order No.66 give this House the procedure to remove a Cabinet Secretary.

Further, under 95, every Member sitting in this House has a constitutional mandate to oversee. We are the ones who do the budget of the Executive. We do not want to know what the President does in State House. It is none of the business of this House. It is not our business to know how the Cabinet is disciplined.

Hon. Speaker: Your point of order?

Hon. A.B. Duale: Hon. Speaker, Sir, is the Member in order to say that this House has no powers to discipline or oversee a Cabinet Secretary?

(Several hon. Members stood up in their places)

Hon. Speaker: Now, you cannot all rise on points of order. Hon. Angwenyi, just read Article 152, and most specifically, read Article 95.

Hon. Angwenyi: Hon. Speaker, Sir, I would like to refer the man I respect most - he can summon me even at midnight and I will appear in his office, namely the Leader of Majority Party in this House - to Article 153(2). It reads that: -

“(2) Cabinet Secretaries are accountable individually, and collectively, to the President for the exercise of their powers and the performance of their functions”.

They are not accountable to this House. So, I am saying that we should have exhausted that provision. Once we have exhausted it, then we can use our overwhelming powers. For that reason, and I want to persuade this House very honestly that if we involve ourselves in small matters of the PSC, we will not be able to perform our major functions of this House.

With those few remarks, I beg to contribute.

Hon. Speaker: I recognise hon. James Opiyo Wandayi, who has a proposed amendment to the report.

Hon. Wandayi: Hon. Speaker, Sir, I rise to propose an amendment to the report as tabled before this House by the two Committees on Lands and Delegated Legislation. The proposed amendment is such that I would like to introduce an additional recommendation after the last recommendation on page 12 of the report that the Cabinet Secretary for Lands, Housing and Urban Development, hon. Charity Kaluki Ngilu, should take full responsibility for the unconstitutional, illegal, irregular and unprocedural acts of creating offices and making arbitrary appointments, promotions and transfers of staff in the Ministry, and further that hon. Ngilu should be held to account for any undesired consequences, which may not be limited to financial loss, that may arise from the aforementioned acts of commission on her part.

Hon. Speaker: Hon. Wandayi, what you have read is not what I have. You have mentioned the name of hon. Ngilu twice.

Hon. Wandayi: This is the abridged version.

Hon. Speaker: You must follow the rules of the House. You cannot give me a proposed amendment and then you start telling me about some abridged version. It does not work that way.

Hon. Wandayi: Can I borrow your copy, if you do not mind?

Hon. Speaker: Hon. Wandayi?

Hon. Wandayi: Could the clerk assist me to read the correct version?

Hon. Speaker: Begin the way your proposal is, namely that the Motion be amended by inserting what you have written.

Hon. Wandayi: Thank you, hon. Speaker, Sir, for your guidance. I will do exactly that in a second.

Hon. Speaker, Sir, I beg to move: -

THAT, the Motion be amended by inserting the following words after year “2013”, “subject to an additional recommendation on page 12 to read as follows: -

The Cabinet Secretary for Lands, Housing and Urban Development, Hon. Charity Kaluki Ngilu, should take full responsibility for the unconstitutional, illegal, irregular/unprocedural acts of creating offices and making arbitrary appointments, promotions and transfers of staff in the Ministry, and further be held to account for any undesired consequences such as but not limited to, financial loss that may arise from the aforementioned acts of commission on her part.”

Firstly, I must thank the committees for coming up with a very good report. By proposing this amendment, there is really nothing significant or new that I am introducing in this report. I am trying to realign the recommendations of the committees with their findings or observations. I was trained that when you are doing recommendations or conclusions, they must be tied to the findings in the body of a report. It is important also that Members read and understand reports that are tabled in this House before they can make informed judgments. If this had been done, then my proposed amendment could not have created a stampede that was witnessed yesterday.

Back to the main issue, if you look at this report---

Hon. Speaker: Hon. Wandayi, we only ran out of time. There was no stampede in this House.

Hon. Wandayi: Hon. Speaker, Sir, I am talking about the near pandemonium that was created by my proposed amendment. If you look at page 10 of the Report--- I will just read some two paragraphs; it says: -

“The Committee observed that the gazette notice was unconstitutional and, therefore, null and void. It is the Committee’s view that the Cabinet Secretary ultimately revoked the notice on realisation of its unconstitutionality”.

Further down, it states: -

“In view of the foregoing, the Committee noted that the recent transfers, promotions and gazette at the Ministry of Lands, Housing and Urban Development were irregular, a nullity and devoid of merit and were not backed by law”.

Further down, it says: -

“The Cabinet Secretary purported to appoint officers to positions and went ahead to gazette an appointment in blatant disregard of the Constitution, the Lands Act and the Land Registration Act”.

You can go on and on, but the import of this is that these are very bold observations. They are, indeed, very bold observations couched in appropriately strong language. The words in this report are not my words; they are the words of the 58 Members of the two Committees. I, indeed, did not sit in either of these Committees. It is also important to note that there was no dissenting opinion from any Member of either the Committee on Lands or the Committee on Delegated Legislation.

If you look at the issues that have been raised, it is clear that in a number of instances, the Cabinet Secretary accepted in broad day light that, indeed, by purporting to create the office of the Director-General of Lands in the Ministry, she violated Article 234(2)(a)(i) of the Constitution. You can go further and establish that by looking at the

appointments that she purported to make, namely appointing Mr. Peter Kahuho, re-designating Mr. Zablon Mabea as the Lands Secretary, transferring the Director of Survey and his deputy and appointing others to their position, the Cabinet Secretary violated the Constitution at Article 234(2)(a)(ii).

By bypassing the Office of the Attorney-General in the processing of the legal notices she purported to create the new office in the department and make the purported appointment of Mr. Kahuho, the Cabinet Secretary contravened the guidelines on proposed legislation as per the Government circular of February, 2002.

You can go further and find that by conferring on Mr. Kahuho the powers to sign title deeds, obviously the Cabinet Secretary contravened the Constitution under Article 262 and the provisions of the Sixth Schedule.

Hon. Speaker, Sir, this litany of transgressions can go on and on. But the upshot of it is that the Cabinet Secretary, by doing all these things violated the oath of office she took on her appointment. This is in contravention of Article 152(4)(a) and the Third Schedule of the Constitution. I can even read it, if given time.

Hon. Speaker, Sir, it is obvious---

Hon. Speaker: Do not bother, just prosecute your amendments. I am still waiting for you to go to the--- You are now debating the report as opposed and not prosecuting the proposed amendment.

Hon. Wandayi: With all these transgressions it is important and only fair that you find the Cabinet Secretary responsible, and that she takes full responsibility for these transgressions. It is clear that we are not talking about a censure here; we are talking about the Cabinet Secretary taking personal responsibility and being held accountable for the transgressions that I have highlighted. It is, therefore, important that hon. Members in this House support the proposed amendment, so that we send a strong message that it cannot be business as usual in this new dispensation.

Hon. Speaker, Sir, all progressive forces in this House should come together to protect the Constitution. I, therefore, move the proposed amendment and ask hon. (Ms.) Florence Mutua, to second the proposed amendment.

Hon. Speaker: Hon. Wandayi, these lights are here to guide you; when you are given first warning, you should know that is time to propose your amendment, move it and then suggest who is going to second it. Now, what you are saying is not on record!

Hon. Wandayi: Hon. Speaker, Sir, I ask hon. (Ms.) Florence Mutua, the County Member of Parliament for Busia to second the proposed amendment.

Thank you.

Hon. Speaker: Next time there will be no reprieve. So, please, take note that any hon. Member speaking should observe the lights. I am not going to conduct other induction workshops. These are simple matters which you need to familiarize yourselves with.

Hon. Member for Busia County? Where is she?

Hon. (Ms.) F.M. Mutua: Thank you hon. Speaker, Sir. I wholly support the amendment as proposed by hon. Wandayi. We must kill the culture of impunity in this country regardless of gender. One must be held accountable as an individual for any act of omission or commission in discharging their duties as State officers. The issue of unnecessary appointments, undeserved promotions and creation of offices arbitrarily should end.

It is only hon. Members in this House who can sincerely and collectively bring this sort of impunity to an end. We should stop playing with people's emotions. This happens especially when it is a lady or a woman who is dismissed or discharged from duty. We should stop the habit of playing with people's emotions and also know that impunity is impunity regardless of gender.

Hon. Speaker, Sir, another issue which is very important is that we should end the habit of Kenyans running to our tribes when we have problems. When you commit impunity, you commit it on your own. Therefore, people should carry their own crosses.

With these remarks, I second the amendment.

Thank you.

*(Question, that the words to
be added be added, proposed)*

*(Question, that the words to be
added be added, put and agreed)*

(Question of the Motion as amended proposed)

Hon. Speaker: Order! Order, hon. Members! We are now going to debate the Motion as amended.

Hon. Gikaria: Thank you, hon. Speaker, for giving me this opportunity to contribute to this Motion. I support the Motion as amended and from the outset I want to echo what the Leader of Majority Party said, that this Parliament should protect and uphold the Constitution by not defending anybody. Parliament must be given an opportunity to do our work and perform our responsibility of oversight over the Executive. What the Committee observed is that the Cabinet Secretary did violate Article 234 of the Constitution by establishing offices when that is the responsibility of the Public Service Commission.

The first paragraph on page 8 states:

“It is worth noting that communication relating to the appointment, establishment and transfers in the Public Service Commission emanated from the Cabinet Secretary and not the authorized officer appointed by the Commission.”

I want to agree that the Committee found the Cabinet Secretary not in order. There was a breach of the Constitution by unilaterally establishing an office and going ahead to gazette the same office and the officer. Going further, the Cabinet Secretary, as per the last statement on page 8, unilaterally vested powers that are otherwise clearly provided for by the transition clauses of the Constitution. The appointments that the Cabinet Secretary made were unconstitutional as per the provisions of Article 234(2)(a)(ii). Even though she accepted that she made the appointments in an acting capacity, that is still unconstitutional.

As regards the transfers, the Committee noted that the procedures in place for transfer of public officers in Job Group “P” and above from the present post to a post of different designation in the same Ministry or to another Ministry, were not adhered to. Therefore, as regards transfer of public officers from one Ministry to another, the responsibility is not bestowed upon the Office of the Cabinet Secretary. According to the

Constitution, the function is supposed to be performed by the National Land Commission and the Public Service Commission. Publication of legal notices is supposed to be done with the advice of the Attorney-General. However, if you look at the legal notice that was eventually gazetted by the Cabinet Secretary, you will appreciate that the advice of the Attorney-General is missing.

She went against the advice of the Attorney-General. Although she indicated at the Joint Committee sitting that she sought advice from the Attorney-General regarding the legal notice, we can see clearly from the minutes of the Committee that she never sought such advice. Therefore, the gazettelement of the legal notice was unconstitutional. One of the issues that are very important, as indicated on page 10, is that none of her acts was backed by any law. She just acted unilaterally. Of course, as it has been said, the appointment of Mr. Kahuhu to the position of Director-General was an act of impunity since that position does not exist in the Ministry's establishment.

We now go to the last observation of the Committee on the transfer of Mr. Mabea and other officers from the Ministry. The Cabinet Secretary had no mandate, under any law, to do what she did. I want to thank the Committee for the good work. The Members of the Committee transcended party-lines and tribal lines to confirm that whatever they have done is forewarning to even Members of this House; that this House will never condone any action that is unconstitutional or irregular.

Looking at the recommendations that have been made, I agree with the Committee that it is prudent for the officers who had been irregularly and un-procedurally removed from their offices to be reinstated. Secondly, as it has been recommended, the promotions and appointments that were done unconstitutionally should be reversed. The Chairman of the Committee was very clear that they requested the Cabinet Secretary to appear before the Joint Committee sitting, where she agreed with the Committee on de-gazettelement of the appointment she had made to the non-existent office as well as on reversal of the transfers, promotions and demotions of officers.

Much as a few officers had been transferred irregularly, it is also high time that this House considers the actual transfers following the due process of the law. Within my constituency, there are so many land matters that are pending. Title deeds have been issued irregularly. So, it is also important for us to note that as much as she may have transferred officers irregularly, there is need for a complete overhaul of personnel in the Ministry of Lands, given the many ills that have befallen the Ministry.

With those few remarks, I beg to support the Motion.

Hon. Speaker: Yes, hon. Munuve.

Hon. Mati: Hon. Speaker, it is difficult for me. Let me confess that whereas I do not object to the amendment, I do not see anything that it is adding to the substance of the report. I actually support the report. The amendment talks about taking responsibility.

Let me start by saying that I do not stand here to speak as *Mukamba*. I am an elected Member of Parliament, representing everybody in this country. I want to congratulate hon. Mwiru and his Committee because they did a good job. He is from a neighbouring constituency. I also want to accept the fact that this was 360 degrees evaluation of hon. Ngilu, coming as it did, very early in her tenure as the Cabinet Secretary for Lands, Housing and Urban Development. I also want to congratulate her because she actually took responsibility and corrected the wrongs that she had committed.

If we go into witch-hunting, where we decide that we have to use a big cane for every wrong done, we will have a big problem, as a country. I remember the early days in the life of this Parliament, when Members of Parliament, and specifically hon. Kaluma, talked about a lot of transfers that had taken place in various Ministries. We did not go very far with the matter then. There were explanations as to why the transfers were done, and the matter rested at that. I beseech this House not to move from playing an oversight role over the Executive to actually playing an executive role.

We have a report. Let us kick it upstairs and wait for the Executive to deal with their staff. They could reprimand or do what they deem fit. That is the responsibility and prerogative of the Executive and not this House. When this House plays the oversight role and also decides to play executive roles within the Government then we will have a problem, and will not be able to move.

Hon. Kabando wa Kabando and I worked very hard for this Constitution to be realized at a time when a lot of people were resisting it. Hon. Kabando wa Kabando was one of my foot soldiers when we were fighting for this new Constitution. Hon. Charity Ngilu made a mistake, but I want to remind this House - a few of us may not have read the report - that hon. Ngilu went ahead and actually revoked the---

(Hon. Kabando wa Kabando stood up in his place)

Hon. Speaker, I have not mentioned hon. Kabando wa Kabando adversely. In fact, I gave him some big credit.

Hon. Kabando wa Kabando: Hon. Speaker, the hon. Member has mentioned my name in both good and bad light about our role with Wandayi and others in Constitution-making. He has described me as his foot soldier.

(Laughter)

Is it in order for hon. Munuve, who cannot assess even 10 per cent of my contribution to our democratic process, call me his foot soldier?

Hon. Speaker: Hon. Munuve, maybe, he was your general.

Hon. Mati: Hon. Speaker, my title in the struggle for the second liberation was "general". I had very many soldiers. In one instance in Kanyanya-ini a foot soldier called Kabando wa Kabando actually made it impossible for us to leave the place without being clobbered by the police, because he did not take orders as they were given by General Munuve.

(Laughter)

Hon. Speaker, I would like to proceed. A lot has been said and, in fact, emotions went so high as to hit even people who were not involved in this matter; for example, my brother hon. Maanzo, was accused of having run with a party and so many other things. I would like us to be focused. This is one incident of one Cabinet Secretary. In our four years here, we are going to get similar cases. It will not be, probably, because of any gazette notices, but other acts and omissions; to err is human. Are we going to make

recommendations that for every mistake done then the axe will be applied on every person who will have made a mistake?

Hon. Members: Yes.

Hon. Mati: This particular Cabinet Secretary realized her mistakes and she withdrew the gazette notice. She effected a gazette notice to correct her mistakes. This means that she realized that this Parliament has a role to play in terms of overseeing her responsibility as a Cabinet Secretary. Our role is very simple. We have received the report from the Departmental Committee on Lands. We have noted what the Minister has done. Let us push the report to the Executive. We cannot be making decisions for the Executive. The Executive will decide whether this wrong warrants a reprimand, warning or suspension. I have been a manager in very many institutions, including managing the constitutional reform process. Every wrong that is done by a staff member does not warrant dismissal. Even courts sometimes exercise leniency and state that a person is a first offender. That is why probation reports on persons are sought to find out whether they have committed other offences before, and whether there are mitigating factors.

We have decided to come here with swords drawn. People have been accused of getting money, but I have received no money myself. I will never receive money. We are wasting a lot of important time by basically trying to force the Executive's arm.

Hon. Keynan: On a point of order, hon. Speaker, Sir. Is it in order for the hon. Member to mislead the Members of this august House that it is not the work of these Members to make decisions for the Executive when he knows that it is the constitutional responsibility of Members of this august House to interrogate the effectiveness of the decisions made by the Executive? That is exactly what this report attempts to do. I would like him to withdraw the remarks that these Members of Parliament are making--- That is a very dangerous statement. We are not making decisions for the Executive. We are interrogating the effectiveness and how lawful the decisions by the Executive are and that is what is before the House.

Hon. Speaker: Hon. Munuve, you are suggesting that the House could be wasting time.

Hon. Mati: Hon. Speaker, there was a slip of the tongue, but "interrogating" is not the same as "taking over responsibility" according to the English that I learned. It is very much in order and within the purview of this House to interrogate anything in this Republic, whether by the Executive or the Judiciary. However, trying to make decisions for the Executive or the Judiciary will negate the three constitutional pillars which dictate that the Executive, Judiciary and Legislature shall remain independent. Interrogation is one thing. I do not know what I should apologize for.

Hon. (Dr.) Pukose: Hon. Speaker, hon. Munuve has been directed by the Chair to withdraw and apologize. Could he withdraw and apologize to the House, please?

Hon. Speaker: Your statement to the effect that the House is wasting time debating these reports is out of order. The House cannot be wasting time. That one you must withdraw and apologize to the House.

Hon. Mati: Thank you, hon. Speaker. I stand guided. I apologize. The House is not wasting time debating this matter. I think I got carried away. It is not in my nature to be disrespectful to the House. So, I withdraw. I totally do so.

In conclusion, I thought I should persuade this honourable House to walk with us in terms of making sure that our oversight role is observed, so that we perform it and

identify wrongs. We are supposed to make our observations to the Executive and allow them to make decisions.

Hon. Speaker: Hon. Members, let me also pay attention to the debate. I do not want any consultations. Let me pay attention to the debate.

Hon. A.B. Duale: Hon. Speaker, this is a very serious report. The hon. Member said, "Hon. Members, let us walk together." We need to be told where and how. I said earlier that Parliament is supreme. Under Article 95 we have a cardinal responsibility to oversee the Executive. This report talks about the Executive.

Hon. Speaker, let him tell us whom we walked with, where and at what expense.

Hon. Speaker: Hon. Munuve, do not respond to that one because you have a right to urge Members to walk together with yourself to some place, wherever it may be.

(Laughter)

Hon. Mati: Thank you very much, hon. Speaker, Sir. You know one big problem about the English language is that not everybody is endowed with the capacity to understand it. On walking together, we are all Members of Parliament. As a Member of Parliament, I want us to walk together.

Hon. Members: Walk to where?

Hon. Mati: In this House and within the Republic of Kenya. We should walk together to the promised land, a more prosperous country. This is a country where people will not lose their jobs because Cabinet Secretaries are powerful; basically, we will make sure that we keep to the fact that it is our duty to oversee them. We are Members of Parliament who stick to their positions, which we have always actually done.

Hon. Members: On a point of order, hon. Speaker.

Hon. Speaker: Hon. Peris Tobiko, please, allow hon. Members--- Allow me time because obviously there are so many of you who are here and I need to listen to what people are saying. There are so many points of order. I will not be able to rule if I do not hear. Obviously as hon. John Munuve says, the English language is a growing language. It is still very young.

Hon. (Ms.) Tobiko: Thank you, hon. Speaker, I want to put it on record that if money has exchanged hands--- If there are those who have received money, I have not received money from anybody. However, I also want to put it on record that I support, recognise and appreciate the power of this House to oversee the Executive.

Hon. Speaker, there are either omissions or commissions in the Committee's Report. The report has not indicated anything to do with the illegality of the position of the Lands Secretary that has existed illegally since August 2010. This position is not in the Constitution, but somebody has been there exercising its powers and signing legal documents.

Hon. Speaker, this report does not also appreciate the corrective measures that the Cabinet Secretary took after realising the mistake she had made, just like any other human being will do; she took corrective measures. This report has also leveled a number of accusations against the Cabinet Secretary, that she has disregarded the Principal Secretary in doing the appointments, yet in the Constitution, the Cabinet Secretary is the Chief Executive Officer (CEO) in the Ministry. I think the role of the CEO of the Ministry really should have been recognised.

Hon. Speaker, the Leader of Majority Party indicated that the Cabinet Secretary did not consult the Attorney-General for advice on the appointments or on the gazette. I would want to inform this House that the Land Registration Act, Section 108, gives the Cabinet Secretary the power to make changes in registration matters. Yes, you can consult about that. You can get that document. I believe it is available.

Hon. Speaker, the report does not also appreciate the fact that the Cabinet Secretary had consulted before doing the redeployment. The Cabinet Secretary, on 10th September, 2013, actually had a letter from the Directorate of Public Service Management advising on redeployment of the same staff. I am left wondering whether what is happening now is about cartels that are very well known to operate in the Ministry fighting back.

Hon. Member: On a point of order, hon. Speaker.

Hon. Speaker: Continue.

Hon. (Ms.) Tobiko: Hon. Speaker, right now the Department of Lands is facing a number of court cases that will cost this country several billions. There are pieces of land which belong to five embassies that are already in dispute. These are the Rwanda Embassy in Mombasa, the Kuwait Embassy in Westlands, the Tanzanian, Liberia and Libyan embassies in the city centre. They were fraudulently allocated land, and this has exposed this country to diplomatic rows.

Hon. Speaker, there is the Ramisi Settlement Scheme where 7,930 acres of land were issued to a private company on 28th December 2012 and grants collected on 2nd January, 2013. There is land which belongs to the National Social Security Fund (NSSF) – the pensioner’s fund – LR No.20305-20310 in Mavoko, which was fraudulently allocated to individuals and companies through forged deed plans and signatures.

Hon. Speaker, let me not continue. What I am trying to say is that this House could actually be operating in a mob justice way and bringing back staff. A lot of these things happened under the watch of Mr. Mabea. These are the same people we are saying should be taken back to the Department of Lands.

Hon. Speaker, let me say, before I sit down, that I am worried as a lady leader because we have seen in this country discrimination against women. I am surprised when the hon. Member for Busia County says that she has never faced discrimination as a lady in this country. I do not know which world she comes from because we have gone through discrimination.

Hon. Speaker, when Nancy Barasa had an issue with a security officer---

Hon. Member: Who was a lady!

Hon. (Ms.) Tobiko: Yes, it is okay. Hon. Speaker, I seek your protection. When Nancy Barasa had an issue with a lady security officer, what happened? She was sent home. Yes, it is true. Dr. Evans Kidero is still seated in his office after slapping a woman leader of this country.

(Loud consultations)

Hon. Speaker: Order, hon. Members! The very fact that what hon. Tobiko is saying may be agitating you is not enough to claim to be rising on a point of order. You have all the time and you will say your bit, which will agitate her a lot but she will not interrupt you.

Proceed.

Hon. (Ms.) Tobiko: Hon. Speaker, Sir, I have said that Governor Evans Kidero is still in office today after slapping a lady Member of Parliament. What happened to the lady hon. Member is public ridicule.

(Loud consultations)

You can make noise but I will continue contributing.

I am just wondering. After Barasa, Shebesh, Shollei and Ngilu, who will be next?

Hon. Members: You have made your point. Shame!

Hon. Speaker: Hon. Members, all that most of you want to do is to disagree with a particular point of view. Let the hon. Member on the Floor express his or her views and you will also have a chance to express yours.

Yes, hon. Pukose.

Hon. (Dr.) Pukose: Thank you, hon. Speaker, Sir, for giving me this chance to contribute to this very important Motion. I rise to support the Motion as amended because it sends a very clear message to our colleagues in the Executive that things have changed, and whichever Cabinet position you hold, you must take full responsibility. You must also be able to perform your duties knowing very well that Kenyans will hold you accountable.

Members of Parliament are the people's representatives. We are here to represent the people and, therefore, on behalf of the people, we will hold Cabinet Secretaries accountable for all the activities.

Hon. (Ms.) Muhia: On a point of order, hon. Speaker, Sir. I am disturbed by hon. Cecily; she is claiming that the 47 women Members are here and they are not protecting other women. She is really using abusive language. I am uncomfortable and I seek your help or protection from this hon. lady.

Hon. Speaker: Surely, on a matter that has not been raised; it is like now claiming that somebody is pinching you and I am not able to see.

(Laughter)

How do I rule on something that is being said in low tones?

Let hon. Pukose proceed.

Hon. (Dr.) Pukose: Thank you, hon. Speaker, Sir. I sympathize with the hon. Member because the Speaker does not know how to proceed with what she has raised.

In the past, every Cabinet Secretary made decisions in their dockets because the system that was in existence was hands off, ears off and everything off. The system that has come in is where the President and the Deputy President are hands on. They are able to know what is happening in the various Ministries. The current Parliament plays an oversight role. For us, we must make sure that things are done well.

(Loud consultations)

Hon. Speaker: Hon. Members, consult in low tones. I do not want to hear what you are saying in low tones. Allow what is being said by hon. Pukose to be heard.

Hon. Ng'ongo: On a point of order, hon. Speaker, Sir. Is it in order for the hon. Member to take credit and give it to the Executive, that is the President and the Deputy President, yet the matter we are canvassing was raised by an "Opposition" Member of Parliament in the name of John Mbadi? It is not right for the Jubilee Government to take credit for this by insinuating that the President---

Hon. (Dr.) Pukose: Thank you, hon. Speaker, Sir. I have said that---

Hon. Speaker: Do not bother responding to him. When you see me shut off a Member, do not bother responding to him. That just means that, that is not a point of order. Hon. John Mbadi wants credit that he raised the issue and that is perfectly in order. However, he must allow others to claim credit where they think---

Hon. (Dr.) Pukose: Hon. Speaker, Sir, if we look at the report, we will find that it says that the Cabinet Secretary lied under oath before the Departmental Committee on Lands. This is a serious issue because we expect---

Hon. Members: It is criminal!

Hon. (Dr.) Pukose: Hon. Speaker, Sir, this is very serious because we expect that when Members are in their positions, they must observe integrity; they must be able to say only the truth and be able to stand by what they say.

The Chairman said that when the Cabinet Secretary appeared before the Committee, she took very lightly the issues that the Departmental Committee on Lands had summoned her to explain. She said that she would transfer and sack more, so that she appears more times before the Committee. That is a bad precedent. You cannot say that you will transfer and sack, so that you appear before a Parliamentary Committee several times.

(Loud consultations)

Hon. Speaker: Order, hon. Members! The hon. Member consulting with hon. (Maj-Gen.) Nkaissery, do so in low tones. Indeed, it is out of order for a Member to stand and purport to be consulting for hours on end. Hon. T.G. Ali, similarly, if you want to canvass anything, please do so while you are seated, because there is more decorum in that.

Hon. (Dr.) Pukose: Thank you, hon. Speaker, Sir. The Chairman, Departmental Committee on Lands said that when the Cabinet Secretary appeared before the Committee on transfers and sackings, she cracked a joke to the Committee to the effect that she would effect more transfers and sackings so that she appeared many more times before the Committee. To me, this was a serious attack on the integrity of a Committee of Parliament.

The Committees of Parliament must be taken very seriously. When we call Ministers to appear before us, we want to transact business and we are not there to waste anybody's time. We are also there to make sure that the work before us is done with due diligence.

All Cabinet Secretaries and Members of Parliament swore to defend the Constitution. It is a serious offence for one of us to flout the Constitution. We have looked at the various Ministries which were created. What is happening in Parliament today is sending a warning to the various Ministries that they should not create structures in the Ministries without due consultation with the various stakeholders or various

constitutional offices. This is to avoid creating offices for your own convenience or for your friends.

With those few remarks, I support the Motion as amended.

Hon. Anyango: Hon. Speaker, Sir, fact number one, the Executive action was clearly unconstitutional. Fact number two, this action by an apparently overzealous Executive seeking to deliver results was reversed before the report was submitted. Fact number three, even we, in this House if we pass legislation which on further analysis is found to be unconstitutional, it is returned to us and we correct it. Fact number four, the new Executive has to live with the changes that empowered the PSC, which has previously been abused substantially by the Executive and, maybe, the Cabinet Secretary was not keen enough to have noticed the differences between past practice and the requirements under the current practice.

Personally, I would not sanction an officer for being overzealous. I would teach the officer to deliver within the law henceforth. What we are trying to do goes beyond an Executive action, or an administrative action. It is apparently a political action, and I think, if we want to use constitutional argument, we are not fair to the Cabinet Secretary in this circumstance. I, therefore, want to plead with the Members. Why did the two committees give us a very blunt report that tells us nothing? Without the amendment, they were telling us to do something, which is already done by an Executive action by way of reversal of what had been done.

So, our continuing debate, I feel has some hidden agenda and in the presence of a hidden agenda, I would rather support the Cabinet Secretary and reject the whole report for a better another day.

(Loud consultations)

Hon. Members: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Hon. Members, obviously, you hold different views. Let everybody express their opinions. I will not entertain arguments by way of points of order.

Hon. Iringo: Hon. Speaker, Sir, I rise to support the document. I strongly feel that the Constitution was violated in this particular incident. Land issues in this country are very emotive, and we have to be very careful when we are dealing with them. According to this report, if you look at it carefully, it appears that it was done just unilaterally by an individual to satisfy some quarters. If due diligence was done and the Constitution was properly followed, these actions would not have taken the period they took to be accomplished, especially writing a gazette notice at 8.30 p.m. Why could it not wait for the following day to be done? Why was it done at night? When you look at the document, the answers that were given by the Cabinet Secretary when she appeared before the Committee just said that she had done it temporarily. I do not know of any provision in the Constitution which empowers a Cabinet Secretary to do things temporarily and forward the same for ratification to the PSC. I strongly feel that there was a big violation of the Constitution. We have been crying about land problems in this country. People in many areas in this country are crying that they need title deeds and we need to move forward. Since Independence, we have not had title deeds yet somebody in

an office, which has been condemned all the years, is messing things more by appointing people to do things which we feel would have made matters worse.

I concur with my colleagues who are supporting this document. I also support the amendment, so that this can be a deterrent measure for other Cabinet Secretaries, who are hiding under some provisions to do some things which are not constitutional. Some of my colleagues in this House are saying that because she revoked the gazette notice, the issue should end there. If hon. Mbadi did not raise the issue in this House, could she have revoked that notice? If the Committee did not sit with her and challenge her to answer questions, could she have revoked the gazette notice? This means that we could have opened a Pandora's box, so that anything would be done with impunity and this would have taken this country backwards to the ages that we want to come out of. So, I strongly support the report as amended.

Hon. M'uthari: Hon. Speaker, Sir, I rise to support the report by these two Committees. As the Members are aware, the land docket is very important and many of the problems that we have in this country, including the post-election violence are related to land issues. It is tragic that officers in the Ministry are transferred without due diligence. If we allow Cabinet Secretaries to exercise the responsibility of transferring officers without due diligence, the Civil Service will be highly intimidated and officers will not perform their functions as they are supposed to.

I commend the Committees for the work they have done. If somebody violates the Constitution or discharges responsibility and exercises powers that are not given to their office, then it will mean that people will do whatever they want to do. It is high time Parliament speaks, so that the Executive knows that we have a duty to oversee the Executive and protect even those who cannot come here and defend themselves. It is even wrong for some Members of this august House to insinuate that this matter is about gender, as if the matter is about men and women. Here we are talking about competence, following procedures and whether due diligence was observed in appointing officers. If the power to appoint is bestowed by the Constitution on the PSC, then it should be like that. Cabinet Secretaries can provide leadership and vision in the Ministries, but the idea of punishing officers without any reason should not be entertained by this House.

With all due respect, it is important for the lady Members of this august House, when they meet lady officers in Ministries and departments, to tell them to do the right thing. They should not do the wrong things and when we come to the House, we do not speak out because one is a woman or a man. The report is about issues. There are facts in the whole report which have been quoted. The Constitution has also been quoted. For this purpose, I support this report. Everybody in this Republic must take responsibility. It is because of impunity and people being allowed to do what they want to do that we have had so many problems. This time round, the Constitution is there to defend everybody, both the civil servants and the Cabinet Secretaries.

I wish to support the report and ask those in offices to take time and do what they have to do. As I speak, in many areas, including my constituency, for the last 50 years, people have not been given title deeds and land has not been surveyed. Instead of concentrating on what is important, the officers concentrate on sideshows. It is the right time for this House to stand up for the rights of everybody to ensure that due diligence is observed.

I support the report.

Hon. Kombe: Asante sana Mhe. Spika kwa kunipa nafasi hii ili nichangia Hoja hii. Ijapokuwa taarifa ya Kamati iko sawa, nina wasiwasi moyoni mwangu. Hii ni kwa sababu walinga walinena: 'Pema usijapo pema, ukipema si pema tena.'

Mhe. Spika, ikiwa wataka kumpiga risasi mwizi, kwanza hutamlenga kichwani. Utapiga risasi juu, akishtuka ndipo umlenge kichwani. Wasiwasi wangu ni kwamba, tunaweza kuitumia ripoti hii kutoa ama kufungua mlango wa wale wanyanyasaji na wanyakuzi wa mashamba wakaweza kuiingia ndani. Huo ndio wasiwasi wangu.

Mhe. Spika, kufikia hivi sasa, kazi inaendelea kuteleza kwa binadamu. Kufanya kosa si kosa, kurudia kosa ndio kosa.

(Loud consultations)

Mhe. Spika, kazi inayoendelea kwa wakati huu ni kazi ambayo inaridhisha. Wengi wetu tulikuwa hatujajua rangi ya cheti cha kumiliki shamba. Lakini imefikia wakati yale mashamba ambayo yalikuwa yamekaliwa miaka na miaka kupatiwa wenyewe. Kuna wengine hapa Kibera tu. Kulikuwa na shamba la Wanubi ambalo limekaa miaka na miaka. Kila mwaka, lakatwa kipande mpaka sasa limebakia ekari 400. Nakumbuka siku moja Waziri alikuja akatuambia kwamba atafanya juu chini kuhakikisha kwamba Wanubi wanapata ardhi hiyo, hata kama itabidi kuuma risasi. Hiyo ni ishara ya kwamba alikuwa amejitolea kufanya kazi kisawa sawa ili kwamba mambo yaweze kuwa mazuri kwa wale Wakenya wanyonge zaidi.

Mhe. Spika, pale alipoingia katika jengo la Ardhi House, ni shimo la tewa. Unaweza ukatafuta hati ya kumiliki ardhi miaka na miaka. Lakini mwenye hela akiingia pale, kwa wiki moja, atatoka na hati ya kumiliki ardhi. Hiyo ndio kazi huyu mama amejitolea kufanya na kulisafisha lile jumba. Lakini hilo halionekani.

Mhe. Spika, tusipokuwa waangalifu, tutaiangamiza nchi hii. Kwa hakika, twendeni mbele tukiangalia tunapotoka. Wengi wamekalia Wizara hiyo lakini hatujaona manufaa ila wakati huu. Si kwamba napinga ripoti hii, la hashu! Nina heshima na naipa sifa zote kamati inayosimamia mambo ya ardhi kwa kufanya kazi yake vizuri. Ikiwa lengo la kupitisha ripoti hii ni kumwondoa Waziri huyu, ninaapa hapa kwamba sitakuwa pamoja na huyo atakayeleta Mswada wa kumwondoa. Kwa ndani, watu wanacheka na kufurahia kwa sababu wanajua wamemshika Waziri. Tutayafanya yote hayo lakini ikiwa ni ya kugandamiza wanyonge, hatutakuwa pamoja hata kidogo.

Kwa hakika, yote na yawe. Ijapokuwa sina tashwishi na ripoti hii, lakini litakuwa jambo nadra kuiunga mkono.

Asante mhe. Spika.

Hon. Speaker: Hon. Members, even as you debate this report, remember you have some other business which has got some deadlines. The business in Order No. 9 has a deadline of Sunday. The next day for the House to sit is tomorrow. Therefore, it is important that even as you debate this report, you bear that in mind.

Hon. (Ms.) R.K. Nyamai: Thank you, hon. Speaker, Sir, for giving me a chance to contribute to this Motion.

I would like to start by saying that, as a Chair of Committee, I really support the initial report that was presented by the Departmental Committee on Lands. I took time, as a friend of the Committee, to participate and hear what hon. Charity Ngilu had to say. So,

I fully supported the initial report. But with the amendment, I feel that I do not support it. I would like to say a few words about it.

First of all, I would like to say that hon. Charity Ngilu, for most of us who know her, is a person who does her work. This time round, she is doing her job in the Ministry of Lands. Therefore, I would like to say that, at times, when you are doing your work in the right way, you may step on the feet of somebody and it becomes a vicious circle.

This matter started as a statement which was responded to and it has mutated to a report. I agree that it was good and I agree that they did a very good job, but I see an ill motive in the amendments that are being done today.

Hon. Speaker, Sir, I would like to say a few points. One, transfers are normal within the Civil Service. Officers get moved from one Ministry to the other. This happened in the Ministry of Lands, Housing and Urban Development. The officers are transferred from the Ministry through a consultative process with other Government agencies. I would like to say that, that is normal and it is going to happen. What I am asking is whether Parliament is going to be supervising and asking why this has happened in the Ministries.

Hon. Speaker, while the report has many irregularities, I would like to agree with what one of the hon. Members who has spoken has said; that the illegality of the Cabinet Secretary's action has been noted. But the illegality which has existed in the Ministry for three years, whereby the position of the Lands Secretary did exist, is not mentioned in the report of the Committee.

I would like to point out that, as a Member, I note this and I think other hon. Members in this House should also take note of this. If the Committee Report was to work for Kenyans, it should have also cured the illegality which exists today. That is because it needs to be taken note of and handled in order for work to continue in the Ministry.

Hon. Speaker, Sir, I would also like to point out that the report is silent on the curative action which has been pointed out. I feel, therefore, that it would be wrong if I do not point it out here. The curative action that the Cabinet Secretary took after interacting with the Committee – by de-gazetting the anomaly, has not been noted. This also needed to have been highlighted in the report. The report does not mention the correspondence between the Cabinet Secretary and the Public Service Commission on the transfers and deployment.

Hon. Speaker, taking punitive measures against that Cabinet Secretary is like having an Appeal Court Judge recommending that a magistrate who gave an erroneous sentence be jailed or fined. I feel that the Cabinet Secretary acted in good faith for the sake of Kenyans. Therefore, even though we have noticed that something was done wrongly – which has since been corrected – I would like us to stand with the Cabinet Secretary.

As Parliament, we should avoid being seen to paralyze the operations of other arms of the Government to an extent that they cannot make crucial decisions, through such recommendations. It is better for one to make a wrong decision to correct a bad situation than not to make a decision at all. Many Ministers have been in this position. We know that the Ministry of Lands is a place of cartels. Therefore, previous Ministers were scared of taking action. This Cabinet Secretary has sat on her position and has

decided to take action. I feel that it is better to take action which may be wrong to a certain extent, than not to take any action at all.

I would also like to point out something regarding the Director of Survey. I will not go into the details of the duties and responsibilities of the holder of that office. However, I would like to point out the requirements for appointment of the Director of Survey. One should have served in the grade of Senior Deputy Director and should have a bachelor's degree in any of a given number of disciplines. In addition, the candidate should have a master's degree in any of the following disciplines: Land Surveying, Plant Management, Cartography, Photogrammetry, among others.

Hon. Speaker, the person who the Cabinet Secretary removed from that office does not have those requirements. The Committee did proper investigations, and I support them. One day, I will also bring a report here from my Committee. I will also need support. I think this was an oversight. They need to look at the qualifications of somebody in that position.

I would also like to say something about delivery of service. The Jubilee Government came into power on a platform of delivery of efficient and cost-effective service to the common *mwananchi*. The appointment letter of a Cabinet Secretary partly reads:

“In addition, as a Cabinet Secretary, you will be responsible for ensuring that your Ministry operates efficiently and, in particular, that public resources are utilized effectively, ethically and that the principle of accountability and transparency is upheld.”

It is against this background that the Cabinet Secretary acted in the manner she did to benchmark her work as an individual. There are so many things that are pending in that Ministry today. Migingo Island should have been surveyed. To-date, the Government has used Kshs62 million, but there is nothing that has happened in Migingo. The people are waiting for the work to be done. Section 108 of the Lands Act says that the Cabinet Secretary has a responsibility to appoint somebody to sign title deeds during the transition period, before regularization is done. I will look at the Lands Act, 2012, so that I can quote it verbatim.

Hon. Speaker, I am talking about public land being used efficiently. As we speak, we have no survey of the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor. The Government has spent Kshs225 million. The money was spent in February, 2013. Out of that amount, a sum of Kshs150 million was immediately used for procurement of goods and services. Even if I were in her position, I would be worried that the same officers are spending public money without any work being seen. I would also have taken action. A total of Kshs70 million of that money was spent in a different place as Kenyans wait for work to be done.

Therefore, as I conclude, I would like to say that I stand by the original report that was done by the Committee. With regard to the amended version, I do not stand by it.

Hon. Speaker: Next is hon. Kenneth Odhiambo Okoth.

Hon. Okoth: Thank you, hon. Speaker. I rise to oppose this Motion and share my views about it.

First of all, I would like to address the issue of gender in leadership in this country. We have seen a disturbing pattern of double-standards in which women leaders are very quickly pushed aside at the slightest opportunity and yet, we, as leaders and role

models for young people, want to make sure that we encourage our people. The Cabinet Secretary, in this report, and according to the---

(Loud consultations)

Hon. Speaker: Order! Order! Relax, hon. Members! You must allow hon. Kenneth Odhiambo Okoth to say his bit even if you do not agree with what he is saying. Even if you do not agree with him, he will be protected to say what he has to say. Proceed, hon. Okoth.

Hon. Okoth: Hon. Speaker, we are going to stand here and say that the Cabinet Secretary, according to the substance of the report, may have acted overzealously but not unconstitutionally.

My second point of concern is the insistence that while Parliament has the right to provide oversight, I do not believe that in a presidential system of government, where the Cabinet Secretary is appointed by the President to be the Chief Executive Officer of a Ministry, he or she should be micro-managed by Parliament. I bring out this point because this is the substance of recommendation number one. The two officers who were transferred still hold the same levels of responsibility in the Ministry of Energy and Ministry of Mining. They did not lose their pay.

The Committee's insistence that they must be taken back to the Cabinet Secretary's team in the Lands Department insinuates several things. First of all, the Cabinet Secretary, as the Chief Executive of the Ministry, should have the leeway to decide whom her team will consist of in order to deliver the Jubilee Manifesto. If she finds people who have been there long enough, and have not been doing the work that is needed to be done, and have been part of the problem; surely, should she not have the right of letting such people move laterally and offer their services in different stations? Why the insistence that the two officers must be taken back to the Ministry of Lands?

That is the second point that we must address. What is so special about those two Kenyans? Does it mean that if they are hit by a speeding bus today, the functions that they used to perform in the Ministry cannot be done? There are so many young and qualified Kenyans who can be surveyors in this country. So, the first recommendation of this report, to the effect that the two people must be returned to the Ministry of Lands, stinks of impunity to me.

(Several hon. Members stood up in their places)

Hon. Speaker: Hon. Members, I will not allow points of argument. Hon. Okoth has a right to say what he has to say. You have quoted all the Articles of the Constitution. I do not think you are telling me anything new about Article 152 or Article 153, or Standing Order No.66. So, let hon. Okoth say what he has to say. He represents the people of Kibra. Let him say what he has to say. So, do not waste your time looking at me with wide open eyes. That is not going to help. Let the hon. Member say what he has to say

Hon. Okoth: Thank you, hon. Speaker, for protecting me.

As I was saying, the Cabinet Secretary may have acted overzealously. She may have made mistakes. She has apologised for those mistakes. She has revoked the actions

that had to be revoked. The fact of the matter is that we have had a constitutional problem since 2010, with the existence of Lands Secretary position, which does not exist in our Constitution. The attempt to install a Director-General was actually part of an internal process within the Government to streamline things so as to deliver on the promises of the Jubilee Government.

Surely, do we not want our President and his Cabinet to succeed? Why are we in a rush to hamper and ensure that they are kicked out? Why knock them at the knees when they are just getting started on their jobs? If we think carefully on important matters in this country, barely five weeks ago, at Westgate; we witnessed serious intelligence and security failures that led to the death of more than 67 people, destruction of property, loss of jobs and tarnishing of the investment of our country. Nobody has been held accountable for those serious lapses. Nothing has been brought to this House to send Gichangi home. Nothing has been brought to this House to send ole Lenku home.

Nothing has been brought to this Parliament to send Kimaiyo home. These are three gentlemen who, in my opinion, failed us because we lost lives and property and even the prestige of this nation in a very severe manner. Charity Ngilu transferred two people – she rattled a snake – who may seem untouchable and for that, you tell me that she must go. Surely, hon. Members, you have to be honest with yourselves. We cannot bully her because she is a female leader of this country. It is about time we became fair and reasonable. She has to be controlled. She has to work within the law and that is true. Any attempt to say that she has to go home quickly, my friends in Jubilee, I warn you. You are setting a precedent for the impeachment of other Cabinet Secretaries and all the way to the President, if you are not looking at this matter carefully. Watch out for what you wish for. You may get it sooner rather than later.

I stand here to reject this report and say that the Cabinet Secretary knows what she did wrong and it is about time we fixed it. My interest is to make sure that she is allowed to streamline that rotten Ministry that has let down Kenyans and has been a den of corruption over ages. She needs to make sure that the poor of this country start getting their titles quickly and on time without having to pay bribes. What a man can do, a woman can do better. The place needs to be swept clean. I have full confidence in Charity Ngilu to sweep it clean. I beg my brothers and sisters on the Jubilee side to support her and give her a chance to deliver. If she does not deliver, it is the job of the President to evaluate her. Unless you have indications and directions from State House or anywhere else that she is an inconvenient occupant in that office and that she must be replaced through Parliament, then so be it. However, if that is not the case, then you are exposing the President and Jubilee Coalition. What you wish for will come back to you very quickly. We will give it to you.

(Laughter)

Hon. Kabando wa Kabando: Thank you, hon. Speaker, for the opportunity to contribute to this Motion. With timidity and humility, I find a lot of difficulty in this matter. And even being a Member of the Joint Committee, I felt very seriously that the implications may be too heavy to bear. However, in the past few days, inside and outside the Committee, along the corridors, on the roads in town, we have seen amplification of tribal cards and misappropriation of gender which is naturally endowed to us by God.

Hon. Speaker, Article 236 of the Constitution states that a public officer shall not be victimized or discriminated against for having performed the functions of office in accordance with the Constitution or any other law; and that officer shall not be dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.

This Committee has spoken. It is actually a shame and serious embarrassment if this is the supreme legislative body in this Republic and a Member would say that the Constitution was not breached.

Let us have other ways of persuasion and other means of cultivating attention. It will be the height of impunity on our side and inside our conscience. I saw a certain body elsewhere seeking to address this matter when the National Assembly was already seized of this matter. The same body is saying: "This matter, if rejected, should be brought to us". These are things that are clearly stipulated in the Constitution and yet, we want to abrogate them. We want to violate them. One thing we should ask is this: When a thing is repeated, is that not a composition of a litany of impunity? Indeed, it is. Article 234 is very clear and hon. Alex Mwiru and hon. Cheptumo, the two respectable Chairpersons of Lands and Delegated Legislation committees respectively have articulated this matter for and on behalf of our joint committee. That is because it necessitates that articulation.

I remember that in the Tenth Parliament, when I was an Assistant Minister, I could be whipped. It does not follow that because somebody comes from Mount Kenya area, then I should follow the narrow and crooked path. I remember I was with hon. Nderitu Mureithi and hon. Dr. Kilemi Mwiria and a few other Members. We formed a caucus. We were all Assistant Ministers. By then, hon. Dr. Otuoma was my boss. He sought to dismantle that effort despite our relationship and proximity to the supreme centre of power.

We also had names for the position of Chief Justice and others. We spoke loudly in Press conferences and paid for articles in newspapers which can be found in archives even now. This was because we wanted to support the former President Kibaki. I am a strong defender of hon. Uhuru Kenyatta, the President of this Republic and the leader of Jubilee, but I will be the first one to tell him that it is wrong and it is a mistake. Either way, whether nay or aye, the House has spoken.

Article 234 states that the Public Service Commission, subject to this Constitution, is the only one endowed with the responsibility of establishing and abolishing offices in the Public Service. Secondly, it is supposed to appoint persons to hold or act in offices and confirm appointments. Prof. Ms. Kobia, the first director of the School of Government and now the Chairperson of the Public Service Commission answered my question within the hearing. *Nikamuuliza*: Do you, in your opinion, think that the Cabinet Secretary violated the Constitution? I was supported by hon. Mwadegu. She answered very strongly: "The Cabinet Secretary breached the Constitution." The late J.F. Kennedy said: "We want to go to the moon not because it is an easy task, but because it is a difficult and very tough task. It is a challenge that Americans want to face. It is not a challenge that Americans want to postpone." For those of us, like hon. Munuve said, who have gone to the trenches for pride and honour; for those Members of this 11th Parliament who are now implementing the Constitution that was unveiled in the Tenth Parliament, our responsibility is collective. Let us not live in denial.

When you speak loudly and say: “We are being finished because we are Kikuyus or women” we have them in the House. They are our mothers. When you say: “We are being finished because we are cowards”, and you have provided leadership and loyalty, it is a violation of the national conscience. I stand here to persuade this House across the divide, across gender, across generations, across ethnicities for we are the Kenya National Assembly and we are the supreme body. Kindly, let us help President Uhuru Kenyatta. If this report passes, I have optimism ranging from Mt. Elgon to Mt. Kenya and from Indian Ocean to Lake Victoria that, indeed, that will happen. We help President Uhuru Kenyatta and the Deputy President, William Ruto to do that which is necessary for we cannot speak--- Even if we were not to do the anticipated and the process was not followed, the voice of this Parliament is the voice of the supreme law-making body. Whatever contention one may have or whatever paranoia you may have, please, do not be captivated by issues that may not be within the limits. We swore to defend this Constitution and so did the President. I have a lot of respect for the holder of that office. People know that, at one time, we did what was necessary in 1987.

However, as pertains to this Constitution, the sanctity of this Constitution cannot be violated. I strongly support the adoption of this report so that the song can be heard. For those who are still on the other side, like we said in the House debates, time is nay. Please cross over and be on the winning boat.

Thank you, hon. Speaker.

(Applause)

Hon. Speaker: Dr. Nyikal.

Hon. (Dr.) Nyikal: Thank you, hon. Speaker, for giving me an opportunity to discuss this report. I am new in Parliament but one thing I still would like to know is: Why does Parliament speak in parables and make it difficult for Members to make decisions?

(Laughter)

It is extremely clear that we are discussing two issues – one which is not being stated and one which is in the report. The one which is not stated has everything to do with the sacking of Charity Ngilu. Now, that is what everybody is discussing without saying where it is in the report.

(Laughter)

So, we then divide the House into those who cannot speak their minds and those who are afraid. Now, from the issue here, it is obvious that the Constitution and the laws were violated. That is true and it is in the report. Therefore, I support the report but nowhere in this report is it indicated that after that is said, Charity Ngilu should be sacked. I think that so long as we Members of Parliament do not come out and speak plainly and in a simple manner, we shall be a disappointment to this nation and we shall also remain to a large extent a disappointment to the people of Africa and to the race of black people because we confuse issues. If tomorrow somebody comes after we have

passed this report and think Charity Ngilu should be sacked, then they should be ashamed because they should have said that here today. It is making it difficult for us to support what is clear. Impunity is a problem. Officers are scared. They can be sacked any time. Processes were not followed and we should say that is wrong. Even the amendment we have put in place is still not clear.

So, I think I want to confine myself today to this report and say I support it because the Constitution was not followed. The processes were not followed. However, I am waiting for tomorrow for anybody to come, be it the Leader of Majority Party or others, and say that you people said that Charity Ngilu should be sacked in this report. That would be dishonesty. Maybe, I am naïve because I am a doctor but if you feel she has done wrong and she should be sacked, why can somebody not come here and make amendments to this report and say that she should be sacked?

So, as this report stands, I support it but I want to also say another issue. The other issue that has come here is actually--- Please, listen to me. Do we in this country need the two positions of Cabinet Secretary and Principal Secretary? What is happening here is that Cabinet Secretaries are performing the functions of Principal Secretaries. I wonder whether those Cabinet Secretaries were inducted and went through orientation. So, hon. Speaker, I end by saying I support this report, but not to the extent that it is being kept under the table.

Thank you, hon. Speaker.

(Laughter)

Hon. Speaker: Hon. Dr. Nyikal, the rules of the House are that you debate what is before you and not what could be in some other people's minds.

Hon. (Dr.) Pukose: Put the Question.

Hon. Speaker: Do not direct. Hon. Members, I will now put the Question.

(Question, that the Mover be called upon to reply, put and agreed to)

Hon. Speaker: Hon. Cheptumo.

Hon. Cheptumo: Thank you, hon. Speaker for giving me a chance to reply. We have taken well over two hours and I would like to start by thanking Members for their candid, open and very clear contributions. What is before the House is, indeed, a very important Motion touching on the Constitution of the Republic of Kenya. You saw Members from every side of the House making their contributions without fear or favour. That is the essence of debate in this House.

Hon. Speaker, I want to thank all these Members. As we move now to the last part of making a decision on this Motion, I want to be very clear that the Joint Committees on Delegated Legislation and Lands were able to direct themselves to the mandate given by this House. They were able to make recommendations. I would wish to really admire the contribution made by hon. Nyikal that what is before us as a House is the content of the recommendations of the Committee. This is a House that is supreme and given supremacy by the Constitution and I want to say that, as a Committee, we became restrictive to the mandate given to us by you. Our recommendations were very clear and

we did them based on the issues, questions, comments and responses by the Cabinet Secretary, the Chair of the National Land Commission and, finally, by the Chair, PSC.

Hon. Speaker, I wish to say that we sat for more than eight times and I would like to disagree with a Member who said that we wasted time. We spent the time fairly well because we wanted to give this report to this House the way we have done. I wish to really thank Members and say this is the spirit of this House to debate issues openly and fairly, so that we can know the truth and we uphold the Constitution of this country.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, I will now put the Question.

(Question of the Motion as amended put and agreed to)

Resolved accordingly

THAT, this House adopts the Joint Report of the Departmental Committee on Lands and the Select Committee on Delegated Legislation on the recent irregular appointments in the Ministry of Lands, Housing and Urban Development, laid on the Table of the House on Thursday, 31st October 2013, subject to an additional recommendation on page 12 to read as follows:-

“The Cabinet Secretary for Lands, Housing and Urban Development, hon. Charity Ngilu should take full responsibility for the unconstitutional, illegal and irregular/unprocedural acts of creating offices and making arbitrary appointments, promotions and transfers of staff in the Ministry and further be held to account for any undesired consequences such as but not limited to financial loss that may arise from the aforementioned acts of commission on her part”.

Let us move on to the next Order! Yes, the Chairperson, Departmental Committee on Justice and Legal Affairs, hon. Chepkong’ a.

(Loud consultations)

Order, Members! The house is still in session and not on exhibition. Hon. Chepkong’ a, what is happening?

Hon. Chepkong’ a: Thank you, hon. Speaker, Sir. I am just waiting for Members who are “recessing” because the noise is rather loud.

Hon. Aluoch: On a point of order, hon. Speaker, Sir. I rise to seek your direction.

(Hon. (Ms.) Mbalu hugged hon. Ichung’ wah)

Hon. Speaker: Hon. Members, those of you who are kissing--- The new Member for Kibwezi East, stop kissing in the House or whatever it is that you are doing with the Member for Kikuyu, who has just walked out.

(Laughter)

That kind of embrace is uncalled for.

Yes, hon. Aluoch.

Hon. Aluoch: Thank you, hon. Speaker, Sir. I rise to seek your direction. I want to say that I have the privilege of serving in the Departmental Committee on Justice and Legal Affairs.

In our last meeting, in which the report was to be adopted, I do recall that hon. Baiya, hon. Nyokabi and myself indicated that we were dissenting to that report and the Chairman understood that and said: “Yes, you have the liberty to do that.” But I have noticed that the report fails to satisfy what is set out in Standing Order No.196(4) which says: -

“Where a vote on a question is not unanimous, the names of the members voting for and against the question and those abstaining from voting, respectively, shall be recorded in the minutes.”

I have seen the report. Apart from indicating that hon. Baiya and I dissented, the Members who abstained or those who supported the report are not indicated. That is the discretion of the Chairman. Under these circumstances, I want to seek your direction on whether this report in its form is proper and can be debated by the House or it should be referred back.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Yes, hon. Chepkong’a.

Hon. Chepkong’a: Thank you, hon. Speaker, Sir. As you know, I have not even moved the Motion on the report. I had merely opened my mouth and hon. Olago Aluoch, of course, whom I have a lot of sympathy for because of what has happened to him today, may have lost some sense of direction. But I have not yet moved the Motion on the report. Of course, he has a lot of sympathy from me.

(Laughter)

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to Standing Order ---

Hon. Members: On a point of order, hon. Speaker, Sir.

Hon. Speaker: You will now relax. Members I think it has become fashionable that we are never able to transact business because of points of order. For every small thing, you want to rise on a point of order!

ADOPTION OF REPORT ON REMOVAL OF MEMBERS OF JUDICIAL SERVICE COMMISSION

Hon. Chepkong’a: Hon. Speaker, Sir, hon. Aluoch came to me here, but he never understood the import of what I told him. I was saying that I was sympathetic to that situation and nothing beyond that.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to Standing Order No.216 (5), it is my pleasure and duty to present to the House the Committee’s Report on the petition for the removal of the Members of the Judicial Service Commission.

The Committee received the petition as committed by the Speaker and we held over eight meetings to discuss and receive information with regard to the issues that were raised in the petition. I must state at the outset of this presentation that, this was the most

difficult report for me. Why? That is because we found that some documents that were tabled here were missing or misrepresented when they were taken for photocopying.

Some Members would call me and ask me: -

“Do you think this affidavit is there? Do you think the Inspector-General’s letter is complete?”

That was the case and yet, I had not seen the photocopied documents. I merely got them yesterday. When I checked and found out that there was a lot of misrepresentation in that report, I asked the Clerk. He told me that he had a lot of difficulties with this report. In fact, some Members are raising these issues to intimidate me. They are telling me that such and such a thing is missing. No wonder hon. Aluoch said that there is a document which is being circulated. That is because the Chair is being threatened. It is very unfortunate for Members who called me.

Hon Members: On a point of order, hon. Speaker, Sir.

Hon. Chepkong’a: Hon. Speaker, Sir, I am making a presentation and those are facts.

Hon. Speaker: Order! I advise that you move the Motion on the report.

Hon. Chepkong’a: Hon. Speaker, Sir, I beg to move the following Motion: -

THAT, pursuant to the provisions of Article 251(2 and 3) of the Constitution and Standing Order No.230, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Petition for the Removal of Ahmednasir Abdullahi, Rev. (Dr.) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi as Members of the Judicial Service Commission, laid on the Table of the House on Thursday, 31st October, 2013.

I would like to set out a number of issues that this House has made a decision on, particularly the Communication from the Chair.

Hon. Speaker, Sir, on 16th October, 2013, you made a Communication from the Chair with regard to accountability with regard to issuing out invitation and summonses to members of the Executive and agencies to appear or attend Committee hearings. In it, you clearly stated: -

“You will recall that those who raise concerns even claim that some State officers are reported to have addressed the media on matters they were expected to answer before Committees of the House. In fact, they were casting aspersion or imputing improper motives on Members and Committees of this House and purporting to direct the House on how to run its business”.

You further went on and stated: -

“This matter, touching on the execution of the oversight role by the National Assembly on one hand and the accountability and answerability and responsibility to this Assembly and its Committees by the members of the national Executive, heads of departments and agencies---”

You ended by stating the following: -

“There is no member of any arm of the Government who is allowed to miss any sitting of any Committee when he has been invited to attend those Committees”.

In your ruling, you stated that all State and public officers invited or summoned to appear or attend Committee hearings must do so without fail. That is the direction that you gave and it is binding on all the Committees of the House.

Finally, you said that this order is meant to stop the whimsical and the discourteous correspondence from State and public officers who purport to want to reschedule Committee hearings when invited or summoned to appear before Committees. In your last paragraph, you clearly stated: -

“When summoning witnesses or persons who are expected to produce documents, at least, seven days’ notice for such a meeting for them to attend must be given”.

There are so many goings-on that have happened in the recent past. There are court proceedings that have been taken out with the express intention of stopping the Committee from presenting its report to this House. There has also been a purported order that was issued today that this House does not discuss this report. In your ruling of 29th October, 2013, in which you were dealing with the scope of oversight powers of select committees, reference to substances of proceedings and comity between Legislature and Judiciary you quoted the former Speaker of the National Assembly, Speaker, Humphrey Slade and observed the following: -

“Parliamentarians are eyes and the ears of the citizen”. He also noted that, an investigation by Parliament attempts to answer the immediate and urgent questions and provides a platform for ventilation of preliminary matters. He concluded that this role of Parliament is so central to parliamentary democracy that it is impossible to imagine its removal or abridgement in any way or form. He concluded: - “The power to scrutinise executive actions or omissions and to bring the executive to account is the inalienable right of this House. It cannot be taken away in any form or guise, whether through a commission or otherwise”.

Hon. Speaker, Sir, in the conclusion of the directive that you gave to this House in the ruling, you said that notwithstanding anything to the contrary and quoting a court’s precedent in the United Kingdom, you stated as follows: -

“The court held that a statute cannot be challenged on the grounds that it was illegally made or made for unlawful purpose, or made unlawfully.” The court also held that if this were possible, it would then amount to denial of supremacy of Parliament. On the same subject, Section 15 of the Mason’s Legislative Manual, provides as follows: “A legislative body having the right to do an act in law must be allowed to select the means of accomplishing such act within reasonable bounds.” Under a constitutional provision declaring that each House shall determine the rules of its proceedings, the fact that a House acted in violation of its rules, or violation of parliamentary law, is a matter clearly within its power and does not make its action subject to review by courts.

Finally, this is what you said: -

“In this regard, it is urged that should a court clothe itself with the powers of the legislature and purport to make determination on matters relating to procedures of a House or the House of Parliament, and therefore question the supremacy of Parliament, then such determination by such court would only be in vain. I doubt any court worth its salt would travel that route.”

While addressing the Members, you said: -

“Hon. Members, this concept of comity between the Judiciary and the Legislature is the very core that separates the two institutions and which we must all jealously protect and respect”.

The Judicial Service Commission is established pursuant to Articles 172 and 173 of the Constitution. The JSC is established within the limits and confines of the

Constitution and the Commissioners retain their positions as Commissioners who sit in it. The Constitution places the JSC in the same pedal and footing as that of other constitutional commissions, namely, the Independent Electoral and Boundaries Commission (IEBC), the Parliamentary Service Commission, the National Lands Commission and all other commissions established under Article 15 of the Constitution as mentioned. The JSC does not exercise judicial authority as its power is reserved for courts and tribunals and Committees of Parliament which have the same powers as that of the High Court. The Judiciary consists only of judges and magistrates and do not earn sitting allowances. They do not travel out of the country on fact-finding missions. They do not hear complaints against their colleagues. The judges and magistrates who sit in the JSC do not sit as judges and magistrates, but as commissioners like any other commissioner, including the Attorney-General and all others that are appointed and are not members of the bench.

The JSC is not a body or an arm of the Government, but an administrative body of the Judiciary. So, the two of them are totally separate and independent. The Constitution bestows Parliament the power to promote democratic governance to represent people and special interests, to deliberate and resolve issues of concern to people and to exercise sovereignty as elected representatives of the people. Every person has a right to petition Parliament to consider any matter within its authority. Like any other constitutional commission, the JSC is not subject to direct or control of any person or authority, but it remains accountable to the people of Kenya through Parliament.

Parliament through its Committees has power under Article 125 of the Constitution to summon any person to appear before them for purposes of giving evidence or providing information, including the JSC members. The ruling of the Speaker recently, as I have just read it, states very clearly that no person, pursuant to Article 125 of the Constitution, can refuse to appear before a Committee of Parliament. The Standing Order No.230(4) provides that once a petition has been committed to a particular or relevant Departmental Committee, that Committee has 14 days within which to table its report to the House.

This Committee met, deliberated on the petition, invited views and memoranda from members of the public as required and tabled its report on Thursday last week. I would like to disabuse the notion created by some members of the public who have made some very disparaging remarks on the Members of this House. I read a report, with a lot of sadness, on Sunday in which one eminent scholar, I thought he was, purported to call Members dimwit. I decided to go the Queens English Dictionary just to confirm what a dimwit is and it is somebody who is stupid and is slow in understanding. From the presentation I am making, I am sure nobody doubts the fact that I am not slow in understanding. The person who wrote that, unfortunately, happens to be a lawyer. Having gone to the same university and taught by the same lecturers, I do not know whether there is a new revelation of law that has come or happened or occurred recently that was not taught to all of us. That, we become dimwits by virtue of becoming Members of Parliament is very unfortunate.

Hon. Speaker, Sir, the concept of judicial independence as the pivotal role of separation of powers in a democracy is very critical and this House understands that. That is why I needed to set out the parameters. This House plays the role of detecting and preventing abuse and arbitrary behaviour or illegal and unconstitutional conduct on the

part of the Government and public agencies that are charged with the responsibility of managing public resources. That includes taxpayers' money that people have paid. That includes the citizens of Kibera or Ainabkoi Constituency. The citizens want to see accountability in the money and the resources that have been budgeted for any institution. They want to see the money expended in such manner that those in authority add value to it.

Hon. Speaker, Sir, as we present this report, I am persuaded and guided by what the 16th president of the United States of America, former President Abraham Lincoln said: -

“We have malice towards none, but charity towards all.”

As God enables us and gives power, let us do that which is right. As I stand here, the Committee comprises of eminent lawyers, social scientists and engineers. They discussed and deliberated the report.

Hon. Speaker, Sir, just to respond to hon. Alouch who is senior to me, and I regard him as a very senior counsel, the minutes were taken by the Clerk and they clearly indicate that hon. Baiya and hon. Alouch dissented and that is clearly stated in accordance with the Standing Orders, which the Clerks are well versed in.

With regard to hon. Priscilla Nyokabi who is the Vice-Chair, I am informed by the Clerk that she went back later on and told the Clerk to remove her dissent.

Hon. Member: Shame!

Hon. Chepkong'a: Hon. Speaker, Sir, the Chair cannot take responsibility over an issue in which an hon. Member goes back and says “Do not put my name”. I am not a minute taker. I am the Chair of the Committee; I merely preside to ensure that there is order. But as to the responsibility of each hon. Member, you are elected and you know what you are supposed to do in Parliament. So, I do not take any responsibility for anything that someone else goes back and says, “This is what I think.” You can change your mind, hon. Speaker. Nothing is cast in stone. You have capacity and ability to make decisions as you deem fit and appropriate towards the conduct of business that you wish to conduct in this House, as long as it is within the Standing Order and the law.

Hon. Speaker, Sir, the Judicial Service Commission as I have stated has been set out in Article 251, which is of particular importance to the petition that was forwarded to us, which is dated 11th October, 2013. It was submitted to us by the Chair and committed for purposes of deliberation. I just want to read the Standing Orders with regard to petitions.

Hon. Speaker, Sir, Standing Order 220(3) states as follows: -

“The Clerk shall, within seven days of the date of receipt of the petition, review the petition to ascertain whether the petition meets the requirements of these Standing Orders and of the law.

(4) Where the Clerk considers that a petition does not comply with paragraph (3), the Clerk may give such directions as are necessary to ensure that the petition is amended to comply with that particular paragraph.

(5) The Clerk shall, if satisfied that the petition meets the requirements under paragraph (3), forward the petition to the Speaker for tabling in the House.”

Hon. Speaker, we believe that since the petition was committed to the Committee, the Clerk was satisfied that the petition, in the form in which it was, was in order. The petitioner, Nicholas Riungu, sought for the removal of the Commissioners I have mentioned while moving debate on the Motion for breach of the following: -

- (i) serious violation of the Constitution;
- (ii) serious violation of the law;
- (iii) gross misconduct in the performance of functions; and,
- (iv) incompetence.

Hon. Speaker, we invited memoranda from the public and caused to be published an advertisement that was signed by the Clerk, after which we received a further petition from one Alex Kibii of P.O. Box 5, Chepkorio, who holds ID No.22064769, a citizen of the Republic of Kenya from Elgeyo Marakwet County. He sought for the removal from office of Ahmednassir Abdulahi, Prof. Christine Mango, Rev. Samuel Kobia, Mohamed Warsame, Florence Mwangangi and Emily Ominde as members of the Judicial Service Commission on the following grounds: -

- (i) serious violation of the Constitution;
- (ii) serious violation of the law; and,
- (iii) gross misconduct in the performance of functions.

He cites the following facts in filing the petition: -

“That, the aforesaid members of the Judicial Service Commission, who are members of the Finance and Administration Sub-committee of the Judicial Service Commission, by purporting to issue instructions to the Kenya Police, seriously violated the Constitution by breaching Article 245(4) of the Constitution, which says that no person may give directions to the Inspector-General with respect to the investigation of any particular office or offences. They breached the Constitution by interfering with investigations through directing the police not to arrest and charge persons suspected to have pilfered Kshs72 million from the Judiciary.”

The Committee considered this petition and resolved to amalgamate the two petitions, so that they can be considered together as the two petitions raise more or less similar issues. This particular one just dwelt on Article 245(4) of the Constitution. The prayers made by this particular petitioner include: -

1. Removal from office of the persons that I have mentioned.
2. In contravening the Constitution and the law, the said members of the Judicial Service Commission have jointly and severally committed acts of gross misconduct in the performance of their functions.
3. The said members of the Judicial Service Commission are jointly and severally incompetent.
4. The said members of the Judicial Service Commission be removed from office on the aforesaid grounds.

Hon. Speaker, we also received memoranda in both oral and written submissions from one Bryan Yongo, who appeared before the Committee and made submissions. His document is titled “In the Matter of Petition by Bryan Yongo pursuant to Section 251(2) of the Constitution to the National Assembly against Ahmednassir Abdulahi, Commissioner, Judicial Service Commission”.

This one was very particular about one person in which the petition claimed that the said Ahmednassir Abdullahi, Commissioner should be removed as he is incompetent. He does not have the capacity to have been appointed in the first instance as a JSC member. Indeed, he attached an affidavit from one Peter Simani in support of his claims. The affidavit is dated 27th January, 1993 claiming that the late Peter Simani, who was a good friend of mine and who passed on in the unfortunate tragedy that occurred at Westgate--- Mr. Ahmednassir Abdullahi did not have a practising certificate between 1990 and 1992 and so the purported execution of the pupillage certificate for Mr. Ahmednassir was irregular and illegal. I will go into that because I am now just submitting with respect to the documents that we have just received.

Hon. Speaker, we also received an affidavit from Mr. Leonard Kamweti who was formerly the Company Secretary of National Bank of Kenya until 31st July, 2013, when he was retired on grounds of public interest. He alleges that Commissioner Ahmednassir Abdullahi caused his termination of employment with National Bank. In support of his contention, he says that Mr. Ahmednassir Abdullahi got in possession of a letter dated 15th June, 2011 from the lawyers of National Bank in which they were giving an opinion to the National Bank regarding some outstanding cases that were in court on some taxation that had taken place. That, in fact, that particular lawyer obtained those confidential documents that were being exchanged between the client and the advocate is breach of the confidentiality rules. So, we will be making reference to that particular letter.

Secondly, he informed the Committee that he registered his complaint with the Advocates Complaints Commission in which he complained of Mr. Ahmednassir Abdullahi having received confidential documents or had access to client confidential documents that were exchanged between client and advocate and that, those particular proceedings are still ongoing.

The sad thing that the Committee noted is the intimidation that, that gentleman went through. The Chairman of National Bank himself purported to withdraw a complaint in which the National Bank had not filed as an advocate itself. We were given two letters in support of this. In one of them, the Chairman stated very clearly that they had not authorized Mr. Kamweti to complain, but we found that the letter was with regard to a complaint that had been made by Mr. Kamweti.

Hon. Speaker, we also received correspondences and submissions from one, Tom Mogaka, in which he claims that a church property was disposed of in an auction contrary to a court order and that Commissioner Ahmednassir Abdullahi, acting as a lawyer for National Bank of Kenya is the one who gave illegal instructions. We will be making reference to that particular issue.

Hon. Speaker, I would like to make corrections to the documents that have been photocopied. In Annex "B", there is a letter from the Inspector-General of Police. In that letter, there is only page one and page two. There is a second page that is missing. When I looked at this, this did not tally with the letter that was submitted to us by the IG of Police. It is missing page two which is very critical in this report. So, that is why I said that in the photocopying of these documents, we have had some difficulties. In that page two in which I have a complete copy which was signed and forwarded to our Clerk dated 25th October, page two which is missing commences with paragraph one in which it says:

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“The two were arrested by officers guarding the bank after the Judiciary denied knowledge of the transaction and were taken to Central Police Station.” It ends with the last paragraph which of course the entire page is missing and which states as follows: -

“That the same day on 27th September, 2013, the GPA audit trail Report was received from the Central Bank of Kenya (CBK) Assistant Director, Banking Division. The Report indicated that the Finance Director, Mr. Benedict Omollo and an accountant by the name G. Macharia were also involved in effecting the Electronic Funds Transfer (EFT).”

Hon. Speaker, this is a very critical page that we would like to be photocopied and be included in the documentation because as it is, that particular letter is missing some contents and we would like it be included. Therefore, I seek your guidance with respect to that because this report as it was tabled contained page two of that letter.

Hon. Speaker: I think the instructions would be that you provide what you have since the Clerk is the one who forwarded it to you and then it can be further photocopied.

Hon. Chepkong’a: Thank you, hon. Speaker. The Committee considered the petition from Riungu Nicholas and it invited, as I have stated, a written response from the persons that were named. The Committee resolved that letters be dispatched to all in the spirit of the principles of natural justice. We requested the Clerk to send letters to all the named persons that were intended to be removed by the petition so that they could respond to the petitions.

Hon. Speaker, the Clerk wrote letters on 17th October, 2013 to hon. Justice Mohammed Warsame, Judicial Service Commission (JSC). A letter also dated 17th October 2013, was written to Mrs. Emily Ominde, (JSC). A letter also went to Mrs. Florence Mwangangi, (JSC). The other letter went to Professor Christine Mango, (JSC) dated 17th October, 2013. The other went to Rev. Dr. Samuel Kobia, JSC.

In response, as we had requested them, I wish to read one of them. It is addressed to Florence Mwangangi just as a common letter that was sent to all of them. It states:

“We refer to the above matter and state as follows: The Departmental Committee on Justice and Legal Affairs has received a petition seeking the removal of the following persons as members of the Finance Administrative Committee of the JSC: Ahmednassir Abdullahi, Rev. Dr. Samuel Kobia, Professor Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi. The petition was presented to the National Assembly by Mr. Riungu Nicholas Mugambi and the same is attached for your reference. During its sitting held on Thursday, 17th October, 2013, the Committee deliberated on the matter and resolved to notify the Commissioners as mentioned of the petition and to request that the commissioners submit their written responses to the petitioner on or before Thursday, 24th October, 2013 or they may elect to appear before the Committee on Friday, 25th October, 2013 at 10.00 a.m.”

Hon. Speaker, Sir, on Friday, 25th October, 2013, we received a letter which was brought to the Committee while the Committee was sitting.

Thank you, hon. Speaker.

ADJOURNMENT

Hon. Speaker: Hon. Chepkong’a, you have a balance of 30 minutes within which to conclude moving the report.

Well, hon. Members, it is time to interrupt the business of the House. The House is, therefore, adjourned until tomorrow, Thursday, 7th November at 2.30 p.m.

The House rose at 6.30 p.m.