

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 28th October 2015

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

WITHDRAWAL OF PROPOSED AMENDMENTS TO STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Speaker: Hon. Members, I have the following two Communications to make. The first Communication regards the withdrawal of proposed amendments to the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No. 57 of 2015.

Before proceeding to business under Order No. 12 on today's Order Paper, I wish to bring to the attention of the House that I have received a letter from the Leader of the Majority Party, dated 27th October 2015, requesting the withdrawal of several proposed amendments to the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No. 57 of 2015. In the letter, the Leader of the Majority Party requests to withdraw proposed amendments to the Independent Policing Oversight Authority Act, 2011 and part of the proposed amendments to the Universities Act, 2012.

As regards the Independent Policing Oversight Authority Act, 2011, the letter notes:-

“The proposed amendments, though not unconstitutional, significantly erode the independence of the Authority without which the Authority would find it difficult to perform its functions free from Executive interference. In this regard, those changes ought to be addressed in a substantive amendment Bill to the Independent Policing Oversight Authority Act and not as a miscellaneous amendment. It is my observation that the amendments to the Independent Policing Oversight Authority Act, 2011 should be introduced substantively on their own not through a miscellaneous amendment law.”

Regarding the Universities Act, 2012, the Leader of the Majority Party proposes to withdraw all amendments to the Act except those related to Sections 22 and 39. It is noted that:-

“The Bill proposes to amend Sections 2, 5, 20, 35, 39 and 51(a) of the Act. My office has received a draft proposal for publication of a separate Bill to amend the same sections except for Section 39. The proposed Bill is quite comprehensive and includes other proposed amendments to the Universities Act, 2012. In this regard, I wish to drop all proposed amendments to the Act, save for the amendments to Sections 22 and 39 in favour of the proposed new Bill.”

It is worth mentioning that this is not the first time that a request of this nature has been made during the consideration of a Bill of this kind. Having considered the request, I am persuaded that there is merit in the withdrawal and I have consequently acceded to the request. The effect of this is that the proposed amendments to the specific sections of the two Acts will not be considered in the Second Reading, Committee Stage and the Third Reading of the Bill. For that reason, the Bill will be dealt with as though the said sections were not part of the Bill.

I thank you.

Those who are coming in, take your seats.

(Hon. Onyonka waved to hon. Members)

Stop waving, Hon. Onyonka. I can see you seem to be excited walking with Hon. Momanyi. I appreciate that he is your good friend; I appreciate.

APPOINTMENT OF MEMBERS MEDIATION COMMITTEES

Hon. Members, you may recall that last week, the National Assembly rejected part of the Senate's amendments to the Mining Bill, National Assembly Bill No.9 of 2014, and also part of the Senate's amendments to the National Drought Management Authority Bill, National Assembly Bill No. 42 of 2013.

Consequently, these Bills stand referred to a Mediation Committee in accordance with provisions of Article 112 of the Constitution and Standing Order No.149 of the National Assembly Standing Orders. In consultation with the Leaders of the Majority and Minority parties, I have appointed Members to represent this House in the mediation committees which will consider the said Bills.

On the Mediation Committee to consider the Mining Bill, National Assembly No.9 of 2014, the National Assembly will be represented by the following Members:

1. Hon. Joyce Emanikor, MP;
2. Hon. (Dr.)Wilber Ottichilo, MP;
3. Hon. Chachu Ganya, MP;
4. Hon. Juma Zuleikha Hassan, MP;
5. Hon. Elmi Mohamed Ibrahim, MP.

On the Mediation Committee to consider the National Drought Management Authority Bill, National Assembly Bill No.42 of 2013, the following Members will represent the National Assembly:

1. Hon. Amina Abdalla, MP;
2. Hon. Ejidius Njogu Barua, MP;
3. Hon. Chachu Ganya, MP;
4. Hon. George Peter Opondo Kaluma, MP; and,
5. Hon. Andrew Mwadime, MP.

In attempting to develop an agreed version of the said Bills, the respective mediation committees are advised to confine themselves to the contested clauses of the two Bills. For avoidance of doubt, the committees have 30 days to table reports on their consideration of the said Bills, failure to which Article 113 of the Constitution shall set in.

I thank you.

Hon. Speaker: Hon. Onesmus Muthomi Njuki, Member for Chuka /Igambang'ombe.

PETITION

CREATION OF NEW ADMINISTRATIVE UNIT IN KARINGANI LOCATION

Hon. Njuki: Thank you, Hon. Speaker for the opportunity. Somebody is wondering why Onesmus. Onesmus is in the Bible. It means the face of God.

On behalf of the residents of Chuka/Igambang'ombe Constituency, I would like to present the following Petition on delayed creation of a new administrative unit in Karingani Location, Meru South Sub-County:

I, Onesmus Njuki, on behalf of the residents of Chuka/Igambang'ombe Constituency, draw the attention of the House to the following:

THAT, to ensure effective co-ordination of national Government functions and services at the sub-county level, there is need to have well defined geographical and administrative units.

THAT, this objective was not realised in delineation and demarcation of boundaries for Karingani Location, which currently exists in Chuka Division and has a population of 18,194 people within an area of 72.5 square kilometres.

THAT, currently, Karingani Location hosts Chuka University, a public university with a population of 12,000 people, which is increasing with every year's enrolment of students coupled with a business community settling in the area, all of which have led to a steady rise in population in that area.

THAT, the current headquarters of Karingani Location, which is Kaanua Market, is far from upcoming markets, thus posing an administrative challenge to the area chief, who is occasionally overwhelmed by workload of co-ordinating activities in the area.

THAT, the requests to address this matter by the residents of Karingani area through organs of the national Government have not been considered while the situation continues to hamper and complicate delivery of administrative services to the area residents.

THAT, the issue in respect of which this Petition is made is not pending before any court of law, constitutional or statutory body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security, intervenes in this matter to cause creation of a new administrative unit in Karingani area to permanently resolve this anomaly.

Your petitioners will ever pray.

I will table the Petition together with the signatures therein.

Thank you for the opportunity.

(Hon. Njuki laid the document on the Table of the House)

Hon. Speaker: Next Order.

PAPERS LAID

Hon. Katoo: Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today, Wednesday, 28th October 2015:-

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (CDF) for the year ended 30th June 2014 and the Certificates therein in respect of the following constituencies:- Alego Usonga Constituency; Kisumu Central Constituency; Westlands Constituency; Ugenya Constituency; Bobasi Constituency; Matungu Constituency; Kitutu Chache North Constituency; Nyaribari Chache Constituency; and, Rongo Constituency.

The Annual Reports and Financial Statements of the Engineers Board of Kenya for the year ended 30th June 2013 and 30th June 2014 and the Certificate of the Auditor-General therein.

Thank you.

Hon. Speaker: The Vice-Chairperson of the Departmental Committee on Agriculture, Livestock and cooperatives.

Hon. Mbiuki: Thank you, Hon. Deputy Speaker. I beg to lay the following Papers on the Table of the House today, Wednesday, 28th October 2015:-

The Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the public petition by Nyeri coffee farmers in the matter of production and marketing of their coffee and payment of the dues owed to them.

The Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on the visit to Mauritius for the First Indian Ocean Rim Association (IORA), Blue Economic Conference held from 2nd to 3rd September, 2015.

Thank you.

Hon. Speaker: The Chairperson, Departmental Committee on Justice and Legal Affairs. Not even the Vice-Chairperson is present? Well, we will skip it temporarily. The Chairperson, Departmental Committee on Energy, Communication and Information.

Hon. Kamau: Thank you, Hon. Deputy Speaker. I beg to lay the following Papers on the Table of the House today, Wednesday, 28th October 2015:-

The Reports of the Departmental Committee on Energy, Communication and Information on:-

- (i) The visit to the Atomic Energy Corporation, Rosatom in Moscow, Russia between 7th and 13th July, 2015.
- (ii) The Commonwealth Telecommunication Broadband Forum held in Abuja, Nigeria from 15th to 19th June, 2015.

I thank you.

Hon. Speaker: Do we see Hon. Samuel Chepkong'a? This Committee has several reports, all of which I have approved.

Hon. (Ms.) Kajuju: *(Inaudible)*

Hon. Speaker: You do not know the reports? You have no reports? It is not a matter of ranking. You need to table various reports. The reports are available.

Yes, Hon. Kajuju.

Hon. (Ms.) Kajuju: Hon. Speaker. I beg to lay the following Papers on the Table of the House today, Wednesday, 28th October 2015:-

The Reports of the Departmental Committee on Justice and Legal Affairs on:-

1. The Petition on the matter of election of the Chairperson of the Agricultural Society of Kenya (ASK).

2. The Petition for the introduction of Anti-Homosexuality Bill;
3. The Petition to amend the Constitution of Kenya, 2010.
4. The Petition on enactment of Legislation to provide for the registration of all properties in Kenya.
5. The Petition on Review of Criminal Laws, that is the Penal Code and Criminal Procedure Code to align them with the provisions of the Constitution of Kenya.
6. The Petition for Mandatory Voter Registration and Compulsory Voting led by the Chairperson, Departmental Committee Justice and legal Affairs.

Thank you, Hon. Speaker.

Hon. Speaker: The second set.

Hon. (Ms.) Kajuju: Hon. Speaker, I beg to lay the following Papers on the Table of the House, today Wednesday, 28th October 2015:-

The Reports of the Departmental Committee on Justice and Legal Affairs on its consideration of the Legal Aid Bill 2015; the Statute Law (Miscellaneous Amendments) Bill 2015; the Statute Law (Miscellaneous Amendments) No.2 Bill, 2015; the Constitution of Kenya (Amendment Bill) No. 5, 2015 on behalf the Chairperson, Departmental Committee on Justice and Legal Affairs.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Those of you who may have been listening can tell that is a total of 10 reports from one Committee. I must commend the Members of that Committee for working tirelessly to produce so many reports. Next Order.

STATEMENTS

PENDING BUSINESS BEFORE COMMITTEES

Hon. Speaker: Hon. Members, as I reminded you yesterday, every Wednesday there will be three departmental committees giving status of business pending before them. Each of them will be accorded a maximum of 10 minutes. We will begin with the Chairperson, Departmental Committee on Defence and Foreign Relations. The Vice Chair is present and he is Hon. Bare Shill.

Hon. Shill: Thank you, Hon. Speaker. On pending business before the Committee as at 28th October, 2015, the following is the status of the report of the business pending before the Departmental Committee on Defence and Foreign Relations:

Firstly, we have the Kenya Defence Forces (Amendment) Bill 2015. The Bill went through the First Reading in August 2015. The Committee subjected the Bill to public participation pursuant to Article 118 of the Constitution, as read together with Standing Order No. 127, and was subsequently adopted through a report on the same on 19th October 2015. The report is waiting to be tabled in the House hereafter.

Secondly, Regiment (Territorial Force) Repeal Bill, 2015: The Bill went through the First Reading on 18th August 2015. The Committee subjected the Bill to public participation pursuant to Article 118 of the Constitution as read together with the Standing Order No. 127 and subsequently adopted it through a report on 19th October 2015. The Report is waiting to be tabled in the House hereafter.

Thirdly, the Military Veterans Bill 2013: The Bill was read a Second Time on 4th December 2014. The Bill is waiting to be committed to the Committee of the whole House, pursuant to Standing Order No. 130.

Petition regarding the alleged continued occupation of Migingo and Ogingo Islands by Ugandan security forces. The Committee considered a report on the Petition on 19th October 2015 and made further amendments. The Report is now waiting to be adopted by the Committee as amended.

Hon. Speaker, there was a Private Member's Motion on Recognition of Somaliland as a Republic. The Committee deliberated on the Motion and the report will be sent immediately. It will be delivered to your office.

The following reports were all considered on 19th October 2015 and amended by the Committee. The reports are waiting to be adopted and tabled by the Committee as amended. The Reports are:

- (i) The Report on the Asian-African Parliamentary Conference held in Jakarta Indonesia, in March 2015.
- (ii) The Report on the Committee accompanying His Excellency the President's visit to Sendai, Tokyo, Japan in April, 2015.
- (iii) Report on the Second African Turkey Partnership Summit held in Malabo, Equatorial Guinea.
- (iv) Report on the 25th Meeting of the State Parties to the United Nations Convention on Law of the Sea in New York in June, 2015; and,
- (v) Report on the Committee's Visit to United Nations General Assembly (UNGA) in New York in September-October 2015.

There are more reports that are still pending including:

- (i) The Reports on the Inspection of Kenya Defence Forces (KDF) Military Installations in Mtongwe, Manda, Lanet, Embakasi and Karen. This is an ongoing activity, and the reports will be ready once the Committee concludes the inspection.
- (ii) Reports on the Proposal to Purchase Diplomatic Properties Abroad, for example, in Uganda, Somalia and others. This is an ongoing activity and the report will be ready once the Committee concludes its inspection visits to Kenya Missions proposed for further purchase by the Ministry of Foreign Affairs.
- (iii) The Pan African Parliamentary (PAP) Protocol: The Report on the (PAP) protocol has been considered by the Committee and is awaiting adoption.

There are neither legislative proposals nor Sessional Papers pending before the Committee.

As I conclude, let me reiterate that the Committee remains committed to conclude all the pending work within its mandate as conferred on it pursuant to Standing Order No. 216.

Thank you.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Speaker. My point of order is in relation to the two reports that have just been read. One is the Report on PAP. The President of Kenya went to the PAP and gave commitment that Kenya was going to be the third country to ratify within a period of one month. It is shaming Kenya before PAP. I was just wondering whether it is possible to hasten it.

Hon. Speaker: Just a minute, Hon. Millie Odhiambo. From time to time I hear Members saying that they are ranking Members who are experienced because they sat in a Parliament. A

point of order is not an occasion for information. You are giving information and I suppose that your information could be useful. If you prosecute it through a point of order, the House may not benefit from the information you have.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Speaker. I stand guided but I can clarify. What I was saying other than the information is because they are not giving it priority, it is shaming the country.

The other issue that I also wanted to raise is the Report on Migingo Island. Two days ago, fishermen from Remba Island were arrested and their boats detained in Uganda. The Ugandan authorities are demanding Kshs80,000 for every boat yet the fishermen cannot afford it. This is something that was raised almost a year ago. My concern is that sometimes we make some of these issues that we raise in Parliament very relevant by time space that we take. My concern is: Is it possible to shorten the time in terms of those that are more urgent? If we have our fishermen and their boats detained, that is extremely urgent.

Hon. Speaker: The way to go around it is to raise it by way of a question. Even though it will be responded to on a Tuesday, you can have priority by using the same procedure as you used to have in the past of Private Members' Question. If you have a question that is urgent, you just need to indicate and it will be brought to me for approval.

Before we proceed, let me take this opportunity to recognize visitors. Seated in the Speaker's Gallery are students from the Department of Political Science and Public Administration of the University of Nairobi. Welcome to Parliament.

The Chairperson of the Departmental Committee on Education, Research and Technology. Do I see the Vice Chair, Hon. Melly?

Hon. Melly: Yes. Thank you, Hon. Speaker.

Hon. Speaker: You have 10 minutes to give us an update.

Hon. Melly: Thank you, Hon. Speaker. I wish to inform the House that the Committee on Education, Research and Technology is considering the following business that is before it.

One, the Basic Education (Amendment) Bill of 2014: The Committee has considered the Bill and the Report is to be tabled in the House.

Two, the Engineers, Technologists and Technicians Bill 2015: It was committed to the Committee on 18th March. The Committee has considered the Bill and has compiled its report that will be tabled before the House tomorrow on Thursday 29th October 2015.

We also have the Statute Law (Miscellaneous Amendments) Bill that is under consideration. We have been looking at it since 7th October.

The other legislative proposals that are before the Committee are as follows:-

- (i) The Basic Education (Amendment) Proposal 2015 by Hon. Grace Kiptui. We have received comments from the Attorney-General (AG) and members of the public have appeared before the Committee.
- (ii) The Kenya School of Law (Amendment) Bill proposal of 2015 by Hon. Irungu Kangata. We are considering it and we have also received comments from the Attorney-General.
- (iii) The Basic Education (Amendment Bill) 2015 by Hon. (Eng.) James Rege. We have considered it and the Committee will be receiving comments from the Attorney-General and other stakeholders.
- (iv) Legislative proposal by Hon. Mary Seneta. We have looked at the proposal and we are waiting for the Committee's comments.

- (v) The proposal on the Kenya National Examinations Council (KNEC) by Hon. Chris Wamalwa. We received it on 25th August. The Committee is scheduled to meet with the sponsor today at 4.00 p.m. We sought the authority of the Speaker and that should be handled.

Pending Petitions before the committee are as follows:

- (i) Petition on the gross mismanagement of Murang'a University College. This was petitioned by residents of Murang'a County. A sub-committee visited the university and heard from the management and the leaders, and we are expected to meet the petitioners on 2nd November 2015.
- (ii) Petition on mistreatment of Bura Girls High School Students by Hon. Nassir. The Committee visited the school and met the management. It will meet the petitioner on 3rd November.
- (iii) Discrimination of Akorino students in some public secondary schools for wearing headscarf. We are considering it and the Committee is scheduled to meet the petitioners in the coming one week.
- (iv) Education crisis in Garissa, Wajir and Mandera counties. It was filed by Hon. Abdikadir on behalf of seven citizens of the Republic of Kenya. The consideration of the Petition is ongoing and the Committee is scheduled to meet with the petitioners during the recess period, that is next week. The Committee has also planned to visit the North Eastern region to assess the education situation and finally table a report.
- (v) Release of 2014 Early Childhood Development Educational (ECDE) examination results by KNEC and registration of institutes of 2015 candidates. This was a Petition filed by Hon. Richard Makenga on behalf of the candidates of the institutes. The committee is considering the Petition and is scheduled to meet the petitioners and KNEC during the recess period.

We have the following Reports:-

- (i) Report on the inquiry into the causes of student's unrest at the University of Eldoret. The draft report is awaiting consideration and adoption by the Committee.
- (ii) The Report on the Petition by Hon. Timothy Bosire MP, on an unfair discriminative treatment of Dr. Benard Omwenga by the Ministry of Education, Science and Technology officials. The draft report is ready. It is awaiting consideration and adoption by the Committee.
- (iii) The Report of the Petition by Hon. Isaac Mwaura, MP on the Kenya Education and Resource Centre Association, Challenges of Education Assessment and Resources. The draft report is ready and is awaiting consideration and adoption by the Committee.

We have the following ongoing inquiries:-

One, inquiry into the matter of management crisis of the University of Nairobi. This inquiry was requested by Hon. Emmanuel Wangwe. The Committee met Hon. Wangwe on 15th October and the Deputy Vice-Chancellor (DVC), Finance, on 22nd October. The Committee will also hold a meeting with the DVC and the Chairperson of the Council tomorrow on 29th October 2015 and three other witnesses on 30th October 2015. The Committee was given a timeline of three weeks, and the time will be lapsing this week. The Committee will be requesting extension

of time. I want to bring to the attention of the House that the Committee will be requesting more time to hear from many other petitioners, so that we can possibly have a balanced inquiry.

Lastly, we also have an inquiry into the conduct of the Principal of Mary Hill School, Thika. It was a matter raised by Hon. Nicholas Gumbo. The inquiry into the matter will commence in two weeks' time.

Hon. Speaker: Very well. There was a request from Hon. Cecilia Ng'eno about one of the business that you have referred to in your report. Is she present? Is there any Member who wishes to know something about the reports that Hon. Melly has talked about?

Yes, Hon. Lessonet.

Hon. Lessonet: Hon. Speaker, I had a question yesterday before the Departmental Committee on Education, Research and Technology. I have not heard the Vice-Chairman speak to it. The Cabinet Secretary (CS), as usual, did not bring a comprehensive response to my question and he is not telling us when he will do it.

Hon. Speaker: This update is not about whether answers have been comprehensive. That should have been raised before the Committee so that, if need be, the CS would be called on another day to give further exposition.

Hon. Lessonet: We raised that and agreed with the Committee to that extent. I just thought it would have been part of his update, so that I could know when the question will be appearing next.

Hon. Speaker: Hon. Melly, do you wish to respond?

Hon. Melly: As agreed at the Committee sitting yesterday, the Cabinet Secretary (CS) agreed to bring a comprehensive report to address the issues at the ground. Hon. Lessonet agreed that in our next sitting, the CS will get information from the field officers and table the same before the Committee with all the data and current information on issues concerning Eldama Ravine Constituency.

On the issue of the Kenya National Examinations Council (KNEC), they are appearing before the Committee on Education, Research and Technology tomorrow with their report on the status of leakages, and all the problems that are bedeviling examination in this country.

Thank you.

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, while still on the matter of education, last night you heard my very good friend, Hon. Munyao saying that he has brought a Motion to disband the KNEC. Hon. Speaker, you need to give direction. For one to disband the KNEC, he must deal with the law that established the KNEC.

There was no Motion before the HBC for approval last night. I waited for it. You need to give direction that once you approve a Motion, Bill or impeachment, a Member can go and address the media or the country about it. This is because before you approve a Motion or Bill it has come before the HBC---

When I was at my House last night, people were calling me to ask if we are disbanding the KNEC. I told them that to the best of my knowledge there was no Motion which the HBC slotted last night. We want your direction and our colleagues should know that we will do all that they want us to do, but we need to do it in a proper way. When a Motion is approved, it comes to the HBC and is slotted for discussion and then it becomes a public document.

Hon. Speaker: I heard some Member trying to make some noise about that. For those of us who understand House procedures, some of these statements are entertainment and comedy. I

have heard several Hon. Members saying they have a Motion; they even go to some shows to discuss it yet nothing has been submitted. It looks like it is the trademark of the 11th Parliament that people imagine things and start saying that they have done this or that. What would be required in that particular instance would be to present a legislative proposal to repeal KNEC Act, which is the law in which KNEC is created. I cannot gag Members from entertaining themselves and the country. The media has a duty to entertain the country. Whenever I see some of these things in the newspapers, I assume that they are part of an objective.

Much more importantly, there is a trend developing in the House that matters not listed as business find expression here. We need to respect other institutions. In as much as we want to be respected, we must respect other institutions, so that they can also perform.

Let us not appear like we are the people holding the Sword of Damocles over everybody's head, and make everybody walk in fear of Parliament. People should have confidence that the House deliberates and resolves issues of concern to them. But it should not be an institution which looks at everybody for compulsion. We must encourage this as part of---

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

Hon. Speaker: You cannot just shout in your place and claim to be rising on a point of order! You must remain seated until you catch my eye.

(Laughter)

For the time being remain seated. We should proceed with the business; can I get the updates from the Departmental Committee on Energy, Communication and Information?

Hon. Kamau: Thank you, Hon. Speaker. This is a report on the status of pending business before the Departmental Committee on Energy, Communication and Information as at today 28th October 2015. We have three pending constitutional Bills: the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015). The report on this Bill has already been tabled before the House. The Committee is awaiting Committee Stage amendments that will be done as soon as the Second Reading is concluded.

The Second Bill is the Access to Information Bill, (National Assembly Bill No. 36 of 2015), by Hon. (Ms.) Priscilla Nyokabi. This is a Private Members' Bill, and it is a constitutional Bill. The Bill is currently under consideration by the Committee. We need to interrogate the Government and the media, including other stakeholders on this particular Bill. We expect that by 9th November 2015, we will have a report before this House after having gone through all those other stages.

The Third Bill is the Energy Bill No. 50 of 2015. The Bill is under consideration by the Committee. By the 9th November 2015, we will have finished with the Bill as well.

There is one report we have not tabled before the House relating to an official trip to China with the Kenya Nuclear Board and the China General Nuclear Power Corporation. This was on 6th to 12th September 2015. The report is ready awaiting adoption by the Committee. By 9th November 2015, we expect to have tabled the report before the House.

With respect to Petitions and Motions, my Committee has nothing pending with regard to the two issues.

Hon. Speaker: Very Well. That is the update from the Departmental Committee on Energy, Communication and Information.

Hon. Bowen: Hon. Speaker, I had a proposed amendment to the Energy Amendment Bill. I appeared before the Committee almost one year and six months ago. I have not seen my proposal making progress from the Committee. It has not gone anywhere, yet I have not heard the Chair of that Committee talking about it.

Hon. Speaker: What is the name of the Bill?

Hon. Bowen: Energy (Amendment) Bill.

Hon. Speaker: Hon. Jamleck Kamau, can you respond to that one?

Hon. Kamau: Hon. Speaker, I recollect that the Member had raised that issue some time ago, and he was advised that he should come to the Committee when we are considering this particular Bill. It is now under consideration by the Committee and very soon we will invite him as we look at the other stakeholders as well, so that he can bring his amendments before the Committee for consideration and reporting to this House.

Hon. Speaker: Hon. Kangongo, is that okay? Hon. Gatobu Kinoti.

Hon. Kinoti: Thank you, Hon. Speaker. I request your guidance. I had an issue regarding the Departmental Committee on Education, Research and Technology; I tried to catch your eye and attention throughout the session when the Chair was presenting but I did not. The issue was on Basic Education (Amendment) Bill that I passed to the Committee two years ago. It came to this House as a Motion, which succeeded and I passed it to the Departmental Committee on Education, Research and Technology, which has been promising to me progress on the same for two years without success.

I request your guidance and response from the Chair of the Departmental Committee on Education, Research and Technology regarding the Basic Education (Amendment) Bill 2013.

Hon. Speaker: Although that is the same Bill that I had wanted Hon. Cecilia Ngetich to appraise the House on, I will allow Hon. Melly to respond to that.

Hon. Kinoti: Thank you, Hon. Speaker.

Hon. Melly: Thank you, Hon. Speaker. I want to inform the Member that we consolidated his suggestions into the Bill that he brought to the Committee and put them in the Basic Education (Amendment) Bill 2014. As I indicated earlier, the Bill has gone through First Reading and we have a Report for Second Reading, which we are about to table. I advise the Member to link up with the Committee, so that he gets to know the status of that particular Bill. I inform him that his issues were captured and they are well presented there.

(Several hon. Members walked on the gangways)

Hon. Speaker: Hon. Members, you are not observing Standing Order No.104. I wonder whether Members are in the House. I am drawing your attention to the fact that your own Standing Order No.104 reads as follows--- We are getting distracted. I appreciate that you could be caucusing or canvassing for something, but this is what your Standing Order No.104 says:

“Except when passing to and from his or her seat or when speaking, every Member when in the Chamber shall be seated, and shall not at any time stand in any of the passages and gangways.”

There are Members who have made a habit of when they are coming in they want to turn around and shake hands, and even embrace fellow Members. I want to begin administering this by getting rid of those of you who do not follow the Standing Order. When you want to speak to

a colleague, just walk to them, as they are not injurious to you, and whisper to them, so that business can continue uninterrupted.

Hon. Gatobu could not catch my eye. The independent Member from Kibwezi East was not able to catch my eye because there were too many people walking all over. So that we can transact business in an orderly way, let us at all times try to consult in an orderly way. When you want to consult, just walk to where your colleague is and sit next to them and consult the way Hon. Wandayi and Hon. David Ochieng are doing.

Hon. Musimba, what was your point of order?

Hon. Musimba: Finally your eyes have seen me.

Thank you, Hon. Speaker. It was not in order to have allowed the Leader of the Majority Party to actually cast aspersions on a Member of Parliament; you ruled when we had an issue with Hon. Moses Kuria---

Hon. Speaker: What?

Hon. Musimba: You ruled when we had an issue with Hon. Moses Kuria.

Hon. Speaker: Where?

Hon. Musimba: Here on the Floor of the House when we wanted to discuss his conduct.

Hon. Speaker: Hon. Musimba, like others, I know you may not claim you have experience. Please can you stick to the business that is before us?

Hon. Musimba: That was the business at the time when I wanted to speak to you.

Hon. Speaker: Casting aspersions?

Hon. Musimba: Casting aspersions and discussing a Member of Parliament, Hon. Kisoi Munyao, on the issue of the Motion on the Kenya National Examinations Council (KNEC). You did, Leader of the Majority Party. This is where we are going on a tangent.

Hon. Ochieng: On a point of order, Hon. Speaker.

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

Hon. Ochieng: Hon. Speaker, I wanted to rise when Hon. Duale was speaking. What he talked about is not a small matter. It is a systemic issue. Two weeks ago, I was surprised to see a Member was processing a Motion to bring to this Floor; then before the Motion got to your desk, somebody, an institution of this country, went to court on a Motion proposed to be brought before this Floor. A court was guided to give an injunction against Parliament on a Motion proposed and not yet brought here. So the issue Hon. Duale is talking about is not a small matter. You need to give direction on this, so that we handle it. It surprises us that someone proposes an issue, saying he wants to do something and then another body - the Commission for the Implementation of the Constitution (CIC) - goes to court to say that there is a Motion to be brought before the Floor and tells the court to stop it from being taken to the Floor. It just cannot work. Some of these things are going to make it difficult for us to work in this Parliament.

The very fact that a Motion can make someone to go to court is laughable. We need to address some of these things, so that Members' fears are allayed; they should think freely and without fearing that if they think loudly like Hon. Munyao, someone will reprimand them. This is the reason I wanted to speak.

Thank you.

Hon. Speaker: There was no debate. I have already expressed myself and said it very well. I am sure you were listening, Hon. Ochieng. I could see you were very attentive. I am not going to gag people. Those who want to appear before television screens, do Press conferences and imagine that they are going to present Motions or they have presented them can continue

doing so. If it remains just an imagination, how do I come to rule on that? The media wants to be entertained, and they want to entertain the country. I cannot be the one to gag the media.

When Hon. Ochieng wants to go and tell them that he intends to do something that is going to be very serious and earth-shaking, obviously the country gets very excited about those kinds of heavy words. For us, we only deal with Motions that are brought to the Floor of the House. I cannot be expected to rule on those others. Even those who want to take Motions to courts of law are at liberty to do so, of course, with all risks attendant with regard to costs and consequences. We cannot really gag them.

As I said, Hon. Munyao was within his right to go and do what he did. It was comic relief to many people. People can hear that Members are also thinking about many serious issues, including entertaining them. There is nothing wrong, but when we come here we will deal with the Motion and once it is approved, you, as Members, who are going to debate and make decisions on each one of them, you know best.

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for committee read)

(The Speaker (Hon. Muturi) left the Chair)

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Cheboi) took the Chair]*

CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON THE EXCISE DUTY BILL

*(Resumption of consideration interrupted
in Committee on 27.10.2015)*

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we will be moving fairly fast today. We discussed all these amendments yesterday. I hope you are prepared. We will proceed from where we had reached. Just to remind you, we were dealing with the Presidential recommendations relating to Excise Duty chargeable on fruit juices. The Leader of the Majority Party had moved and there was a proposal for an amendment by the Chairperson of the Departmental Committee on Finance, Trade and Planning. That is the point at which we left it. We will proceed quickly.

(i) Part I of Paragraph 1 of the First Schedule: Fruit juices and corresponding rate of Excise Duty-

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the recommendation by H.E the President to insert a new item in Part I of Paragraph 1 of the First Schedule, relating to Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter and corresponding rate of Excise Duty, be deleted

*(Question, that the words to be left out be left out,
put and negatived)*

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, hon. Members! If you are not contented, you rise to claim a Division.

(Several hon. Members stood up in their places)

You have the requisite numbers claiming a Division. You can resume your seats. For purposes of clarity, the “Nays” had it because we could not raise the requisite numbers.

I order the Division Bell to be rung for 10 minutes.

(The Division Bell was rung)

Okay, Hon. Members. I order that the Division Bell be stopped. The doors should be now closed and the Bars drawn. This is what we are going to do, Hon. Members. We will all log in to confirm the number of Members who are in the House. Can Hon. Members resume their seats and log out first? Log out, Hon. Members.

(Hon. Angwenyi stood in aisle)

Hon. Angwenyi, you are being fairly disorderly. Hon. Members, can you resume yours seats? We want to confirm the numbers we have in the House. Therefore, all Hon. Members should log out. Hon. Maanzo, Hon. Wamalwa, Hon. Koech and Hon. Oyoo, please log out. Okay; we want to confirm the numbers that we have in the House in order to determine whether we are going to proceed with a vote. Hon. Okoth, please log out.

The process which we are going to undertake is to confirm the numbers. If we have the two-thirds, we will proceed to determine whether we will delete that item as proposed by Hon. Langat. If we do not, we will proceed very quickly to the proposal or recommendation by His Excellency the President, which we can pass with only 50 Members. But we will need two-thirds for any change to what is proposed by the President like the one proposed by Hon. Langat; we will need two-thirds. You had all the time from yesterday. The reason we have this today is because Members were given an opportunity.

We will not open it up today, Hon. Members. We are now in the process of logging in. Can Members kindly log in? Log in so that we know the number first and then we make a decision. This is a matter which is in law.

(Hon. Kaluma spoke off the record)

Okay; let us hear you. What is it, Hon. Member for Homa Bay Town? You cannot talk now, you know. I hear you talking about the Leader of the Majority Party de-whipping Members of Parliament. That is a very serious allegation. I do not know if he is de-whipping Hon. Members from Committees or de-whipping them from the House. I am not so sure. Let us log in first and see if we have the numbers. The rest of the issues are matters of strategy by whoever is doing them. Let us proceed and see the numbers.

Hon. Members, let us give a few minutes to the system to detect specific Hon. Members who are here. Even the ones who have made requests, log out again and then log in. Hold on before you log in, because I will give you the signal at the right time. We are having an issue with the system. Okay, I see it now. Hon. Members, can you place your cards now? Are your gadgets working? You might have to start again. Let us start afresh; there is a problem. Remove your cards again. I can see Hon. Dawood, Hon. Okoth and Hon. Gikaria logged in. Yes, we are now okay. We are clear here. Let us wait. I can see that. Hon. M'eruaki, kindly log out as we sort out the system. As you press, kindly do not make requests. Just log in with your cards; there is no making of requests. Just log in; you have your numbers; you log in.

Hon. Wamalwa is actually interfering with the machine here. You have made a request, Hon. Wamalwa. I just want you to log in. Yes, that is perfect now. We will be waiting for the display now and then we will proceed. We have some 20 seconds now, do not do anything. You will log in at the right time. We are waiting for the timings here; you are already logged in. Ten seconds, you can now press.

As you can see, Hon. Members, we have 91 Members present in the House. Would you want us to help you with a head-count, again?

Hon. Members: Yes.

The Temporary Deputy Speaker (Hon. Cheboi): Is there any possibility of getting the numbers? You know we only use electronics. Hon. Members, you clearly can see that there are no numbers. We had to be sure how many Hon. Members are in the House. We can see that we are 91. The net effect of that is that we cannot vote on Hon. Langat's amendment. We cannot do it. So, I will proceed.

Open the Bars. There should be no heckling from the Floor, Hon. Members. I will proceed to the recommendation by the President.

Hon. Members, no Member has even left.

(Several hon. Members stood in their places)

Resume your seats. We cannot go to the Division on this one now. We cannot because you do not have the numbers to change that one. We will proceed to the next one, but I will take any points of order.

(Several Hon. Members withdrew from the Chamber)

Resume your seats first because you do not have the numbers; 91 Members are insufficient. I will entertain your points of order as we move on. Those Members who want to exit the Chamber should do that quietly.

Hon. A.B. Duale: Hon. Chris Wamalwa, I need to move the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Those Members exiting, kindly do so quietly.

Hon. Wakhungu: On a point of order, Hon. Temporary Deputy Chairman.

Hon. A.B. Duale: What has URP got to do with this? You have no numbers.

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Hon. Odhiambo?

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Hon. Temporary Deputy Chairman. My point of order, and speaking as a lawyer, is that I think that even when we do not have quorum, it is in order that we have the records of the House correct. I would want to request that a different terminology be used instead of saying that the “Ayes” have it when they have not. You should say that it is defeated because of lack of numbers. The record will show that the “Ayes” had it when they did not.

The Temporary Deputy Chairman (Hon. Cheboi): Now, the gracious lady from Suba, I think you are straight on the point. The only issue there is that we need, for example, to amend our Standing Orders to provide for the alternative, which you have indicated. It makes perfect sense; unfortunately, our Standing Orders provide that either the “Ayes” have it or the “Noes” have it, but it is a perfect thought and something which can be explored by the Members. Let us proceed, Hon. Duale.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Part 1 of paragraph 1 of the First Schedule be amended by-
(ii) deleting the items relating to cigarettes appearing immediately after the item on “catridge for use in electronic cigarettes” and substituting therefor the following item and the corresponding rate of excise duty:

Cigarettes containing tobacco or tobacco substitutes	Shs. 2500 per mille
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(Question of the amendment proposed)

(Hon. Wandayi and Hon. Nassir stood up in their places)

The Temporary Deputy Chairman (Hon. Cheboi): The only reason why I cannot recognise the two Members is that you cannot request a point of order when standing. You are out of order, Hon. Wandayi!

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, the proposed change will improve revenue collection.

Hon. Nassir: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Nassir an opportunity to raise a point of order. I said that we can only allow Members who are orderly in the first place, to raise a point of order. Hon. Wandayi, you are standing and you cannot commandeer the Chair. It is absolutely impossible. Let us have Hon. Nassir.

QUORUM

Hon. Nassir: On a point of order, Hon. Temporary Deputy Chairman. It seems in the whole melee of people getting overworked, we are less than 50 here.

The Temporary Deputy Chairman (Hon. Cheboi): Well, you are raising a point of order relating to numbers. So, I, therefore, will order the Bell to be rung.

Hon. Nassir: It seems that the Leader of the Majority---

The Temporary Deputy Chairman (Hon. Cheboi): Now, that is enough. You have succeeded in your point of order and the Bell is going to be rung.

(The Quorum Bell was rung)

It is not 50. We can see from here. The Bell has been rung. Hon. Wandayi, you are now a fairly old Member of the House. The Bell is ringing because of a point of order, which has been raised by Hon. Nassir successfully on the issue of quorum. As we speak, there is no quorum. So, let us proceed.

The two Members who are leaving, you cannot leave at this point in time because the Bell is ringing; these are the Member for Nakuru Town West and the Member for Kiambu. No Members will be allowed to leave the Chamber. Hon. Alice Wahome, you will not leave the Chamber at this point in time. So, please resume your seat. You know the Standing Orders. We cannot have Members disobeying our Standing Orders. You cannot walk out. We only have the Whips and the rest of the membership.

Hon. Members, I can see that we are short of two Members. I am going to order the Quorum Bell to be rung for a further five minutes. Hon. Nassir, you are the one who requested for it. I have given a further five minutes.

With two Members, we have the quorum. We will proceed and I order the Bell to be stopped. Members, kindly remain in the House because we will need the numbers throughout. Hon. Langat, in view of the fact that we do not have two-thirds majority, we will not allow you to move any amendment now. So, we will proceed with the Mover.

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

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Part I of paragraph 1 of the First Schedule be amended by –
(iii) deleting the item relating to “Motor vehicles of tariff heading 87.02, 87.03 and 87.04” and the corresponding rates of excise duty and substituting therefor the following:

Motor vehicles of tariff heading 87.02, 87.03 and 87.04	Less than three years old from the date of first registration Kshs. 150,000 per unit Over three years old from the
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	date of first registration Kshs. 200,000 per unit
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This again contravenes the provisions of Section 40(5)(a) of the Public Finance Management (PFM) Act, 2012 that requires any amount of revenue raised to be consistent with the approved fiscal framework and the Division of Revenue Bill passed by this House. So, the House cannot have one hand giving to the Executive and again through the Committee or Members withdraw the same resources.

(Question of the amendment proposed)

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

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Part I of paragraph 1 of the First Schedule be amended by –
(iv) inserting the following item and its corresponding rate of excise duty immediately before the item referring to “Plastic shopping bags”:

Motor cycles of tariff 87.11 other than motor cycles ambulances	Shs. 10,000 per unit.
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On the same line, this revenue was factored in as per the Budget expenditure and revenue which was passed by this House.

This section requires the same thing I had mentioned earlier. If this House had the legitimacy to pass the Budget Estimates for the Executive, it is incumbent upon the Executive to implement the same. A Committee of this House, led by Hon. Langat, cannot use back door manoeuvres to deny the Executive the resources through an amendment.

I beg to move.

(Question of the amendment proposed)

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

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

*(Part I of Paragraph 1 of the First Schedule
as amended agreed to)*

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Presidential Memorandum on the Excise Duty Bill (National Assembly Bill No.28 of 2015) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

Hon. Cheboi: Hon. Speaker, I beg to report that a Committee of the whole House has considered the Presidential Memorandum on the Excise Duty Bill (National Assembly Bill No.28 of 2015) and approved the same without amendments.

Hon. A.B. Duale: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. (Dr.) Shaban seconded.

Hon. Speaker: Member for Mvita, you are in the National Assembly plenary. Pay attention. We may not do this often.

(Question proposed)

(Question put and agreed to)

MOTION

ADOPTION OF REPORT ON REMOVAL OF MAJOR (RTD) M.S. MUTIA FROM NPSC

Hon. Abongotum: Hon. Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Petition for the Removal of a Member of the National Police Service Commission, laid on the Table of the House on Thursday 22nd October 2015 and, in accordance with the provisions of Article 251(3) of the Constitution and Standing Order 230(5), finds that the Petition does disclose sufficient ground for the removal of Major (Rtd.) Muiu Shadrack Mutia as a Member of the National Police Service Commission.

Hon. Speaker, on behalf of the Departmental Committee on Administration and National Security and pursuant to the provision of Standing Order No.230, it is my pleasant privilege and honour to present to the House the Report of the Committee on the Petition by Mr. Simon Katee, on behalf of the Juhudi Committee Support Centre, seeking the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner of the National Police Service Commission (NPSC).

The Petition was introduced to the House by the Speaker of the National Assembly, on behalf of Mr. Simon Katee and Juhudi Support Centre on Thursday, 8th October 2015, pursuant

to Standing Order No.225 (2) (b). Pursuant to Standing Order No.227 (1), the Petition was referred to the Departmental Committee on Administration and National Security for consideration, and for preparation of a report within 14 days, pursuant to Standing Order Nos. 233 and 234. The Committee held three sittings to consider the prayers of the petitioners. The Committee complied with the constitutional and legal requirements when considering the Petition. We ensured that the requirement for public participation and openness in carrying out the proceedings was adhered to. Notification inviting the public to submit memoranda was placed in the mainstream print media, in tandem with the law.

Hon. Speaker, the Committee made the following observations:

1. Major (Rtd.) Muiu Shadrack Mutia was appointed to the NPSC under Article 246(2)(a)(ii) of the Constitution, being one of two retired police officers and representing the Administration Police Service.
2. The Commissioner, Major (Rtd.) Muiu, consistently failed, neglected or refused to attend to his duties or perform his duties as a Commissioner for the past two years. I will indicate the reasons because it was not deliberate that this Commissioner did that. There were reasons which the Committee found valid.
3. This continued absence has negatively affected the operations of the Commission, thereby denying the Commission the chance to make informed decisions, particularly with regard to the Administration Police.
4. There exists information in the public domain of the continued inability by Commissioner Major (Rtd.) Muiu to attend to his duties as a Commissioner due to physical incapacity to perform his functions or his failure, neglect or refusal to attend to his duties as a Commissioner.
5. The Commissioner may be removed from office, pursuant to Article 251(1)(b) and (c) of the Constitution, for gross misconduct and physical and mental incapacity to perform the functions of the office respectively.
6. The police reform agenda is in danger of stalling following the absence of the Commissioner, Major (Rtd.) Muiu, given his background as a former police officer with the Administration Police and also in the military.
7. The crisis of quorum in the NPSC is further compounded by the demise of one Commissioner, Madam Esther Chui-Colombini, more than two years ago, with the vacancy yet to be filled; and the retirement of the Deputy Inspector-General of Police, Madam Grace Kaindi, in September 2015.
8. Based on the aforesaid, the petitioners suspected that the Commission's operations have been seriously hampered by the continued absence of the Commissioner and is therefore unable to attend to the efficient oversight and administration of the NPSC.

Hon. Speaker, the Committee received submission from the National Police Service Commission with respect to the Petition. In their submissions, the Commission expressed its concurrence with the petitioners. I will not go into those details because they are in the report.

I would like to state that the Committee made an attempt to give a chance to Major (Rtd.) Muiu and in the spirit of national justice, the Committee reached out to the Commissioner Major (Rtd.) Shadrack Muiu Mutia vide letter reference number NA/DCA/ANS/2015/66 with a view to having a meeting on the matters raised in the Petition.

The letter was delivered to the National Police Service Commission offices but was later returned to the National Assembly since the Commission had no means of getting in touch with the Commissioner.

I would also like to confirm to the House that my clerk and I made an attempt to have him come, but he did not come to face the Committee, most probably on health grounds. Upon further follow up, the Committee contacted the Commission via phone and despite several attempts the Commissioner did not honour the invitation to appear before the Committee.

Having given those observations, I want to reiterate that the petitioners had prayed that the National Assembly, through the Departmental Committee on Administration and National Security, resolves that the Petition discloses grounds for removal of Major (Rtd.) General Shadrack Muiu under Article 251(c) of the Constitution and recommends to His Excellency the President to form a tribunal to investigate the Commissioner.

In response to the above prayers, the Committee made the following recommendations:-

- (1) That, it finds the Petition has disclosed grounds for the removal of Major (Rtd.) Shadrack Muiu Mutia as a Commissioner to the National Police Service Commission as set out in Article 251(1)(b) and (c) of the Constitution.
- (2) That, the President appoints a tribunal in accordance to Articles 251(4) (b) and 251(5) of the Constitution, to investigate the matter expeditiously, report on the facts and make a binding recommendation to the President.
- (3) That, the President expeditiously initiates the process of replacement of the other deceased Commissioner Esther Chui-Colombini as required under Section 9 of the National Police Service Commission Act (No. 30 of 2011), in accordance with Section 6 of the Act.

Before I conclude, I would like to inform Hon. Members that we have tried even informally to get in touch with this Commissioner. This is because had it not been for what is indicated here by the petitioners and the Commission, Major (Rtd.) Muiu served this country with a rare distinction when he was the Commandant in the Administration Police. He was an officer who had strict discipline. He was very effective. He was the one behind all the reforms of the current Administration Police.

In 1982, Major (Rtd.) Muiu, with the help of other military officers, General Mahamud, Maj. Cheboi and others fought hard to quell the coup we had in this country. As we consider this matter, I would like to remind Members that this is an officer who did this country proud. As a Committee, we are recommending that he is relieved of his duties. That a tribunal be formed to investigate the matter so that the Commission will get a commissioner who will represent the interest of the Administration Police so that the reforms within the police sector as recommended by Ransley can go on.

Lastly, on behalf of the Departmental Committee on Administration and National Security and pursuant to Standing Order No. 230, it is my pleasant duty to table in this House the Report of the Committee on its consideration of the Petition by Mr. Katee, on behalf of Juhudi Community Support Centre seeking the removal of Major (Rtd.) Muiu Shadrack Mutia as the Commissioner of the National Police Service Commission.

I beg to table the Report and I would like to request Hon. Alice Wahome to second.

Hon. Speaker: Hon. (Ms.) Alice Wahome, I do not see your name.

Hon. (Ms.) Wahome: Thank you, Hon. Speaker. I rise to support the Motion in respect to this Report pursuant to a Petition by Mr. Simon Katee.

The Committee has deliberated on this Petition and the findings show that we are in agreement with the Petitioner. There is a recommendation by the Committee that a tribunal be set up by the President to commence the process of removing this Commissioner from office.

This Commission has seriously suffered quorum issues. Major (Rtd.) Muiu is one of the commissioners. Under Article 242 of the Constitution, quorum is mandatory among other requirements. Therefore, when he is not present, the vacancy becomes a challenge in the way of moving the proceedings of the Commission. Currently, as stated by the Departmental Chairman, there are three vacancies in this Commission; one by virtue of the absence of Major (Rtd.) Muiu. There is the vacancy created by the death of Esther Chui who was the Vice-Chairperson which has not been filled for the last two years and the third vacancy has risen due to the retirement of Grace Kahindi, the Deputy Inspector-General (IG). Therefore, this Commission has two critical quorum members: The Deputy IG and this particular commissioner.

Hon. Speaker, there is correspondence in support of the Petition and the findings of the Committee that clearly indicate there have been serious efforts to understand the reasons why this Commissioner has stayed on the job taking into account that he has been unable to perform his duties. He fell sick as stated in the attached correspondences from the Commission that were presented to the Committee during its proceedings. The correspondences are many and it is clear that there has been no cooperation on the part of this commissioner. Notwithstanding the fact that he has been unwell, he has not attended to the request that he agrees to be subjected to a medical board process. He declined that. There have been various discussions which he has failed to accept. He has also failed to reply to correspondence sent by the Commission.

The Committee, as stated by the Chairman, made various efforts to bring him to the Committee. He also did not attend. Therefore, in the recommendations, we said that you cannot stay away on medical grounds for more than the necessary period. He has been away since February 2013. He fell ill while he was on duty but since 2013 he has not been able to go to the office. With that understanding, the Committee was at pains to arrive at this decision considering that he is somebody who has given a lot of service. Nevertheless, the vacuum must be filled and we had expected that he would take the less painful route of retiring.

He has even been given letters. The Commission has made those requests. I believe that his failure to attend the Committee session to present his case clearly demonstrates the fact that he is no longer interested in being a commissioner and, therefore, the Petitioner's case was fairly proved because one of the accusations and charges is that he has not been in office to execute his duties since 2013. It is not possible to use the excuse that he is out on medical grounds or he has kept away on bad health because that can only be for six months and extended pursuant to regulations. Therefore, he is beyond the accepted period to stay away on medical grounds.

It is important for Members of this House to see the larger public interest that the Commission is being denied a critical quorum set under the Constitution. Therefore, if this House approves this Motion, the President should move with speed to set up a tribunal. We appeal to the House to find that public interest in this particular case should not be compromised by the need to keep a commissioner in office even when he has been unable to perform his duties or mandate.

Sections 8 and 9 of the law and Article 251 of the Constitution require that a tribunal must be set up because this is a constitutional office and he cannot be removed through any other method or route. Therefore, we appeal to Members to find this Petitioner's case well proved and stated. There is supporting documentary evidence to show the process, the route and the pain the

Commission has gone through because of his absence and failure to cooperate or even to show interest in his work.

With those remarks, I second this Motion.

(Question proposed)

Hon. Speaker: Hon. Members, before I give this Motion for debate, let me state as follows: That this is a first of its type. The grounds are the ones contemplated in Article 251(1)(c) of the Constitution dealing with ailment and incapacity. I request Members that we be temperate in the way we debate this matter. It is a Petition grounded on health or physical incapacity. What we say we must be alive to the fact that the person we are discussing is not even able to attend. We must be really temperate in what we say.

Let us have the Leader of the Minority Party.

Hon. Nyenze: Thank you, Hon. Speaker. I do not know if someone stole my card.

Thank you for giving me this chance to contribute on this very important Motion and also thank you for that caution because we are discussing a Motion that touches on somebody's health and who is not here to talk about themselves. So, that caution is very important.

I reject this Report in totality because this officer has served, he is unwell but he is recovering. I just want to ask our Committee to put themselves in his shoes. If you are old, sick but recovering, is this the kind of treatment you would want meted to you? This is an officer who has served properly. I agree with the views expressed by Hon. Zakayo Cheruyoit. Maj. (Rtd.) Muiu deserves fairer treatment than being asked to resign. The fact that he has shown tremendous improvement, he should be given a chance to serve without being asked to resign.

Article 244 of the Constitution enshrines human rights, basic freedoms and the operations of the National Police Service Commission. I want Maj. (Rtd.) Muiu to be accorded his right to serve. It is also un-African when someone has given good service and gets something that he has no control over like disease, he cannot benefit from the fruits of appointment or employment because of the physical health or old age. It is un-African to talk about discriminating a sick person. We pray that Major (Rtd.) Muiu gets better.

The Chief of Staff in the Office of the President and other officials in the National Police Service Commission (NPSC) have stopped Major (Rtd.) Muiu's salary. They have even written letters seeking to know his medical condition without his consent or the consent of his family, which is unethical, un-African and a shame. The Committee, in its wisdom, led by Hon. Asman Kamama, should reconsider that Major (Rtd.) Muiu should be given a chance to serve instead of looking for other avenues to send him home.

Article 249 of the Constitution sets out the objects and functions of constitutional commissions, including promotion of constitutionalism, promotion of observance of democratic principles and values, and protecting the sovereignty of the people. It is good to give Major (Rtd.) Muiu a chance to even present his views and wishes because he has offered his service to the nation. Surprisingly, the Vice-Chair of the Commission has not been replaced.

I can see a trend which is very painful. We have seen Kamba people being hounded out of office. Madam Grace Kaindi served in the National Police Service with all her dedication and then the issue of retirement was raised yet there was a contract. She went to court. If you look at all the dismissal cases today, it would seem like the Jubilee Administration is after the Kamba. If it is not Kaindi, it is Major (Rtd.) Muiu or Prof. Mbithi, whom they want to sack from the

University of Nairobi, or the Chief Executive Officer (CEO) of the KNEC, plus the other old cases. This is a trend I have observed.

Hon. Chepkong'a: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Chepkong'a: Thank you, Hon. Speaker. I rise pursuant to Standing Order No. 83 as read together with Standing Order No. 107. Is it in order for the Leader of the Minority Party to claim that the Jubilee Administration is to be blamed for the sickness of Major (Rtd.) Muiu? If somebody is unwell, you cannot politicise their health. Two, when somebody is unwell, you cannot ethnicise the matter and say he is a Kamba. Sickness does not know whether you are a Kamba, Kalenjin, Kikuyu or a white man or white woman. So, is he in order to assign the sickness that is unfortunate on the part of Major (Rtd.) Muiu to Jubilee? Unless he has any evidence to adduce before this august House to prove his allegation---

I have a lot of respect for Hon. Nyenze. He was a minister in the KANU Government, which I served with him. So, I have a lot of respect for him. I do not know that since he went to the other side he has changed his moods. Maybe with this point of order, he may change his habit again.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, let us remove the ethnic dimension. I do not think it helps. The Constitution, in Article 251(1)(c), anticipated a situation in which a member of any commission may fall ill to an extent that they are not able to execute the functions of their respective offices. If those circumstances become so serious that it is not feasible to see a possibility of the person recovering, that was put as a ground alongside other grounds, for removal of the person from office. We are not talking about incompetence. That is why I said when we discuss these matters, let us not politicise anything. If we start bringing issues which are not going to help the country, it is not fair. We are discussing the health of a person. We do not want to appear to politicise everything. The health of this Commissioner is important. We have been told that he has been unwell since 2013.

We should confine ourselves to argue whether we should give him more time or not. The moment we begin looking at this issue with other lenses, I can assure you that we will be dealing with this matter not in the right frame of the mind. We should refrain from other issues. Just look at this issue compassionately. That is how I look at it. It is a matter that requires compassion even as we discuss or as we decide one way or the other.

Hon. Nyenze: Thank you Hon. Speaker, for your wisdom and that piece of advice. I have picked the word "compassion" from you. I will not dwell on other issues. I would not like to politicise this matter. However, I am appealing to the Committee, under the leadership of Hon. Asman Kamama, who is a very balanced Chairperson, to look for a soft landing for this officer who has served well. He could be given his gratuity so that he goes home with honour. Anybody can fall sick. No one has control over illness. I urge the Committee to look at the issue of Major (Rtd.) Muiu with compassion as advised by the Speaker of the National Assembly. Even when they make their recommendations, let them give Major (Rtd.) Muiu a soft landing because these are issues beyond him.

With those remarks, I support the Motion.

Hon. Speaker: I appreciate what the Leader of the Minority Party has concluded with. Let us also appreciate the processes contemplated in Clauses 4, 5, 6 and 7 of Article 251 of the Constitution. If this Report is adopted and forwarded to the President, the President is obligated

to set up a tribunal. That tribunal is the body required by law to go into the nitty-gritty of this matter, including making binding recommendations. In the wording of Article 251(6), the tribunal is to make recommendations binding on the President, including but not limited to the proposal that Hon. Francis Nyenze has made. Let us be alive to those processes which are contemplated in the Constitution. The Committee could not go into that because it is not their function.

Hon. Naomi Shaban, you have the Floor.

Hon. (Dr.) Shaban: Asante sana, Mhe. Spika. Nataka pia kuunga mkono Hoja hii ambayo imeletwa na Kamati ya Kiidara ya Utawala na Usalama wa Kitaifa.

Ni dhahiri ya kwamba Meja Mstaafu Shadrack Muiu Mutia amefanya kazi nzuri hapa nchini. Lakini, kama tunavyosema; maisha ya binadamu hubadilika kila siku. Kuna wakati ambao utakuwa mzima na wakati ambao utakuwa na shida na hutaweza kutekeleza majukumu yako.

Hakuna aliyetaja kuwa Meja Mstaafu Shadrack Muiu Mutia, hajafanya kazi yake vizuri kwa utendakazi wake. Lakini maisha ya mwanadamu yanazidi kubadilika--- Katika Katiba yetu, Kipengele cha 251, kimetaja uwazi kwamba atakaposhindwa kutekeleza majukumu ya kufanya kazi, hana budi kustaafu.

Ninaunga mkono Ripoti hii kwa udhaifu na kuwaomba wenzangu kwa unyenyekefu kwamba tukiangalia Kipengele kile na kazi nzuri Meja Mstaafu Shadrack Muiu alifanya--- Kamishna wa Tume ya Kitaifa ya Kuwaajiri Polisi amefanya kazi nzuri katika utenda kazi wake.

Kimaumbile, Meja Mstaafu Shadrack Muiu Mutia hawezi kuendelea kufanya ile kazi sasa hivi. Kamati ilijaribu sana kumtafuta ili aje ajieleze. Lakini Mwenyekiti wa Kamati kwenye masuala kama haya, mkiambiwa mtu ni mgonjwa, ingelikuwa ni vizuri pia kama mngkwenda kumsalimia nyumbani ili mjue ako hali gani na katika hali ya kiutu na kibinadamu, bwana huyu ana tatizo kubwa kiasi gani.

Nafikiria hakuna Kanuni za Bunge hili, yaani *Standing Orders* ambazo zinawaruhusu kwenda mpaka nyumbani kwa mtu kuangalia ni shida gani iliyomfanya bwana au mfanyakazi huyu kukosa kuja hapa Bungeni, katika utenda kazi wake. Hivyo basi, kama wangelipata habari kwamba yuko hospitalini, wangekwenda pale. Kuna umuhimu kwamba Kanuni za Bunge hili zibadilishwe kuwaruhusu Wabunge wanakamati fulani kuwatembelea wafanyakazi kama hawa ili tuwezekujua mbivu na mbichi.

Nimemsikia ndugu ya Kiongozi wa Wachache Bungeni, Mhe. Nyenze, akilalamika. Lakini, juu ya kulalamika ni kwamba kazi lazima itendwe na ifanyike vilivyo. Roho yangu ikiwa nzito, ningependa kumwambia kaka yangu, ndugu yangu, kiongoze, Mhe. Nyenze kwamba ni lazima kazi ifanywe hata tukilalamika vipi.

Mhe. Spika, tulimpoteza Kamishna Esther Colombini, aliyekuwa mama mchapa kazi. Alivyofariki, mtu mwingine hajapatiwa jukumu la kutenda kazi ile. Amekwenda mbele ya haki-- - Vile vile, ilimbidi dada yetu Naibu Kamishna wa Huduma ya Kitaifa ya Polisi Bi. Grace Kahindi, kustaafu.

Kusema kweli, Tume hii inashindwa kufanya kazi. Hivyo basi, hatuna budi kuunga mkono mapendekezo ya Kamati hii tukiomba kwamba hatuna njia nyingine ila kuhakikisha kuwa majukumu ya kufnaya kazi lazima yatendeke na kazi itendeke.

Mhe. Spika, hatuna njia nyingine ila kumwoomba Mhe. Rais aunde tume itakayoangalia matatizo haya na kupendekeza njia ya kumsaidia, na vile vile kumpatia Mkenya mwingine nafasi ya kufanya hii kazi.

Kwa masuala ya Kaunti ya Makueni, hivi juzi tulisikia Mhe. Rais akisema kwamba haoni kama hiyo ndiyo njia ya kuisaidia Makueni. Vile vile, kwa tume itakayotengenezwa kuangalia masuala haya ya Meja Mstaafu Shadrack Muiu, wakipata habari kwamba anaendelea vizuri, basi Mhe. Rais ataamua.

Mhe. Spika, ninaomba wenzangu wote tuunge mkono Hoja hii ya kumuruhusu Meja Mstaafu Shadrack Muiu---

Hon. Speaker: Hon. Dan Maanzo.

Hon. Maanzo: Thank you, Hon. Speaker for giving me an opportunity to comment on this Report.

Major (Rtd) Shadrack Muiu comes from Makueni, the area I represent. I would like to state that the Departmental Committee on Administration and National Security observed that he became incapacitated while working or serving the National Police Service Commission. In fact, he became incapacitated while he was on official duty. For that matter, efforts to reach him later were not fruitful though the Committee, from the reports they got from the commission, knew very well what had happened.

For that matter, the law anticipates a situation whereby one is likely to be incapacitated. It is very unfortunate for this commission because it lost one of its commissioners and the other one got retired in situations which have even ended up in court. In the circumstances, the commission is right now incapacitated and it is unable to move.

From the way the Deputy Leader of the Majority Party has contributed, it was as if the Committee also went beyond its duties by beginning to do the work which is supposed to be done by the tribunal which the President will set up under Article 251 of the Constitution. Article 251(c) of the Constitution anticipates a situation like this and also creates a formula on how to handle it. Major (Rtd.) Shadrack Muiu has served this country with a lot of dedication and finds himself honoured even when he becomes incapacitated while serving the nation. He should be handled in a humane manner and we should thank him. He is one of the heroes of this country. We just celebrated Heroes Day and I believe he is one of the people Kenyans and the people of Makueni celebrated. He is very famous for having helped in crashing the 1982 attempted coup.

His efforts have saved many lives in this country. Therefore, his life must also be treated well. He must be handled well. He is a highly respected man in Ukambani. When this matter goes to a tribunal set by the President, it will deal with this incapacity and look for better ways of handling the matter. Should that tribunal find that he has recovered and there is a better explanation, then there will be nothing stopping the President from allowing him to continue giving his very useful service to this country.

Thank you, Hon. Speaker. I support.

Hon. Speaker: Hon. Gikaria.

Hon. Gikaria: Thank you, Hon. Speaker for giving me this opportunity to support the Report by the Committee. I am a member of the Committee. Rightly and as you have just said, these are issues that came up in the meeting when we deliberated the matter. The sentiments that you have just echoed here is what the Committee was trying to grapple with, particularly for a commissioner who has worked for this country in a very diligent way. What mandate does the Committee have regarding such matters? This is something we deliberated through the able leadership of Hon. Kamama. It was unfortunate that we had to come to that conclusion.

First of all, I want to talk about the petitioners. When the petitioners came before the Committee, there were so many questions they were asked including whether they have any

personal grudge. They made it very clear that the petitioners are just part of a group of a Non-Governmental Organisation (NGO) based in Mombasa and is concerned about police reforms. That is how they came to do this Petition. Through the normal process of their work, they cited two articles in the *Daily Nation* Newspaper where the Commission had indicated that they were ready to have a replacement of the Vice-Chairperson who is deceased, and Major (Rtd.) Muiu. After seeing the second article, they got concerned and made an effort to reach the Commission to try and get some information as to what was happening regarding this.

Basically, this is an NGO that is concerned with police reforms. They also had an opportunity to interact with the Commission where the Commissioner was conspicuously missing in all the five meetings that they held with the Commission. That is how they came to write this Petition. They had done some research regarding the issue.

I want to thank Hon. Nyokabi, the Women Representative for Nyeri County, for her participation and one of the questions that we raised to the petitioners was whether they had access to information under Article 44 and whether they sought information from the Commission in writing. We did not want them to tell us that they tried without anything in writing to show that they sought information. They raised some very fundamental issues and that will be addressed by the Bill that is before the House which was brought by Hon. Nyokabi. If you want information from a certain institution, how do you get it? They told us that they could not seek information because they did not know where to get it from formally. They wondered whether they should have gone to the Commission or the National Police Service (NPS). We totally agreed with them that access to information needed some legislation, so that even if you place a letter in a certain office, then it can be treated as having reached where it was supposed to have gone. It is important for us to look at the National Police Service Commission Act and through Hon. Nyokabi's Bill, we can do this.

Secondly, about the Commissioner himself, we even tried to find out his age. The National Police Service Commission Act stipulates that commissioners can only be there for a term of six years non-renewable. This Commissioner has not been there for three years from 2013. When we were asking about his age, we were told that he is just slightly above 84 years. Again, the age factor came in. This is a very hard working officer. Under Article 246, he represents one of the retired police officers from the Administration Police and the success of the AP has been attributed to him. It is unfortunate that he came from the APTC a long time ago and there are many people who were with him at the college when he started some very wonderful programmes at the AP College.

As Hon. Maanzo has just said, it is true that he fell sick while on duty in New York and he had to be airlifted back to the country. He spent about four months in hospital and it was very sad. They tried to reach him so that he could also give guidance regarding early retirement. At that time, we had two memoranda, but they were supposed to be in sworn affidavits. We got two letters from two gentlemen who were pleading with the Committee to retire him on medical ground. As we have already said, we looked at our mandate and we could only deal with the prayer that had been done by the petitioners and we could not go beyond that. That was not within our mandate. As I have rightly indicated under Article 251(5), maybe the tribunal might do that when it is formed.

Regarding the Commission, it also made an effort and wrote to the Commissioner five times and four times to the doctors to give an update regarding the Commissioner's health issue. At some point, they recommended that the Medical Board forms a committee that can give a

medical report, which never happened. The Commission had gone that far to request the relevant Government agencies to form that committee. Under Article 251(1)(c), physical incapacity can only be proven by a medical report which was not there. They were just saying that he had been given a week's rest, another one month's rest and then he appeared once in the committee. The Commission did its part and at some point, it advised the Commissioner to retire willingly on medical grounds, so that he could get his benefits, but unfortunately that was not fourth coming.

The other bit is the quorum issue. Early this year or late last year, we made amendments to the National Police Service Act, which changed the quorum from five commissioners to six. When we looked at the changes, it mentions who must be present. That is something that we also needed to do.

Hon. Speaker, basically, I agree with you that the Committee could not go beyond its mandate. At the same time, and we need some guidance on this, Article 251(c) is on physical incapacity, and it is also a challenge. We were trying to look at gross misconduct and again it could not fit. The petitioners were saying that the commissioner was conspicuously absent, but they never proved this because they also did not have any medical report. So, does it fall under that?

Lastly, when we were making our recommendation, we looked at Article 251(4).

Hon. Speaker: Hon. Wangamati.

Hon. Wangamati: Thank you, Hon. Speaker for giving me this opportunity that I may also contribute on this Motion. Many of us have been employees and members of boards and quorum is very important to run the affairs of the board or commission. From the explanation, our Parliamentary Committee did very well on this issue and they were considerate. They performed beyond their mandate.

[The Speaker (Hon. Muturi) left the Chair]

*[The Temporary Deputy Speaker
(Hon. (Ms.) Shebesh) took the Chair]*

Even if Major (Rtd.) Muiu is sick, he should appreciate that the Commission was fair to him. The only thing is that I do not know why he could not retire so that he goes up to where we have reached. I feel that our Committee did well. It is high time people considered when they are in position whether they are delivering. If they are not able to deliver, they should give way for others to do the job.

I support the Committee and the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Michael Kisoi.

Hon. Kisoi: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to contribute. I want to totally disagree with this Report. As much as I appreciate the comments on the issues raised by the Committee chaired by the very able Hon. Kamama, I have few concerns. Before those concerns, I would like to say that Major (Rtd.) Muiu is one of the heroes of this country who for many who do not know, is known as the father of the Administration Police (AP). He is one of the people who initiated the AP and established it in this country with a lot of commitment and dedication. He is one person who has served exemplarily well in this country. That one is in no doubt.

There is also one factor that is also not disputable in this Report, that this officer, Major (Rtd.) Muiu fell ill while on official duties. That was out of his wish. As much as we want to follow the law which we are obliged to sometimes, I want to remind Members that the law is not made exclusively for its own purpose. Today, we may have our way with this Report because it is Major (Rtd.) Muiu but tomorrow it could be any Member of Parliament here or anyone's son or daughter in this case. Therefore, when we are looking at this Report, we need to ask ourselves the kind of precedent that we need to set for this country in terms of what happens when similar circumstances occur. We have heard on various occasions that Members of the National Assembly are out for duty for quite some time. It can happen to anyone. You would imagine if anyone would have petitioned, within that span of time, to have those Members sent home without following due process.

So, I want to appeal humbly to the Chairman, Hon. Kamama, to consider some of the recommendations that he has put here. I want to point out page 13 of this Report where they are saying that the Committee, in the spirit of natural justice, reached out to Commissioner Major (Rtd.) Muiu with a view to having a meeting on matters raised in the Petition. The letter was delivered to the National Police Service Commission (NPSC) offices but was later returned to the National Assembly since the Commission had no means of getting in touch with the Commissioner. It is quite laughable if the NPSC does not have any physical contact address or the residential area of one of its colleagues.

There is a further contradiction down there. The Committee's Report says that upon further follow up, it contacted the Commissioner via phone and despite several attempts the Commissioner did not honour the invitation to appear before the Committee. At some point, they are telling us that the NPSC could not in any way get to Major (Rtd.) Muiu. On the other hand, they are telling us that the Committee was able to reach him via phone. That contradiction raises a lot of concerns.

I have perused this Report and there is no evidence that Major (Rtd.) Muiu was served with a copy of that Petition before we start arguing that he did not appear. Article 47 of the Constitution spells out clearly issues to do with fair administrative action. It includes procedural fairness where presumably allegations are made against an individual and then he is required to be served with a petition. He is then given a notice to appear so that he can give his side of the story. I find that the process was fundamentally flawed because at no given time was Major (Rtd.) Muiu given an opportunity to appear before this Committee. There is no evidence whatsoever in this Report that tells us that he had an opportunity to present his case in person to this Committee.

Article 27 of the Constitution prohibits discrimination against any individual based on health status. As much as we want to adopt this Report---

Hon. (Ms.) Abdalla: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Just hold on please for one minute, Hon. Kisoi.

Hon. Amina Abdalla, do you have a point of order?

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Speaker, I am rising on Standing Order No.95 to request that the Mover be called upon to respond. Much as I have listened to all the Members, they seem to be in agreement that we should not discuss the incapacity of this Member. I do not think that there is new information coming out. Could we have the Mover to respond?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will put the Question after Hon. Kisoi has completed his contribution.

Hon. Kisoi: Thank you, Hon. Temporary Deputy Speaker. When you look at this Report, there is no absolute evidence to indicate that Major (Rtd.) Muiu is physically incapacitated. It is just a process from the Head of Civil Service requesting the Director of Medical Services to constitute a board that would in turn give a report on the status of his incapacitation. With the absence of this, I think the Committee has put the cart before the horse. The process would have been given time so that the Director of Medical Services could constitute the board which would come up with a report. I want to believe that this is normally done by a competent physician as the requirement of the law so that now we can determine whether to subject Major (Rtd.) Muiu to a tribunal.

So, in the absence of that, I feel constrained to support the intentions of this Committee but I want to appeal to Kenyans to realise that issues of sickness can come any time and there is no dispute at this moment that Major (Rtd.) Muiu is on official sick leave. This raises the question: What would happen if all those people who have sick leaves have to be laid off simply because they are not able to perform? That is why sometimes I have said that we are obliged to follow the law but sometimes this is a precedent. It is now Major (Rtd.) Muiu but it can affect any other person or any other Kenyan.

My appeal is that the Chairperson of the Committee should, with all humility, revisit the recommendations of this Report and give a fair opportunity to Major (Rtd.) Muiu to give his side of the story through physically competent medical personnel. He should also appear before a medical board. In any case, they would really like to subject him to that process. The guy is entitled to full medical benefits, which even this Committee did not find it worth recommending. I find it a bit far-fetched in as much as I want to agree that there is a tribunal process. I want to go on record as saying that Major (Rtd.) Muiu was not given an opportunity to be heard by this Committee.

Thank you, Hon. Temporary Deputy Speaker.

*(Question, that the Mover be now called upon to reply,
put and negatived)*

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, since the Question has been negatived, debate on the Motion continues.

I now give the Floor to Hon. Joseph Kahangara.

Hon. Kahangara: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I rise to support the Motion.

I am a Member of the Departmental Committee on Administration and National Security. I would like to tell my colleagues who do not support this Motion that the Committee did not have any interest on this matter. It was a petition that was brought by a Kenyan and he has the right to do so. The Committee, as Hon. Gikaria tried to say, sympathised and tried to go out of its way by asking many questions before we arrived at the recommendations.

Something that has not come out clearly from the outset is that the original composition of the National Police Service Commission (NPSC) was nine members. Out of the nine members, the quorum was meant to be five members, excluding the police officers. The police officers are the Inspector-General and the two Deputy Inspector-Generals. Out of nine members,

if you remove three, you are left with only six members. From there, we had Madam Esther, who passed on. This means that the people who could form quorum were only five. One is Major (Rtd.) Shadrack Muiu. In his absence, it simply means that if the NPSC tried to make any decision while doing its work, it would be illegal because they did not have a quorum. The NPSC has to continue working. Remember the kind of work they are trying to do for this country. We are talking about police reforms. We have seen them undertake vetting of police officers. It is work that is very strenuous and somebody in Major Muiu's condition would not be able to cope.

It is also important to realise that the NPSC, including the Chief of Staff, on several occasions tried to get in touch with Major (Rtd.) Shadrack Muiu. There are even letters that were written requesting him to voluntarily retire from the public service so that he can get the benefits that we are talking about. Even when this was done, there was no response to the letters. His doctors started writing letters as early as 2013. Two-and-a-half years down the line, there is no communication between the Commissioner and the Commission itself, meaning that the work of the Commission had been hampered. This was until Parliament went ahead and brought amendments to the NPSC Act. We amended the Act to allow for police officers to form part of the quorum. That was when they were able to continue doing their work.

The Committee had a lot of sympathy and consideration to make before we arrived at this recommendation. Since he was not able to appear before this Committee, when the tribunal is formed, he will be at will to appear before it. The tribunal will then make recommendations. That means if there are any steps that Members feel were not taken care of, he can present himself at the tribunal stage, because he has not been removed yet.

It is important to note that his salary was stopped sometime back. He has not been earning a salary, the NPSC has to go on fulfilling its mandate and the country has to move on. We all agree that he did a great service to this country but, for purposes of moving on, it would be better for him if he had agreed to retire, which he did not. Therefore, we were left with no option but to ask His Excellency the President to form a tribunal so that we can have a replacement, if the tribunal finds it fit. However, at this stage, Major (Rtd.) Muiu still has an opportunity to present his case and the tribunal will be able to come up with very informed decisions.

With those remarks, I support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I give the Floor to Hon. George Ogalo.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to also contribute to the Motion.

I want to take this opportunity to sympathise with the retired Major for falling sick during his tenure as a Commissioner. The Constitution creates the NPSC and gives it specific duties to carry out. If for two years the Commission could not raise quorum because a Commissioner was not able to be physically in office, as Members of the National Assembly, we have an obligation, under Article 251 to consider any petition by any member of the public seeking to remove a Commissioner from office on those grounds. If it was not contemplated that somebody would fall sick in the course of his appointment and be unable to carry out his or her duties, that sub-article would not have been inserted in the Constitution. The drafters of the Constitution were alive to the fact that it is possible for somebody to fall sick. If they did, there must be a mechanism within law to replace such a person.

However, I do not want to let this Commission off the hook. They have been in office since 2013 and they knew that there had been a vacancy. They knew that a member of the Commission had died but they did not see why that person, who was the Vice-Chairperson of that Commission, should be replaced. It would be immoral to pile pressure on a Commissioner who is sick instead of replacing a Commissioner who is already dead. It sounds immoral.

I believe that this Report has indicated that there was loss of communication between the Commission and the Commissioner. Looking at the chronology of events cited in the letters, it is clear that the Commissioners tried as much as possible to accommodate the Commissioner. It would be unfair to accuse the Commission of high handedness when they had gone a step further to request the Commissioner to retire so that he could get his full benefits and gratuity. How else is he benefitting by being there now? The sick leave is over and he is not earning any salary. It is in order that we allow the process of the law to take its course.

Article 251 of the Constitution says that a tribunal can be appointed to investigate the matter. Parliament does not have the capacity to determine anyone's medical condition. However, if you look at the tribunal proposed in the Constitution, you will find that one of the members of that tribunal will be somebody who is well versed on the grounds which a person is being investigated or discussed. Because we are talking about physical incapacity, I assume that one of the members of the tribunal will be a medical doctor.

If it finds the ground not sufficient, then the tribunal will write a report that it is not sufficient and the Commissioner will go back to work. The Government has staff rules and regulations which state that you still earn full salary when you fall sick. Subsequently, for a number of months you will get half salary and after that you get nil salary. Those are standard procedures. We are discussing this because he is a Commissioner who cannot be laid off like that. There are many Kenyans who get laid off just by the implementation of these staff rules and regulation on medical ground.

Therefore, I would like to appeal to the House to allow the process to continue and articles of the Constitution to be implemented. The tribunal will be set up and we will see the report the tribunal will come up with and what the President will decide. He can act on the Report of the tribunal.

Thank you, Hon. Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will now give the Floor to Hon. John Nakara.

Hon. Nakara: Asante Mhe. Naibu Spika wa Muda, kwa kunipatia nafasi kuchangia Hoja hii. Hoja hii inatatiza kidogo kwa sababu Kamishna ambaye tunaongea juu yake ametumikia nchi hii kwa muda mrefu katika nyadhifa mbalimbali.

Tumeambiwa kwamba Major Mstaafu Shadrack Mutia, aliletea mabadiliko katika Kikosi cha Utawala. Hadi leo, kikosi hicho kinaendelea vizuri. Tumeambiwa kwamba pia alisaidia kuzima jaribio la mapinduzi ya mwaka wa 1982. Licha ya hayo yote ameyafanya katika nchi ya Kenya, wakati unafika ambapo tunaweka nchi mbele kuliko masilahi ya mtu mmoja.

Mhe. Naibu Spika wa Muda, huduma kwa taifa ni lazima. Ukiajiriwa au kupewa cheo katika idara ya taifa, ni lazima upeane huduma kwa sababu ushuru unaotumiaka kukulipa hutoka kwa wananchi ambao wanahitaji huduma kutoka kwako.

Mhe. Naibu Spika wa Muda, magonjwa hutokea kwa kila mtu. Ni heri Kamishna huyu astaafu lakini apewe marupurupu yake ili apate matibabu, na pia aishi vizuri. Hii ni kwa sababu amechangia katika ustawi wa taifa hili.

Tunaomba Kamati inayohusika kwamba iwapo watamstaafisha Kamishna huyu basi wampatie marupurupu yake kama njia ya heshima kwa vile ametumikia taifa hili kwa muda mrefu na katika nyadhifa mbalimbali.

Mhe. Naibu Spika wa Muda, kama ningekuwa na uwezo ningependa Tume hii ya kuleta mageuzi katika idara ya polisi ifutuliwe mbali. Iwapo umewahi kuwaona makamishna hawa wanapowahoji maafisa wa polisi, utagundua wanatoa vitisho. Vitisho ambavyo wanatoa mbele ya askari wanaohojiwa ni vya kuvunja moyo. Ningeomba Kamati hii itilie mkazo kwa hao Makamishna wanaowahoji askari wasitumie vitisho.

Kuweka shaka kwa mali ya watu ni jambo ambalo tunaomba Kamati hii iangalie na kuelezea tume hiyo kwamba huwezi kuweka mashaka kwa utajiri wa mtu kwa kuuliza alipotoa mali na kwa nini hatumii pesa zake, na kuuliza mshahara wake ni pesa ngapi. Watu wana njia mbali mbali za kutafuta pesa kama kufanya biashara na kuwekeza mahali fulani.

Tume hii imewafuta maafisa kazi bila hatia au kuhusika katika ufisadi. Tunaomba Mhe. Kamama ambaye ni Mwenyekiti wa Kamati ya Usalama na Utawala, aangalie mambo hayo. Hii ni kwa sababu hatutasimamisha huduma ya afisa ambaye amejitolea kuhudumia nchi hii kwa sababu ya kuweka mashaka juu ya mali yake na kuuliza mahali alitoa mali yake.

Ningependa kumkumbusha Mwenyekiti wa Kamati hii kwamba, makamishna wanafaa kuwa na huruma, utu na ubinadamu. Unapohudhuria kikao cha hao makamishna wanaoleta mageuzi katika idara ya polisi, unagundua kwamba hawana utu jinsi wanauliza maswali. Wanatumia matamshi makali na kuangalia maafisa na macho makali hata kama afisa alikuwa na mambo ya kuzungumzia anashindwa. Tunaomba Mwenyekiti Kamama awaeleze hawa makamishna wawe na utu kwa sababu hawa maafisa ni watu walio na familia.

Nikimalizia, Meja Mstaafu Shadrack Mutia, kwa sababu ya ugonjwa uliompata, tunamuomba kwa heshima ili aendelee kuheshimika akubali kustaafishwa, na aombe tume impatie marupurupu ili aishi maisha mazuri.

Kwa hayo machache, ninaunga mkono Hoja hii.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Gideon Ochanda Ogolla.

Hon. Ogolla: Thank you, Hon. Temporary Deputy Speaker. One thing I might want to quickly look at in this debate is that we are in a situation where there is the issue of the chicken and the egg. This depends on how we want to look at the matter.

Certain things are very clear that Major (Rtd.) Shadrack Muiu Mutia was a competent Kenyan who was interviewed, vetted and recruited to be a Commissioner. These are facts. Out of those processes, he convinced everybody that he was competent. By that fact, he was made a Commissioner. The whole issue in terms of what happens thereafter is clear that it was an issue of sickness, and not competence anymore. That is why I am saying we are in a situation of the chicken and the egg.

I was a little uncomfortable with the extent to which the Committee looked at the petitioners. I have one problem with the petitioners in the sense that instead of looking on how to fill the vacancy created out of death, they looked at how to dismiss a sick Commissioner from office. They are using death as an additional disadvantage to the Commission rather than the main disadvantage to the Commission. This is where I had a problem with the petitioners. The death of Esther would have taken much more prominence than the sickness of Shadrack Muiu. If you look at it in that manner, then two or three issues emerge.

The Commission cannot transact its business properly as a Commission of the Republic of Kenya and it cannot lead itself. There are certain things that must be looked at when the

Commission cannot transact its business because the overall leadership---We are talking about police issues. Part of it is what we were discussing in a Motion in the morning. We are still not looking at our security in a proper manner. How is it that in the last two years, two or three Commissioners are making the Commission not to work, and yet it is an important Commission in the Republic of Kenya?

If you look at the leadership of the Commission, you will realise that the Report indicates that there were attempts to look at how things could be done. I think it has taken too long. If, for example, they cannot operate because of death and the position cannot be filled until we have the public complaining and petitioning Parliament that this position needs to be filled, it is a failure on the part of Government. This issue needs to be looked at in a very serious manner.

On the observation of the Committee, the petitioners are alluding to what the Committee has indicated was not the situation. In my view, the Committee ought to have put this in their observations.

Hon. Temporary Deputy Speaker, when the petitioners are saying that Maj. (Rtd.) Muiu has consistently failed, neglected and refused to attend to his duties and/or perform his duties as a Commissioner for the past two years, this is one thing that, first, the Committee needed to have said very clearly in its observations that this is not a fact; this is not right. This gentleman is only unwell; he has not failed; he has not neglected and he has not chosen not to attend to his functions. It is out of the situation he finds himself at the moment that he is unable to perform his duties.

Beyond that, I believe that the rest of the things that the Committee has come up with makes quite a bit of sense, particularly when we are talking about the tribunal. There is no other route of creating a vacancy in the Commission other than through a tribunal. If you look at the Constitution very well, you will find that it is the only direction. As we look at that direction, we need to look at it with a very serious human face that here we have an officer who has worked and served this country very well. As much as a tribunal is the direction to go, I would have thought in terms of the recommendations that the Committee would have come up with. It could have come up with a rider to the effect that as much as we get the tribunal, it needs to see into it that there are good reasons why Shadrack has not been able to be on duty.

The other important thing, as we look at the recommendations again, is that we do not want to look at it as Shadrack is going to be dismissed. This whole issue that the tribunal is coming in needs not be looked at in the sense that Shadrack cannot perform the functions but that even as he is unable to perform his functions, he is still a good Kenyan who, out of service, is still a good person and needs to be out of office in a manner that is recognised by both the Commission and even previous employers. Major (Rtd.) Shadrack ought to be given some good rest out of office in a very respectful manner and not just hounding him out of office because that is now the process.

I wanted to recommend that the Committee needed to indicate the issues of benefits. This needed to be very clear as we move to the next step. Issues of benefits should be clearly indicated and clearly isolated. Issues like insurance for purposes of his continued treatment need to be looked at. There are some people who really need some of the packages for the retired officers, particularly those who are retiring or getting out of office when they are unwell. These are the areas we need to focus more on, sometimes even much more than when we retire, we are healthy and we are giving many benefits to those leaving office.

I beg to support this Report but as we move forward, the Committee needs to indicate certain things to the tribunal before it comes up with their own things. *Asante sana*.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Cyprian Iringo.

Hon. Kubai Iringo: Thank you, Hon. Temporary Deputy Speaker, for this opportunity to contribute to this Report. As I contribute to this Report, I contribute with a heavy heart because we are discussing a Kenyan who has done a lot for this country especially in his profession. We are discussing him here in Parliament in his twilight years because age and health have caught up with him. That is why I say I am discussing this with a very heavy heart.

It would have been prudent for this senior citizen of this country to have been consulted properly and, at least, told to resign instead of subjecting him to a tribunal at his age. When we subject him to the same, maybe we are even reducing his days of staying in this world because of going to report to the tribunal and other things.

I appreciate that the NPSC has to continue with its work. It is unfortunate, as information has come out, that this Commission has had its share of problems like losing commissioners and here we have another Commissioner who is almost incapacitated. It means that probably they have not done what they should have done. Whereas we know that it is a constitutional provision which has to be fulfilled within certain timeframe, because we have had these lapses and unfortunate occurrences, I know the NPSC has not lived to its mandate.

Secondly, I strongly feel that the mandate that the NPSC was created for should be accomplished. It has to be accomplished within the constitutional framework. It is unfortunate now that we have other issues which have come in. Therefore, I shyly support the Committee's recommendation that Maj. (Rtd.) Shadrack Muiu be given a chance to retire but I strongly feel that this old man should not be subjected to a tribunal. I wish there could be a way of getting him wherever he is if he is at home or in the hospital through the doctors to be requested to resign or retire honourably and get his benefits so that, at least, he can feel recognised. His history has been read by those who know him very well, especially Hon. Nyenze and Hon. Kiso. What we are reading here is that in his heydays, he was a man the country was proud of. He was a man the country was relying on. He was a man who did a lot to the Administration Police. I understand the framework which runs this department of the disciplined forces was his brainchild. He was, therefore, an asset to this nation and in his twilight days he should not be subjected to tribunals and other things. I believe even the Members of his family could be listening to what we are saying here. They have been listening to what we are saying about their father and grandfather. They are worried why we are discussing the old man because of his ill health. We all pray we get to that age but we also pray that we will die when we are not very sick, weak or unable to perform our duties.

As much as Hon. Kamama's Committee recommended that a tribunal be formed because that is the constitutional way of handling this matter, I personally feel that other avenues should be sought to request Maj. (Rtd.) Shadrack Muiu to voluntarily retire or resign; or a framework is done to have him go and rest in his home with medication in peace. However, let him get something to keep him going like medical insurance scheme if he does not have one. Something can be done for him so that he spends his remaining days on this earth comfortably and not to subject him to a tribunal.

Hon. Temporary Deputy Speaker, I support the Report but I do not support the tribunal way of handling the issue of this old man.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Rashid Juma.

Hon. Bedzimba: Asante sana, Mhe. Naibu Spika wa Muda kwa kunipatia fursa hii. Ninakushukuru sana kwani unapokuja ninapata fursa ya kuzungumza. Mara nyingine huwa nabofya mpaka nasinzia.

Ninasimama hapa kuunga mkono Kamati ya Usalama wa Taifa kwa Ripoti ambayo imeleta. Ni kweli kwamba inakuwa vigumu kwa vikao vya tume kuendelea kwa sababu ya idadi ya wanachama wao. Ninachukua fursa hii kusema kwamba ndugu yetu Maj. (Rtd.) Shadrack Muiu alikuwa mzalendo aliyejitolea kwa taifa hili. Juzi, tulisherehekea siku ya Mashujaa. Siku zijazo hata yeye atakuja kusherehekewa kama shujaa kwa sababu alijitolea mhanga kwa taifa ambalo lilikuwa linakwenda kwenye mapinduzi. Kwa sasa, inakuwa vigumu kumtaja na tunaangalia wale wa mwanzo. Lakini siku za usoni hata yeye atatambulika kuwa alisimama siku moja kuzuia mapindizu humu nchini. Kwa hivyo ni kweli kikao ni muhimu sana kuendelea, lakini tusivunje heshima yake kwa siku moja. Ningeomba tumpe nafasi aje ajieleze tena, ama wale wanaohusika na matibabu waje watueleze kama kulingana na yale maradhi aliyonayo anaweza kuendelea ama hawezi kuendelea. Kama hawezi kuendelea, tumuondoe kupitia kwa matibabu na alipwe pesa anazofaa kulipwa ili heshima yake iendeleo kwa sababu ni mtu ambaye amejitolea kwa taifa hili. Haswa yeye ndiye aliyewatengeneza askari wa utawala. Amejitolea kwa mambo mengi.

Ninaiunga mkono Kamati hii lakini huyu Bwana apewe nafasi tupate ripoti kamili. Ikiwa kweli matibabu yake hayawezi kumruhusu kuendelea na shughuli zake, basi astaafishwe. Hata kabla ya kuleta tume, wale wanaohusika na matibabu yake waje watueleze sababu sote hapa kwa sababu hatujawahi kujua yale maradhi anayougua na iwapo anaweza kuendelea na matibabu kwa muda gani. Vile vile, kwa sababu ugonjwa huu aliupata akiwa kazini, inaonyesha kwamba ni mtu ambaye amejitolea. Kama angekuwa mgonjwa akiwa hapa ingekuwa tumesema ni matatizo ya ndani. Lakini huyu alienda kazini na maradhi yakampata akiwa kazini. Kwa hivyo kuna sababu kamili kwamba huyu ni mzalendo. Tusimtoe hivi tu na kumharibia jina. Huyu ni shujaa. Kwa hivyo tumwondoe kishujaa na tumpe heshima zake. Ninakubaliana na Ripoti ya Kamati lakini hilo jambo liangaliwe.

Asante, Naibu Spika wa Muda.

Hon. Nyamweya: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Manson Nyamweya, what is out of order?

Hon. Nyamweya: Hon. Temporary Deputy Speaker, I am raising a point of order on the Report we are discussing. I have gone through the Report but the memorandum from Simon Katee is missing. I have asked the Chairperson of the Committee where the memorandum is and he is telling me it is very far. So, I do not know whether we can continue discussing this Report when the main reason why we are here is missing. I have checked at the Office of the Clerk and the memorandum is not there. I have also consulted with the Chairperson---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Are you talking about the Petition itself?

Hon. Nyamweya: Yes, the Petition. We want to see what the Petition is saying because that is the basis of our discussion. If that Petition is not here, how do we move on? Hon. Temporary Deputy Speaker, I need your guidance.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): When a Petition is presented on the Floor, the Speaker commits it to a Committee and then the Committee's Report is what is debated. So, there is nothing out of order in not having the Petition as part of the documents presented here.

Hon. Angatia: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Savula, what is your point of order?

Hon. Angatia: Hon. Temporary Deputy Speaker, I seek your guidance on whether this House has turned into a tribunal itself to discuss the health status of the Commissioner while there is a letter here stating that his doctors declined to provide a medical report on his status to the Commission. Are we in order to discuss his health status or confirm the Commissioner's health status when we do not have the capacity, as a House, to do so? I thought this matter should be settled through a tribunal where a medical expert will be called to explain.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Savula, you are making your contribution in the guise of raising a point of order. I will not allow that.

Hon. Barua, please, press the intervention button so that I can give you an opportunity.

Hon. Barua: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this very important Motion. From the outset, I would like to express my sympathies to Maj. (Rtd.) Muiu who is unwell.

The previous contributor to this Motion has made it very clear that Maj. (Rtd.) Muiu was and is still a hero of this country. As we debate, we should not lose his status of national hero by fronting trivialities. We should not confine the status of Maj. (Rtd.) Muiu to an ethnic dimension.

I am saying this because Maj. (Rtd.) Muiu served this country without giving preference to any ethnic community. As such, I do not think, under the situation he is in now, which is a very unfortunate situation of sickness, he requires specific sympathies from one or his ethnic community. This is because of what the Leader of the Minority Party said in his contribution. I do not support his views that Maj. (Rtd.) Muiu is being treated this way because of where he comes from.

I appreciate that for Maj. (Rtd.) Muiu to get this position, it was a great honour and recognition of his service by the people of Kenya. It is unfortunate that he has got sick while on duty. I support the Committee's Report but with a few comments. If Maj. (Rtd.) is relieved of his responsibilities and duties, he should be given due consideration so that he does not suffer unnecessarily by loss of his position or status. This in particular is in connection to medicare because every Kenyan has a right to medical attention.

We are in this House performing our national obligations. One of our national obligations, as the National Assembly, is to ensure that we do what we are supposed to do. One of the things we are supposed to do is to discuss matters like this. We have to ensure that the NPSC continues to operate and offers services to Kenyans. The NPSC is one of the security organs in this country. This country is suffering from insecurity. It will be irresponsible of us, as Members of this House, to keep the NPSC in a moribund situation because we do not want to face the reality. The reality is that Maj. (Rtd.) Muiu never neglected duty. He does not attend to the functions of the NPSC not because of neglect but because of being disabled and unwell. We must have a human face when we prosecute this matter.

I would like to support the views of some of the contributors to this Motion who have said that it is good for this nation to ensure that this Commission operates. As it is now, without

the three members, the Commission cannot raise a quorum. That means that the Commission cannot perform its constitutional duties. One of the members of the Commission, the former Deputy Inspector-General, cannot be replaced because there is a case in court in connection with that position. This Commission requires two members for it to function. This country requires a functioning NPSC. It is for this reason that I support the Report of the Committee to ensure that the position of the late Commissioner and the position of Commissioner Muiu, who is unwell, are filled.

As much as we are being compassionate, let us put the interests of the nation first. I am sure that Maj. (Rtd.), in the many capacities he has served this nation, operated and acted in a very patriotic manner. If we were in the same situation that we are in now, looking at somebody else, we would have arrived at the same decision. Let nobody look at this august House as a partisan House. The Committee is not partisan as it has just made a decision, provided a solution and acted on behalf of the people of Kenya.

Hon. Temporary Deputy Speaker, I would like to ask Members from both sides of the House to ensure that we make Kenya a better and progressive nation as we address issues facing this country. It is not good for us to frustrate Government efforts because we are not in the ruling coalition. Some issues cut across party lines. There is no partisan interest in this. So, if we are going to make this country progressive, we all have to work as a team and make sure that national or public interests take precedence over personal or ethnic interests.

So, I would like to end my contribution there and say that I support this Report of the Departmental Committee on Administration and National Security. As we prosecute this issue further, and I support the opinion by Hon. Savula that, the tribunal is also going to give the Major (Rtd.) another opportunity to prove whether he is incapacitated or not. If through the tribunal he is found not to be incapacitated, I am sure His Excellency the President will reinstate him and he will be able to go back and perform his duties.

Hon. Iringo has also given us another option that if the Major (Rtd.) is quite unwell, he can do himself and this nation a service by retiring voluntarily to save us the agony of the tribunal. He can, therefore, get his full benefits. After doing so, he will enjoy his life in retirement.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Before I give a chance to the next Member, this is for your information Hon. Nyamweya.

On page 11 of the Report, which I believe you have like me, are the contents of the Petition. Hon. Chairman of the Departmental Committee on Administration and National Security, I do not know whether I am right. Those are the contents of the Petition.

(Hon. Abongotum nodded his head)

You can refer for your comfort as you are giving your contribution. You do not have the same Report? You can come and borrow mine.

Let us have Hon. Zuleikha Juma.

Hon. (Ms.) Juma: Asante sana, Bi. Naibu Spika wa Muda kwa kunipatia nafasi hii ili nichangie Hoja hii. Tunajua kwamba hii Komisheni au sekta ya polisi humu nchini imekuwa na shida kwa miaka mingi sana tangu tupate Uhuru.

Waliotengeneza Katiba mpya na Wakenya walipoipitisha, tulisema kuwe na Tume ya Kitaifa ya Huduma za Polisi humu nchini kutusaidia katika sehemu ya ulinzi ya serikali. Kwa sababu ambazo zitaongelewa hapa, imekuwa vigumu kwa Komisheni hii kufanya kazi yake inavyostahili. Sababu moja ni kwamba kuna Kamishna ambaye alifariki, pili, kuna huyu mwingine ambaye tunamzungumzia leo ambaye ni Meja Mstaafu Shadrack Mutia Mulu ambaye amekuwa mgonjwa kwa karibu miaka mitatu sasa na hawezi kuhudumu inavyostahili.

Mwanzo, ninataka kusema pole sana kwa Meja Mstaafu Mutia kwa sababu ya ugonjwa wake. Hakuna mtu anayemtakia mwingine ugonjwa au maradhi. Hususani magonjwa ambayo yanamweka siku nyingi sana mpaka hawezi kuja kazini na kufanya kazi inavyostahili.

Ninaunga mkono Kamati hii na Ripoti walioleta hapa Bungeni kwa sababu inaomba jambo ambalo ni la busara sana. Wanataka hili suala ambalo ni la Kamishna ambaye ni mgonjwa kwa karibu miaka mitatu sasa liende kwa jopo maalum au *tribunal*. Jopo hilo litaona kama anaweza kustaafishwa au la. Tunaunga mkono kuwa ikiwa jambo hilo litakubalika, apewe marupurupu yake kwa ukamilifu na Serikali imuangalie katika masuala yake ya kutafuta huduma ya kiafya kwa sababu amehudumia nchi hii kwa muda mrefu sana. Ninakubali kwa sababu hatuwezi kuruhusu Tume ya Serikali ikae kwa muda mrefu sana bila kufanya kazi yake. Ie ndoto ya Wakenya na ndoto iliyotunga Katiba kuwa na Tume haifikiwi ikiwa hii Tume haitafanya kazi yake.

Vile alivyokataa kustaafu kwa hiari yake, ninakubaliana na Kamati kuwa hili jopo liungwe mkono ili lifanye kazi yake. Ningeomba hili jopo likikaa, lisicheleweshe hii ripoti kwa sababu litakuwa limemtia hofu na wasiwasi Maj. Shadrack kwa kutojua mwelekeo. Nchi inashindwa kusonga mbele katika hii sekta kwa sababu ya masuala ambayo yanaweza kuangaziwa.

Kwa hayo machache, shukrani kwa nafasi hii.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Bernard Shinali.

Hon. Shinali: Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute on this Report. From the outset, I support the Report by this Committee, which I am a Member. Having had a privilege of attending the meeting in which the petitioner presented his Petition, it came out clearly that Major (Rtd.) Shadrack Mutia has taken a long time to report to the Commission and serve Kenyans.

Having said that, I also want to appreciate the determination and desire by Commissioner, Major (Rtd.) Mutia to serve the Commission. I also want to congratulate him for the work he has done for this country. The Committee consists of many Members who have worked with Major (Rtd.) Mutia, both in the Government and in the army. Major (Rtd.) Walukhe worked with him and the Members handled this matter with a lot of passion.

I wish to reveal to this House that the Committee has also made several efforts. As it stands, there are a few Members whom we think have to reach the Commissioner and maybe convince him to resign, so that he can get his dues. Having said that, the Commission needs to serve Kenyans. The issue of quorum at the Commission is very critical. Looking carefully at the Commissioners, they are six in total from the civilian side; one from each region, the two Deputy Inspector-Generals and the Inspector-General. Right now, the Commission faces a critical challenge of raising quorum. There are six members. This House amended the National Police Service Commission Act and provided that the quorum should be six. The Commission has to raise a quorum of six and yet they are only six Commissioners.

This is one of the reasons which informed the Committee to reach this decision bearing in mind, as I have mentioned earlier, that we had friends and Members who have worked with Major (Rtd.) Muiu in the Civil Service.

Hon. Temporary Deputy Speaker, I stand here to support the Report because in the Civil Service, we have regulations which require that after six months when a member is on medical leave, he is paid salary and thereafter his salary is terminated. So, as we speak, Maj. (Rtd.) Muiu does not earn any salary. On that note, we have a feeling that for him even having the position does not benefit him financially. We recommend that this Report on Major (Rtd.) Muiu be sent to the President for him to constitute a tribunal to look into issues or better ways of retiring Maj. (Rtd.) Muiu if he is found to be medically fit. Efforts by the Committee to reach him were fruitless besides having spoken and promised to come physically to the Committee to defend himself.

With those few remarks, I wish to support this report.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Maison Leshoomo.

Hon. (Ms.) Leshoomo: Asante sana, Naibu Spika wa Muda, kwa kunipatia hii nafasi nichangie Hoja hii. Kwa kweli, kuna mambo ambayo watu wanaona ni magumu kwa kila Mkenya. Kulingana na hii Ripoti, Maj. (Rtd.) Muiu, ingekuwa muhimu ikiwa mtu amekuwa mgonjwa--- Huwezi kujiletea ugonjwa. Hakuna mtu anajua ugonjwa unaweza kuingia mwilini mwake siku gani lakini wakati unawahudumia Wakenya na uwe mgonjwa, ni muhimu utambuliwe kama shujaa wa Kenya na ukiondoka kazini, uondoke inavyostahili.

Tume hii inawatatiza watu wengi. Ninashukuru Kamati ya Masuala ya Usalama na Utawala. Kuna mambo yanaendelea kwa wafanyikazi wa Serikali ambao ni polisi. Kama juzi tuliona mengi kwa gazeti. Maafisa wa Serikali walisimamishwa na wengine 70 walifutwa. Ingekuwa muhimu pia kuangalia kwa undani kwa sababu ukiambiwa watu 70 wamefutwa kazi ama wameondoka, sijui kama wote ni wabaya ama wote wataenda na malipo yao ya uzeeni ama wataenda kwa njia gani. Kwa hivyo, ninaunga mkono Kamati ya Masuala ya Usalama na Utawala. Waendele kuangalia hayo mambo kwa sababu tukizungumzia kustaafu kwa Maj. (Rtd.) Muiu, pengine kesho utapata kesi nyingine.

Kamati ya Masuala ya Usalama na utawala inafaa kuangalia kindani ni nini kinachoendelea kwa sababu ukiangalia hata saa hii, utapata tunayo shida kupigana na utovu wa usalama. Hujui kama ni kwa sababu ya haya mambo yote wanafanyiwa yanamfanya ashindwe kufanya kazi au ni mambo mengine. Pengine hajui atatoka kesho na atatokaje.

Ninaunga mkono hii Ripoti ya Kamati lakini ni vizuri waangalie idara ya polisi. Tuna shida kubwa katika idara ya polisi. Jambo hili linapaswa kuangaliwa kwa kina.

Asante, Naibu Spika wa Muda, kwa kunipa fursa hii.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker, for giving me the chance to contribute to this important Report.

Looking through this Report, and at the same time listening to my colleagues who have made contributions, there are some facts which are coming out of this debate which we cannot ignore.

One of the facts is that the NPSC has a very clear national mandate. It must be seen to be operating and delivering on that mandate. The second fact is that, with the way the Commission

is currently constituted, it is facing challenges to do with quorum. When that happens, it may not be able to conduct business effectively.

The third fact is that when you look at our Constitution, there is a very clear provision that somebody can leave office because of poor health. The Commissioners or all Kenyans who work for the Government are expected at one point to leave office on the basis of poor health.

On the other hand, there are also facts to do with this Commissioner. None of us is questioning the service he has delivered to this country throughout his life as he has worked in various positions. The other thing which is also not being questioned is the fact that this Commissioner got sick while he was on duty doing the work of this Commission. The third fact is that the Report has not confirmed to us how sick the Commissioner is or what is ailing him in terms of a medical report. When you put all these facts together, you realise that this Committee must have been between a rock and a hard place. Making a decision in such a situation becomes very tricky.

I want to propose that while it is important that the Commission delivers on its mandate, we must also realise that we are all human beings and we can get sick. In case I become sick as a Member of Parliament, I would like to be treated fairly. This guy is bed-ridden. If I was the one in that state, my family would be very concerned about how I get treated by Kenyans because I got sick while on national duty. Even as we adopt this Report, we need to bear in mind that it would be very unfair if this Commissioner, who is bed-ridden, was to be dragged through a tribunal. It means that you have to drag him from wherever he is to Nairobi and the tribunal asks all these hard questions and takes him through medical tests. I do not know whether at any point this Commissioner has been presented with a retirement package for him to consider. I have heard some Members say---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Manson Nyamweya, what is your point of order? Give me a minute, Hon. Mulu.

Hon. Nyamweya: Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to raise this point on the Petition. I have gone through this letter and I have noted that it is not dated when it was received. I thank the Committee for taking the action that they took. Two, the signature of this letter and the identification card attached to the person are different. It is as if it is an identification card of 8th February, 2014. I have a challenge.

If you also look at the Petition, you will find that they did not leave a telephone number on which they could be reached. So, I am just raising very genuine issues. It could be an oversight on the Members but if you look at the Petition, the signature is different from what is in the identification card. The letter is not dated. There is no physical address where you can reach these people. It could be an oversight. The Speaker could have been busy and passed it over but the authenticity of what we are discussing is what I am raising. One, the letter is not dated. Two, there is no physical address. Three, there is no telephone number on how they were reached. We have taken our time to discuss this issue in the National Assembly---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chairman, do you want to respond to that? Go ahead.

Hon. Abongotum: Thank you very much, Hon. Temporary Deputy Speaker. I want to invite Hon. Nyamweya to paragraph one on page three of this report that says:-

“The Petition was tabled before the House pursuant to Standing Order No.225 (2)(b) by the Hon. Speaker of the National Assembly on behalf of Mr. Simon Katee and Juhudi Support Centre on Thursday, 8th October, 2015.”

I just want to confirm to the House that all these documents were brought and were properly before the Committee.

I do not know the Petition Hon. Nyamweya is reading. I want to confirm to the House that we looked at all these issues and everything was in order.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You have taken the words out of my mouth. That is exactly what I was going to say. This Petition has gone through all the relevant processes. It went to the Committee and found itself here as a Report, Hon. Nyamweya. So, we can put that issue of validity of the Petition to rest.

Proceed Hon. Makali Mulu.

Hon. Mulu: Thank you, Hon. Temporary Deputy Speaker. I was just making my concluding remarks. What I was saying is that even as you make sure that the Commission does its work effectively, we also need to look at how this commissioner is handled and treated by this House because we are going to set a precedent in terms of how we operate in future. I am concerned that some of us might be in this stage in future. We need to demonstrate that compassion that this Commissioner has been sick and he needs to be given fair treatment. My proposal would be, if it is possible, because he is not earning any salary as we are talking, that a very attractive package be prepared and possibly presented to this commissioner so that even as he does his retirement letter, he is well taken care of in terms of his retirement package. His family will also appreciate that he has done good work in this country and the services delivered are also appreciated by the same Kenyans he has been serving.

With those remarks, I want to propose that Hon. Kamama's Committee shows the compassion we are all pleading for this Commissioner.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we have canvassed that Report on the Petition adequately. Now, I want to give the Mover a chance to reply.

Yes, the Chairman of the Committee, Hon. Kamama.

Hon. Abongotum: Thank you, Hon. Temporary Deputy Speaker. I wanted to be generous enough by giving Hon. Waluke and Hon. Ndiege some minutes but now that the time is not there, it is only five minutes, let me just complete. I have heard the concerns and pleas on the issue of this Petition.

Hon. Temporary Deputy Speaker, we will approach this issue with the spirit of *ubuntu* and compassion. As I stated earlier, I know this officer as an extremely dedicated officer who served our country with distinction and rare sacrifice. That is why I want to say that we will go as a Committee out of our way to ensure that we even give submissions to this tribunal to ensure that this Commissioner gets a soft landing, *ex gratia* and his gratuity. This tribunal should go out of its way to ensure that Kenyans who have served their country with patriotism and dedication do not leave with frustrations. We will ensure that it happens. We will also work very closely with the Commission to ensure that upon receiving the report from the tribunal, it also does what is necessary to ensure that this officer is given a soft landing.

Like you heard from many Members, this is an officer who went out of his way in 1992 to crash a military coup that wanted to take over leadership through extra constitutional means. So, such officers should be treated the way we have treated the late Gen. (Rtd.) Mulinge, Gen. (Rtd.) Mahamud Mohammed and all those other officers. I am even told that one of my Members

here, Maj. Waluke, also did his part. So, we will ensure that this Commissioner gets justice. We will approach the issue with compassion and the spirit of *ubuntu*.

Thank you very much, Hon. Temporary Deputy Speaker.

I beg to reply.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will not be putting the Question for obvious reasons. We will put it at the right time. So, Hon. Members, the time being 6.30 p.m. this House stands adjourned until Thursday, 29th October 2015, at 2.30 p.m.

The House rose at 6.30 p.m.