

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 13th November, 2013

The House met at 2.30 p.m.

[Hon. Deputy Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

DELEGATION FROM PARLIAMENT OF TANZANIA

Hon. Deputy Speaker: Please, settle down, Members. I have a Communication. I allow the Members who are at the door to come in.

(Hon. Members entered the Chamber)

Hon. Members, I wish to introduce to you and welcome to this House a delegation from the Parliament of the United Republic of Tanzania. They are as follows:-

Hon. Pindi Hazara Chana, MP - Leader of the Delegation
Hon. Felix Francis Mkosamali, MP
Hon. Fakharia Shomari Hamis, MP
Hon. Rukia Kassim Ahmed, MP
Hon. Mustapha Boay Akunaay, MP
Hon. Ramadhan Haji Saleh, MP
Hon. Jasson Samson Rweikiza, MP
Hon. Tundu Antiphas Mughway Lissu, MP
Hon. Deogratias Aloyce Ntukamazina, MP
Hon. Ali Khamis Seif, MP
Hon. Mariam Reuben Kasembe, MP
Hon. Abdallah Sharia Ameir, MP

(Applause)

They are accompanied by Mr. Yona Peter Kirumbi, a Committee Clerk. They are members of the Parliamentary Committee on Justice and Legal Affairs and are visiting the Kenya National Assembly to benchmark on matters relating to administration of justice, legal and constitutional reforms. On behalf of the House and on my own behalf, I wish the delegation a very fruitful and happy stay in Kenya.

(Applause)

Next Order.

PAPER LAID

The following Paper was laid on the Table:-

Report of the Kenya Defence Forces in respect of the deployment at Westgate Mall as per the Constitution and KDF Act provisions.

(By hon. A.B. Duale)

Hon. Deputy Speaker: Okay. I now refer this report to the Departmental Committee on Defence and Foreign Relations for their consideration. Any other Papers to be laid? If none, we move to the next Order.

NOTICE OF MOTION

ADOPTION OF PUBLIC ACCOUNTS COMMITTEE REPORTS

Hon. Ababu: Hon. Deputy Speaker, I beg to give notice of the following Motion:- THAT, this House adopts the Reports of the Public Accounts Committee on the Government of Kenya Accounts for the Financial Years 2008/2009 and 2009/2010, laid on the Table of the House on Wednesday 19th December, 2012.

Hon. Deputy Speaker, these are reports that were laid before this House just before the Tenth Parliament dissolved and the rules of this House allow the subsequent House - the 11th Parliament - to proceed and debate them.

Thank you, hon. Deputy Speaker.

STATEMENTS

Hon. Deputy Speaker: Next Order. There was a response by the Chair of the Departmental Committee on Lands that was not prosecuted because the Member was not in the House. Is the Member now available? Was it the hon. Lemanken Aramat? Okay; Chair of the Departmental Committee on Lands, can you proceed?

Hon. Mwiru: Thank you very much, hon. Deputy Speaker. This was a matter that was supposed to have been responded to in the morning. By good luck, we have been communicating with the hon. Member. We had undertaken that the Statement would be given in the afternoon and I am happy that the hon. Member is around. Therefore, I want to reply.

This request was made by the Member for Narok East Constituency, hon. Lemanken Aramat. He sought a Statement from the Chair, Departmental Committee on Lands, on encroachment of the Kenya Agricultural Research Institute (KARI) land in Naivasha. In his request, he sought a clarification of the status of the occupation of the land, and the measures that the Government has taken to have the land revert to KARI.

The Committee invited the Director, KARI, who appeared before it and gave a brief on the invasion of the KARI land by the Isahakia Self Help Group and others and the efforts being made to have the land revert to the institute.

The Committee also invited the Cabinet Secretary for Lands, Housing and Urban Development, who appeared before it to respond to Members' queries and address their concerns on the issue. I now wish to respond to the House as follows:-

On the status of the occupation of KARI land in Naivasha, this land comprises of several parcels as follows: LR No.427 comprising of 210.4 hectares registered in the name of the Central Land Board. This land has not been encroached on. LR Nos.43858 and 3989/7 are registered in the name of KARI and there is no encroachment. LR No.5210, measuring 1,308 hectares has not been issued to KARI and has been encroached on. On LR No.5211/R comprising of about 330.9 hectares, KARI is on the ground and has institutional houses and paddocks although in December, 2010, it was erroneously allocated to Naivasha Isahakia Self Help Group. The allocation was revoked later on vide letter Ref.9447/24/38 dated 11th April, 2011. This was done after it was established that KARI was in possession of the land and the allocation was made on misinformation.

The efforts the Government has made to ensure that the land reverts to KARI are as follows: Some parcels of KARI land were irregularly and illegally alienated to private individuals and entities, and the Ministry was pursuing repossession and restoration of the same to KARI. This concerns LR No.3989/1, which measures 28 hectares. The land was allocated to a Mr. J.M. Hungu in 1995. LR No.5211, that measures 514.4 hectares, was allocated to M/s Kimonda Ltd. and Kingpin Kenya in 1997, who have since subdivided it and sold some of the plots. KARI is, however, in possession of the land. LR No.5212, measuring 400.65 hectares was allocated to Pigo Ltd. and has been subdivided and leased to flower growing firms. LR No.12248, measuring 240 hectares, was allocated in favour of Sarah Nyambura in 1977, and has been subdivided and some portions disposed of.

The Cabinet Secretary assured the Committee that the registered parcels will be issued to KARI immediately, while those with individual titles will be registered in favour of KARI once the repossession process is concluded.

The Ministry is working closely with the National Land Commission to ensure that KARI land reverts to the institute.

On the concerns of the Committee, KARI Naivasha Centre, the Committee noted that the role played by the centre in the development of dairy, poultry, sheep and goats as well as a Sahiwal Research Programme was enormous. The centre holds the largest Sahiwal pure breed herd in the world and, therefore, is of economic value to the country. Furthermore, the centre supplies improved animal genotypes to pastoral communities, thereby improving their livestock and income.

The Committee further noted that the centre was upgraded to a regional dairy centre of excellence, serving the Eastern and Central African region, hence the need for the protection of all its land.

On the protection of public land from encroachment, the Committee observed that Isahakia Self Help Group were enjoying protection from the Administration Police, and that administration personnel have been reluctant to give the institute the required assistance in evicting the invaders. A High Court ruling dated 23rd March, 2012, ordered them to vacate the land within 45 days.

On the delayed repossession of KARI land, the Committee observed that the Provincial Administration was reluctant to come to the institute's aid. This is because the invaders settled on the land with the help of armed police officers. The Committee noted that disciplinary measures ought to be taken by the Chief of Staff and Head of Public Service against the

Provincial Administration in Nakuru region. Furthermore, the Ministry should fast-track repossession of the said parcels of land to enable the institute discharge its mandate optimally.

Hon. Deputy Speaker, threats were even extended to a Member of my Committee and the Committee recommends that the Ethics and Anti-Corruption Commission (EACC) investigates the matter and reports to Parliament by 31st December, 2013.

The Committee noted that since the land was allocated in 1997, to date the Government has been reluctant to have the irregular allocations revoked. The Committee noted that it was a threat to national food security for animals to be allowed to graze indiscriminately on KARI land due to the quarantine nature of the research centre on its livestock. The indiscriminate breeding interferes with the research livestock breeding programme at the institute, and ought to be curtailed.

Thank you, hon. Deputy Speaker.

Hon. Aramat: Thank you, hon. Deputy Speaker. I thank the Chairman of the Departmental Committee on Lands, although I request that whenever a Statement is prepared in response to a request, the Member should be given a copy of the response in advance, so that he can raise some questions. I was just called this morning and I am sorry that I was not in the House early in the morning. As you know, there is biting drought in our constituencies and I was on the ground trying to sort out water problems.

As much as we are saying that these parcels of land are secure, KARI still has large parcels of land that have been taken. Many institutions in Kenya face such a problem. There is need for the Government to quickly issue institutions with title deeds, so as to secure their land.

KARI in Naivasha is in a sorry state; I know it because I come from that area. We breed Sahiwal animals within Suswa, Narok East, Kajiado and Trans Mara, and we normally get our animals from that institute. It is unfortunate that drought is biting now, and animals are dying because all the KARI land has been taken by people. Food security in this country is threatened as we watch. I ask the Chairman to move quickly to revert that land to KARI.

Hon. Deputy Speaker: Hon. Serut, do you want to ask further clarification?

Hon. Serut: Thank you, hon. Deputy Speaker. If I heard the Chair of the Departmental Committee on Lands correctly, he said that KARI is still in possession of the land, but a number of pieces of land have been sold. Could he clarify what he means by saying that KARI is still in possession of this particular piece of land, yet the same land is said to have been disposed of?

Hon. Mwiru: Hon. Deputy Speaker, I will begin with the concerns of hon. Aramat. Indeed, it is only that the Member was not in the House, and I understand the problem that he was going through in his constituency. The answer to his Statement was available in his pigeon hole from yesterday. It is only that he was not around, but now that he has the response, he has interrogated it.

On the issue of several pieces of land that belong to KARI being encroached on, I am on record, as the Chair, during the interrogation of KARI when the management and the Director appeared before us, advising them to profile all their land, so that they could secure the necessary documents and prevent further encroachment. That is an exercise that they are going on with. When they appear before us, we will help them.

With regard to hon. Serut's concern, I said that some pieces of land have been encroached on. I have given quite a number of L.R. numbers, which are blocks of land within the area. Some pieces are not encroached on and those are the ones which I am saying that KARI is still in possession of. However, there are some which have been encroached on and the

recommendation we have made is for the authorities to make sure that these pieces of land are repossessed and reverted to use by KARI.

The Deputy Speaker: These other Members, are you on the same further clarification or on a different one? John Kihagi, are you on a point of order?

Hon. Kihagi: No, I am on the same, hon. Deputy Speaker.

The Deputy Speaker: You are on further clarification on the same Statement?

Hon. Kihagi: Yes, hon. Deputy Speaker. I am on this as the bona fide Member for Naivasha, and also as a Member of the Committee on Lands. As the Chairman has said, the Committee interrogated the matter with KARI management; I believe the state of KARI ownership of the land has been well amplified. KARI Naivasha is the premier agricultural research station in the country. It was established more than 100 years ago and its contribution towards the betterment of agriculture in this country cannot be over-emphasised. As the Chairman has said, quite viable agricultural research is happening at the station. A few weeks ago, KARI, Naivasha, came up with a cure for a lethal maize disease that we have seen in this country in the last few years. It has also been identified as a regional centre of excellence in dairy farming---

Hon. Deputy Speaker: I need to know what you are doing, hon. Kihagi. Is it a point of information, or are you going to seek further clarification? I need to know where you are taking us.

Hon. Kihagi: There is a point I am driving at.

Hon. A.B. Duale: Hon. Deputy Speaker, you need to give clarification to the House. What we are seeing is a Member of a Committee seeking clarification from his Chair on a matter in which he was involved. We need to have clarification. The Member for Naivasha is a Member of the Lands Committee and now he is seeking a clarification from his own Chair. This is ridiculous. We need direction.

Hon. Deputy Speaker: Hon. Kihagi, that is why I asked you from the beginning whether you were on a point of order, and I waited to hear where you were taking us and whether you were on a point of information. Now, you are confusing us.

Hon. Kihagi: Hon. Deputy Speaker, the point I want to drive home--- I just want to amplify what the Chairman has said about the Isahakia Community, who are occupying KARI land. I believe they are occupying that land on mis-information and manipulation by certain characters within the Government. The Chairman has said that last year a revocation of the 330 acres was hurriedly done; it had been allocated to this community. One Peter Kahuho revoked the allotment letter. A lot of people in the Government and within the political class have been trying to grab land in Naivasha in the name of the Isahakia Community. The Isahakia Community came to Naivasha together with Lord Delamere when he was settling around KARI land. He was also instrumental in the establishment of KARI, Naivasha. The point I want to drive home is that there are historical and current injustices happening to the Isahakia Community, and they are being manipulated by political and Government characters. They are being used as a tool in land grabbing. The National Land Commission and the relevant Ministry should move to ensure that the historical injustices occasioned to Isahakia Community, even as they move out of the KARI land, are addressed and they are properly settled as citizens of this country and my constituents.

Hon. Deputy Speaker: Okay; I will take that as a point of information, hon. Kihagi. Chairman, had you finished?

Hon. Mwiru: Hon. Deputy Speaker, I will be magnanimous enough to comment a little on what my Member has said. It is only necessary that this House handles matters as they come. The Isahakia case is a matter that the Member is very well placed to bring to my Committee as a member of the Committee also. He can afford to raise the same as an injustice, so that we can tackle it. For now, the question that was raised was about KARI getting its land back. Therefore, his is misplaced information for now.

Hon. Deputy Speaker: So, you are not welcoming the information? Let us move from there, Members. What about ole Kenta? Are you on the same matter?

Hon. ole Kenta: Hon. Deputy Speaker, in fact, I am shocked that the Chairman of the Committee can talk about having not addressed the issue of the Isahakia. This is a historical injustice. These people have been there since early 1900. So, even if he is talking about KARI, the issue of the Isahakia should not be forgotten. It should have been addressed. Where will you take these people? They have been on those farms for generations, and it is important that the Committee should have addressed it; it should be raised as a very important national matter.

Hon. Deputy Speaker: Are you also a member of that Committee?

Hon. ole Kenta: I am not.

Hon. Deputy Speaker: So, hon. Chair of the Committee, is this a different question altogether, or is it related to the question that you have answered?

Hon. Mwiru: Indeed, hon. Deputy Speaker, this is a matter for another day. This is so that we are able to get into the historical injustices of the Isahakia Group.

Hon. Deputy Speaker: Okay then. So, let the matter rest there. As you have seen there is interest in this Isahakia group led by John who is a Member of your Committee. Can you, please, prosecute it? As we said, you do not need us to give you instructions on what to work on in your Committee. Whatever you feel is within your mandate, you go ahead and investigate and bring the findings in a report to this House.

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, pursuant to Standing Order No.44(2)(c) hon. George Oner Ogalo, Member for Rangwe Constituency had requested for a Statement---

Hon. A.B. Duale: On a point of order, hon. Deputy Speaker. I think Wednesday afternoon was only meant for receiving requests and not response to requests for Statements. That was the procedure that the Speaker gave in his Communication. It is only for requests and not for Chairpersons to give responses.

Hon. Deputy Speaker: Hon. S.W. Chege you are supposed to be making a request about IFMIS and not answering to a Member.

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, I thought I got advice from you in the morning that because time has elapsed for this question, then I could answer this afternoon. So, I stand to be guided on the same.

Hon. Deputy Speaker: Hon. Members, allow this because it was--- It is not the norm. The norm as you have said is that today is request time. I will allow this because I had allowed you in the morning, but just this one.

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, I would also like to know whether hon. George Ogalo Oner is in the House.

Hon. Deputy Speaker: Is he present? Hon. Members we have agreed that if the Member is not in the House we cannot be answering a question that we cannot ask supplementary questions.

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, in that case let me place my request for a Statement.

REQUESTS FOR STATEMENTS

REPORT ON INTEGRATED FINANCIAL MANAGEMENT INFORMATION SYSTEM ACADEMY

Pursuant to Standing Order No.44(2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Finance, Planning and Trade concerning the Integrated Financial Management Information System (IFMIS) Academy.

In his Statement the Chairperson should inquire into and report on the total number of staff contracted as trainers in the IFMIS Academy stating their nationalities and the number of individuals who have been trained in the academy since its inception and the courses being offered at the same academy.

The Chairperson should give us the measures the Government has put in place to ensure that non-Kenyans are not offered employment in areas where there is local expertise and whether the academy is State-owned or is a private body. The Chairperson should state the amount of money the Government has spent on the academy since inception.

Hon. Deputy Speaker: Could we get an indication as to when that response can be received? Is the Chairman or the Vice-Chairperson present?

Hon. Dawood: Hon. Deputy Speaker, we will give an answer in the next three weeks. I will communicate this to my Chairman.

IMPLEMENTATION STATUS OF RETIREMENT POLICY FOR PERSONS LIVING WITH DISABILITIES

Hon. Wetangula: Hon. Deputy Speaker, pursuant to Standing Order No. 44(2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the implementation status of the Government policy on the retirement age for persons living with disabilities.

The then Ministry of State for Public Service vide letter dated 29th May, 2012, Reference No.MSPS/HRM/2/2/Vol.221 raised the mandatory retirement age for public servants living with disabilities from 60 years to 65 years. In the Statement, the Chairperson should inquire into and report on:

(i) the number of civil servants currently affected by this policy and the Government office charged with enforcing the same under the new dispensation;

(ii) whether or not the Central Bank of Kenya is bound by this policy as is evidenced by Mr. Bernard M. Mutua, Staff No.1341 who has been advised to retire on 31st December, 2013 upon attaining the age of 60 years;

(iii) the number of civil servants who have been forced to retire at the age of 60 years despite the existence of this Government policy.

Hon. Muchai: Hon. Deputy Speaker, both the Chairperson and the Vice-Chairperson are not in the House. The importance of that question cannot be underscored. It involves a number of inquiries to be made. I will request the Member to give the Committee at most three weeks to come up with a reply.

Hon. Deputy Speaker: Hon. Wetangula, you will get your response in the next three weeks once they have done the relevant investigations. Hon. Kabando wa Kabando.

STATUS OF KROLL REPORT

Hon. Kabando wa Kabando: Hon. Deputy Speaker, I have two requests to make. Pursuant to Standing Order No.44(2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Finance, Planning and Trade on the monies amounting to US\$2 billion, approximately Kshs85 billion illegally stashed abroad by way of cash in banks, land, ranches, shares in companies *et cetera*.

Hon. Deputy Speaker, a report by Kroll Associates UK Limited which was commissioned by the Government to investigate the matter shows that the accumulated illicit capital flight from Kenya hidden in over 40 tax havens around the world amounted to a staggering Kshs566 billion or approximately US\$6.4 billion as of 2010.

In the Statement the Chairperson should inquire into and report on:

- (i) the status of the Kroll Report;
- (ii) the amount of money paid to Kroll Associates UK Limited by the Government of Kenya;
- (iii) how much of the money detailed in the Report has been recovered to date; and
- (iv) measures the Government is taking to ensure compliance and prevent misappropriation and illicit transfers of public finances to tax havens.

MEASURES TO STOP TAX EVASION BY MULTINATIONAL FIRMS

In my second request, pursuant to Standing Order No.44(2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Finance, Planning and Trade on the monies in unpaid taxes recently recovered from multinational firms amounting to Kshs4 billion.

Hon. Deputy Speaker, recent audits on multinationals operating in Kenya reveal that some have been evading taxes through what is called transfer pricing. It emerges that whereas Kenyan taxpayers diligently bear the heavy burden, foreign multinationals appear to get away with payment of taxes with ease contrary to Section 45 of the Anti-Corruption and Economic Crimes Act, 2003.

Hon. Deputy Speaker, in the Statement the Chairperson should do the following:

- (i) provide a detailed report containing the names of the offending companies, including which sector is most culpable;
- (ii) state exactly how much has been recovered in bad taxes and penalties and from which period or duration of time; and,
- (iii) state the measures the Government is taking to prevent such blatant tax evasion, including demonstrating how such serious economic crimes are being dealt with according to the full force of the law.

Hon. Deputy Speaker: Is the Chair or Vice-Chairperson present? Is hon. Dawood going to answer on behalf of the Committee?

Hon. Dawood: Thank you, hon. Deputy Speaker. The issues raised in the Statement request by hon. Kabando wa Kabando are very weighty. We need a minimum of four weeks, because there is a lot to be prosecuted. We will invite even the hon. Member, if he knows more, to present the same to the Committee. On the second Statement request, three weeks is okay. We will get the transfer pricing document from the Kenya Revenue Authority.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Dawood, remember that we now have trackers for Statements and Bills. So, as you give assurances that it will be done in three weeks' or two weeks' time, remember that we will track your pronouncements.

Yes, hon. Nassir.

Hon. Nassir: Thank you very much, hon. Deputy Speaker. I have two Statement requests, both of which are going to the Chairperson of the Committee on Education, Research and Technology.

PAYMENT OF HOUSE ALLOWANCES TO CITY SCHOOL TEACHERS

Pursuant to Standing Order 44(2) (c), I wish to request for a Statement from the Chairperson of the Committee on Education, Research and Technology regarding payment of house allowances by the Teachers Service Commission (TSC) to teachers in city schools. Article 184 of the Constitution and Section 60 of the Urban Areas and Cities Act, 2011 clearly state that Mombasa and Kisumu are cities, but to date the applicable city house allowances have not been implemented for teachers working in Mombasa. The Chairperson should inquire and report on the following:-

(i) why the TSC is not implementing this policy yet the relevant laws clearly state that Mombasa and Kisumu are cities; and,

(ii) state, giving definite timelines, when the teachers within city schools should expect the applicable house allowances.

NON-PAYMENT OF INVIGILATORS/SUPERVISORS OF EXAMINATIONS BY KNEC

Hon. Nassir: Hon. Deputy Speaker, the second Statement request is in regard to payment of supervisors and invigilators of the Kenya Certificate of Secondary Education (KCSE) examination by the Kenya National Examinations Council (KNEC) in Mombasa County. Supervisors and invigilators have not been paid for work done during the 2011 and 2012 KCSE examinations. Therefore, I would like the Chairperson to inquire into and report on the following:-

(i) policy measures that the KNEC has put in place with regard to payment and other terms of engagement of staff charged with the responsibility of overseeing the administration of KCSE and Kenya Certificate of Primary Education (KCPE) examinations; and,

(ii) give reasons for the delay in the payment of the invigilators and supervisors and state when they will be paid.

Thank you very much, hon. Deputy Speaker.

Hon. Deputy Speaker: Vice-Chairperson of the Committee, could you give an undertaking?

Hon. Melly: Hon. Deputy Speaker, as a Committee, we are going to convene and invite the relevant authorities. We will report back to the House after two weeks.

Hon. Deputy Speaker: Okay, two weeks it shall be.

What is it, hon. Shariff?

Hon. Nassir: Hon. Deputy Speaker, I just want a clarification as to whether it is two weeks for both Statement requests.

Hon. Melly: Hon. Deputy Speaker, we need two weeks for both requests because the Ministry officials are currently engaged in administration of examinations. We will be able to furnish the House with a full report on the two requests after two weeks.

Hon. Deputy Speaker: Yes, hon. James Gakuya.

KENYA'S ROLE IN FOREIGN GLOBAL FUND CONFERENCE

Hon. Gakuya: Hon. Deputy Speaker, pursuant to Standing Order 42(2) (c), I wish to request for a Statement from the Chairperson of the Committee on Health regarding the Foreign Global Fund Conference to be held early December in Washington DC. The aim of the conference is to raise US\$15 million to drive the implementation of the Global Fund strategy to fight HIV/AIDS, tuberculosis and malaria so as to save 10 million lives. The conference also will seek to institute measures to prevent between 140 million and 180 million new HIV/AIDS, tuberculosis and malaria infections in several parts of the world, including Kenya. The Chairperson should inquire into and report on the following:-

- (i) the role that the Government will play in the conference; and,
- (ii) whether Kenya stands to benefit from the Fund.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, hon. Antony Kimaru.

Hon. Kimaru: Hon. Deputy Speaker, I am still waiting to request for a Statement. I do not wish to contribute to that one.

Hon. Deputy Speaker: No! No! No! I am asking you to make your request.

Hon. Kimaru: I do not know if he got a response from the Chair on how soon the Statement he has requested will be brought.

Hon. Deputy Speaker: I am sorry, hon. James Mwangi. That was going to help. Is the Chairperson of the Committee on Health in the House?

Hon. (Ms.) Nyamai: Thank you, hon. Deputy Speaker. I note this important Statement request from hon. Gakuya, who is also a Member of my Committee. He talked about a conference that is going to take place in the first week of December. We will respond to the matter within a week.

Hon. Deputy Speaker: Okay, one week it shall be. Let us now hear the request by hon. Kimaru.

MEASURES TO ADDRESS LAND OWNERSHIP CONFLICT IN LAIKIPIA NORTH

Hon. Kimaru: Hon. Deputy Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairpersons of the Committees on Land and Administration and National Security regarding the tension that threatens to turn into widespread violence amongst communities inhabiting Laikipia County. Simmering tension over land and grazing areas threatens to disrupt peace between local communities as well as between local communities and ranchers. There have already been incidents of arson, including the burning of a police post in Tutu area and the burning of Loisaba Lodge in Laikipia North Constituency. We have also had invasion of private land and eviction of non-Maa-speaking residents in Ereri, North Tetu, Kimuri and Kimagandura in Laikipia North Constituency. Therefore, the Chairpersons of the Committees should inquire into and report on the following:-

- (i) whether those alleged to have incited members of the public to invade private land and commit arson have been arrested and whether the invaders have been removed;
- (ii) why the Ministry of the Interior and Coordination of National Government has not done anything to address the worsening security situation in Laikipia County;
- (iii) immediate measures being taken to prevent the situation from degenerating into full scale conflicts; and,
- (iv) efforts being undertaken by the National Land Commission to address the outstanding grievances over land in the greater Laikipia County.

Hon. Deputy Speaker: This looks like a joint committee's work. I do not know whether the two chairmen will give an indication.

Hon. Mwiru for Departmental Committee on Lands and Natural Resources

Hon. Mwiru: Thank you, hon. Deputy Speaker. When I found these Statement requests, I was able to consult with my co-Chair, Member for Tiaty, hon. Abongotum. What I can say from the outset is that there must be mutual respect, whether there was historical injustice or not; there is always a procedure. There must be some sanctity of land title in this country.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! The consultations are too high.

Hon. Mwiru: Therefore, since this matter is serious and is about to blow up clashes of some sort, I have agreed with my co-chair that we give the Statement in two weeks' time, so that the area can be calm.

Thank you hon. Deputy Speaker

Hon. Deputy Speaker: Okay; this is a matter that has been raised severally, and I think you need to treat it with the urgency it deserves.

Yes, hon. Abongotum

Hon. Abongotum: Hon. Deputy Speaker, what the hon. Member is raising is very genuine. I live not far from Laikipia North. In 1993 we lost 60 people within that area because of these conflicts between pastoralists and farmers. So, I want to co-operate with my co-Chair to ensure that this report is here in two weeks. Meanwhile, I will inform the Cabinet Secretary for Interior and Coordination of National Government to ensure that pastoralists respect title deeds and their district boundaries, because that is the main problem. Moving around without any direction and without getting permission from other communities, from other districts, will not be entertained. So, two weeks, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, we have a lot of business and I do not want to entertain any more issues on Statements, if you will allow me. I will give the last chance to hon. Kang'ata. If you are not in the House, then the Statement is dropped.

The rest of the Members, I do not know where--- If you are not on this list, and you have a Statement that you are expecting to request, then, please, ensure that you inform the Clerks in time after approval. I see hon. Tonui has a point of order.

Hon. Tonui: Thank you, hon. Deputy Speaker. Yesterday you gave direction to the Committee on Agriculture, Livestock and Cooperatives to give a response to my request for a Statement on tea bonuses. We waited for it in the morning, it was not presented. In the afternoon, I consulted the Chair and we were here for him to respond; I think he checked through the list, and it was also not appearing on the Order Paper.

Hon. Deputy Speaker: He did not see it on the list, but as you have said today is for requests. We want to try and organize ourselves. I have been informed that your Statement will be read tomorrow, when requests will be responded to.

Hon. Members, this other long list of hon. Gichigi, hon. Kihagi and hon. Kipyegon, please allow us to move to the next business because of its nature. Hon. Members, before I move out of Statements I have a communication.

Members, Order!

COMMUNICATION FROM THE CHAIR

DEBATE ON *UWEZO* FUND REGULATIONS

This is with respect to the Communication from the Chair on consideration of the *Uwezo* Fund Regulations. Hon. Members, you will recall that the Public Finance Management *Uwezo* Fund Regulations, 2013 were tabled in the House on 22nd October, 2013, pursuant to Section 11 (1) of the Statutory Instruments Act No. 23 of 2012. Thereafter, the regulations were forwarded to the Committee on Delegated Legislation for consideration. The Committee has since considered the regulations and tabled its report today morning. The House Business Committee agreed to schedule the Motion for discussion of this Report on the Order Paper for tomorrow, Thursday, 14th November, 2013. Hon. Members, I now want to guide you on procedure for consideration of the regulations.

Tomorrow the House will have a general debate on the regulations for one hour. Thereafter, the House will proceed to the Committee of the whole House to consider the regulations in detail. Hon. Members with any amendments are, therefore, requested to submit these in writing to the Clerk's office before close of business today to ensure their inclusion in the Order Paper tomorrow. Please, note that pursuant to Standing Order 133(2), no amendments will be allowed which will not be on the Order Paper. You are, therefore, encouraged to present them in good time. Hon. Members can find copies of the Committee Report at the main reception.

Thank you.

What is your point of order, hon. Ng'ongo?

Hon. Ng'ongo: Hon. Deputy Speaker, much as I agree with your ruling, the matter that you have just talked about, *Uwezo* Fund Regulations, involves a lot of input in terms legislation on financial management. We have to get it right, if this fund is to succeed in its objective. I was just wondering what could be the reason for bringing this matter in a hurry. From now to 6.30, we are expected to prepare, read these regulations together with the Report of the Committee, make suggestions for amendments and debate this matter tomorrow. Why could we not have time to transact this issue even next week? If there is no reason I would request that the Chair reconsiders the ruling and allows us more time to look into the proposed regulations.

Hon. Deputy Speaker: Hon. Members, I am sure you are like me; everybody in the country is asking for *Uwezo* Fund. We have invited the Cabinet Secretary on several occasions and I know that Committee Report is very short. You do not need another week to go and look at it. Hon. Ng'ongo, I know you take your work very seriously; I am sure the rest of the Members also do so. Let us get over with this process, so that the youth and women of this country can access these funds and do something with it, instead of us talking about *Uwezo* Fund and never really getting it on the table. Please, Members, let us see if we can get this done.

Hon. Gichigi, what is your intervention?

Hon. Gichigi: Hon. Deputy Speaker, I have just received a copy of the Report of the Committee on Delegated Legislation. It is about 50 pages. I will tell this nation that, if I am not given a chance to read this document after this session has ended, I will not be able to propose any amendments. I will not have time to do it as I sit here. I really plead with you to give us a chance to look at this overnight, and then, perhaps, we can propose amendments tomorrow before midday.

Hon. Deputy Speaker: Leader of Majority Party, you know what business we have. Can you give us some guidance on this?

Hon. A. B Duale: Hon. Deputy Speaker, I will take a middle ground. Even if we bring it on Tuesday next week, I am sure some Members will not even read the Report. The Report is not 50 pages, and you know you should not mislead the House. If you read the Report, the amendments are less than 20. I will suggest we put it on Tuesday; tomorrow we do the debate, then Tuesday we do the committee; or, on Tuesday we do the debate plus the Committee of the whole House. I hope the weekend will be utilized very well and the Report will be read.

Hon. Deputy Speaker: Okay. Hon. Members, we have taken into consideration your sentiments. I have then agreed that we can do both the debate and the Committee of the whole House on Tuesday next week.

However, it means, therefore, that you still have to do your reading tonight and tomorrow because amendments must come in by the close of business tomorrow. This is because all the preparation of the Order Paper is done by the end of tomorrow. So, at least, by Friday for what is going to come on Tuesday. So, we have given you some latitude; use the time well and make sure that you get us the right amendments, so that we let this Fund be accessed by Kenyans.

Next Order.

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD

Hon. A.B. Duale: Thank you, hon. Deputy Speaker.

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

THAT, notwithstanding the provisions of Standing Order 127(4), this House resolves to reduce the referral period of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 32 of 2013) to the relevant Departmental Committee from 20 to 14 days.

Hon. Deputy Speaker, Miscellaneous Amendments Bill is huge and it touches on a number of sectors. But more fundamentally, what makes us pass this Bill before we go on recess is that one of the amendments in that Bill touches on the vetting of judges and magistrates which is coming to an end. We still have about 300 magistrates to vet.

Hon. Deputy Speaker, what we are reducing is only the period that the relevant Committee can have this Bill from 20 days, as is stipulated in the Standing Order, to 14 days. So, we are reducing the period by only about six days, so that it comes back to the House for Second Reading and Third Reading before we go for recess on 5th of December, 2013.

I would urge my colleagues that, at least, we dispose of this Bill and many others before we break for the Christmas and the New Year holidays, after which we will start the Second Session.

I would ask my colleague, my good friend, hon. Ng'ongo, to second.

Hon. Ng'ongo: Thank you, hon. Deputy Speaker. I wish to second that we allow the publication period to be reduced from 20 days to 14 days, so that this House can also have time to quickly get this Bill to the Second Reading for debate. I believe I do not want to discuss the details of the Bill, but there are issues in this Bill that we need to transact before the recess. I think it is important that we fast-track this and have the Bill debated.

Hon. Deputy Speaker, 14 days, I think, are sufficient. Twenty days is required, but even if you reduce them by six days, I do not think there is much difference.

Finally, I hope, and I repeat, that the Leader of Majority Party and House Business Committee will also consider reducing even the publication period for the VAT (Amendment) Bill that is supposed to come to this House, so that it is debated and passed before the December 5th break.

I Second the Bill.

Thank you.

(Question proposed)

(Question put and agreed to)

BILLS

First Readings

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

THE MILITARY VETERANS BILL

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

Second Reading

THE ELECTION CAMPAIGN FINANCING BILL

(Hon. (Ms.) Kanyua on 24.10.2013)

(Debate concluded on 12.11.2013)

Hon. Deputy Speaker: Hon. Members, debate on this Bill has already been finalized. What remained was only the putting of the Question.

(Question put and agreed to)

THE NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL

(Hon. A.B. Duale on 25.9.2013)

(Resumption of Debate interrupted on 12.11.2013)

Hon. Deputy Speaker: Hon. Members, I have some guidance that hon. Wandayi had a balance of seven minutes. Hon. Wandayi, you have the Floor.

Hon. Wandayi: Hon. Deputy Speaker, actually, I rose on a point of order, yesterday. I was not really contributing to the debate on the Bill. I was time barred. Therefore, I will continue to prosecute my point.

Going by the guidance that was given by the Speaker some time back, that you could raise an issue at any time in the course of the Second Reading, I just want to briefly say that it is important that we take time to address this matter conclusively. The constitutionality of the National Police Service Commission Bill is so important that we should dispense with it early enough. If we do not do so, this matter will come to haunt us, as House.

Hon. Deputy Speaker, it is important even though the Speaker exercised the discretion he is given under Standing Order No.47(3)(b) that this discretion is taken not to be open ended. The discretion under that Standing Order cannot be open ended. It must be exercised within the confines of constitutionalism, democracy and principles of good governance.

Hon. Deputy Speaker, if you look at Article 246(3)(b) of the Constitution where the National Police Service Commission is mandated to exercise disciplinary control and remove persons holding or acting in offices within the Police Service, even if we were to believe that Article 246 conflicts with Article 245 which creates the Office of the Inspector General and gives it powers, the logical step to take should be to bring a constitutional amendment Bill to this House to cure the problem. However, we cannot attempt to amend the Constitution through the back door as we are just about to do.

Hon. Deputy Speaker, the powers conferred on the National Police Service Commission under Article 246 are not transferrable to any other authority or person through a mere Act of Parliament. That is what this amendment Bill is proposing to do and if you look at it keenly, the amendment Bill is attempting to redefine the meaning of “disciplinary control” by inserting an additional clause, Clause 4. This is by defining “disciplinary control” to mean very many other things that are very vague. They are all over here. I cannot go through them because of time but one of them is that the Commission shall review and ratify disciplinary action taken by the Inspector General.

Hon. Deputy Speaker, the Commission cannot just perform the functions of rubberstamping as the Inspector General has done. The problems we have had in this country over the years are that powers have been concentrated in the hands of one individual formerly the Commissioner of Police, which powers have been misused to the disadvantage of the rank and file of the police officers. The junior police officers in this country have suffered over the years. Some of them have served for over 30 years without getting a promotion because of the powers that have been invested in one hand. That is what we are trying to do and this is against the spirit of the police reforms that we embarked on a number of years ago.

Hon. Deputy Speaker, if this House goes ahead and passes this Bill in its current form, it will be going against the Constitution. It will be reversing the gains we have made in this country on police reforms. It will be taking us back to the old dark days when the police service was a tool used by politicians to frustrate the citizens.

Hon. Deputy Speaker, this House cannot go down in history as a House which negated the gains that have been made through this Constitution, and that were realised through the sweat and blood of Kenyans. If you look at Article 245(2)(b) of the Constitution, it states:-

“The Inspector General shall exercise independent command over the National Police Service and perform any other functions prescribed by national legislation.”

Mark my words. The words of the Constitution are so clear – “The Inspector General shall exercise independent command over the National Police Service.” That is fine but if you look at what is being proposed in the National Police Service (Amendment) Bill which I am sure is coming later, it is saying under New Clause 8(A):

“Notwithstanding the provisions of any written law, independent command of the Inspector General in relation to the service envisioned in Article 245 means that the Inspector General shall be responsible for all matters relating to the command and discipline.”

Now, they have introduced a new word “discipline” in the Bill. They are conferring on the Inspector General powers of disciplinary control, which powers are not given to the Inspector General in the Constitution. The Constitution vests those powers squarely in the National Police Service Commission. We cannot use an ordinary Act of Parliament to amend the Constitution. If we want to amend the Constitution, we bring forth an amendment Bill and amend the Constitution to cure any inconsistencies that could be there. To go through the backdoor and attempt to change the Constitution through a mere Act of Parliament will be against the Constitution and, therefore, null and void.

Hon. Deputy Speaker, I want to go on record--- I can tell you that if we go ahead and pass this Bill as it is, the second day after passing it somebody will go to court and the court will find that this Bill is unconstitutional. This House cannot act in vain. We have got all the time to look at this matter and I want to plead with you to stop this debate, go ponder over it and make a considered ruling on the issues I am raising. That is very clear under Standing Order No.47. The discretion I insist the Speaker has under Standing Order No.47 is not open ended. The Speaker must be guided by the rules of democracy, constitutionalism and common sense.

Hon. Deputy Speaker, it is important that we do not introduce dictatorship through a police force that is going to be answerable to nobody other than themselves and one person in State House, perhaps. The police service must be accountable to the people and the only avenue for doing that is through accountability to the National Police Service Commission.

Hon. Deputy Speaker: Hon. Wandayi, the Chair of the Departmental Committee on Administration and National Security is on a point of order.

Hon. Abongotum: On a point of order, hon. Deputy Speaker. Thank you, hon. Deputy Speaker.

My good friend, the Member for Ugunja, is totally misleading this House because if he has read this report--- In fact the first institution that we consulted was the Commission for the Implementation of the Constitution (CIC). We had several sittings with them. The Ministry had several sittings and this institution has reported that there are no constitutional issues in this Bill. So, let us not take the route of hon. Wandayi. He is totally misleading this House that we are trying to amend the Constitution using this Bill.

Hon. Wandayi: Hon. Deputy Speaker, I really respect my friend hon. Kamama, but the same CIC he is talking about approved the Bill in its original form and now the Committee has established that there were provisions in that Bill which were against the Constitution, and which they are proposing to amend during the Committee stage. The Committee is saying in its report that there are certain sections of the Bill which are against the Constitution, particularly in the

area giving the Cabinet Secretary power to direct the Commission on the issues of human resource management. The CIC was there when the Bill was coming to the House, but he cannot tell us that the CIC is some angel. It made errors. It has made an error again now by allowing you to bring this Bill the way it is, giving powers that belong to the Commission to the Inspector General – these are the powers concerning disciplinary control over the Service.

Hon. Deputy Speaker, it is important because the disciplinary control powers have been used over the years to frustrate the National Police Service and hardworking officers. Currently, what is happening in the country is because of low morale in the police force at the lower level. That low morale is because of the bad actions of the Police Commissioner before and now the Inspector General. They have exercised powers in a manner that does not serve the interests of the people but that satisfies their own interest and, perhaps, those of a small clique of people.

Hon. Ochieng: On a point of information, hon. Deputy Speaker.

Hon. Wandayi: I accept a point of information from hon. Ochieng.

Hon. Deputy Speaker: Okay, hon. Ochieng.

Hon. Ochieng: Thank you very much, hon. Deputy Speaker. I just wanted to inform hon. Wandayi, just to help him in his argument, that if you look at Article 249 of the Constitution, it basically talks about what he is talking about now. It is about the independence of these commissions; it says this at Article 249(2) (a) and (b):

“The commissions and the holders of independent offices-

(a) are subject only to this Constitution and the law; and

(b) are independent and not subject to direction or control by any person or authority.”

So, they are not subject to the CIC. It goes on to say at Article 249(3) that:

“Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote.”

Hon. Deputy Speaker, I just want to inform him that what he is talking about is spot on to the extent that this particular Bill intends to bring a stranger into the commission by saying that the Cabinet Secretary shall be the one to approve any employment or any recruitment of staff by this commission. That is what I want to inform hon. Wandayi.

Hon. A.B. Duale: On a point of order, hon. Deputy Speaker. My good friend, hon. Ochieng, has quoted Article 249(2). That provision talks about commissions. It is all commissions. The hon. Member should not mislead the House and the country. I want to tell hon. Ochieng that before this House there is a constitutional Bill touching on a Commission called “SRC”. It is this same House that passed a report last Thursday on the Judicial Service Commission (JSC).

The National Police Service Commission is not different from these other commissions. Further, when a Bill of this nature comes to the Floor of this House, ultimately, the House has powers to reject it at the Third Stage. Yesterday, we changed the “engine” of the Matrimonial Property Bill and that fundamentally changed that law.

Secondly, before a Bill is printed, it goes through the stakeholders including the CIC. Whether you like the CIC or not it is the only commission mandated by law to oversee the implementation of the new Constitution. Every Bill must get the concurrence of the CIC which is led by Charles Nyachae. We might not like the face of Charles Nyachae or we might not like his members, but unless you do what you did to the six members of the JSC, Charles Nyachae’s input is as mandatory as any other commission.

The Speaker and the Legal Department of Parliament looked at that Bill and it was printed. The point is that you used a big phrase “commissions” to mislead the House. Let us debate, come to the Third Stage, disagree with the Committee, the owners of the Bill and say that this Bill will go back minus the amendments they wanted.

With that we can move on.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Deputy Speaker. Hon. A.B. Duale, the Leader of Majority Party has raised a very fundamental issue that you need to rule on in light of what hon. David Ochieng and hon. Wandayi have raised.

I know for a fact that this House has decided in the past and, therefore, it is on record in this House that when a Bill or a portion of it is unconstitutional, the matter will be brought to the attention of the Speaker at any time and the Speaker will make a ruling as to its constitutionality. That is a decision that was made even in the former House more than once. It was deliberated and the Speaker made considered ruling.

Hon. Deputy Speaker, we would like to know whether the House is departing from that stance and creating new procedures, rules and standards or whether we are sticking to the Constitution. I am even more worried given what the Majority Leader has said that they did yesterday because he actually led Members to bring an amendment which was unconstitutional. When that is brought to the Floor and especially, when it is brought by a Chairman of a Committee, he raises a matter that is unconstitutional and he has not given notice---

Hon. Deputy Speaker, we would like you to give a considered ruling on this issue so that people can stop sneaking in issues that are unconstitutional at the last minute. Even though I know that I must support my brother, hon. David Ochieng, on this one, I would like to encourage him as a lawyer that he should come to equity with clean hands. Yesterday, he used the same procedure he is seeking a ruling on to do something unconstitutional. Today, he is coming before the House seeking protection of the law using the same procedure. As Members of Parliament, we need to be consistent with the things we say and what we stand for. Hon. Deputy Speaker, give us your considered ruling.

We are not in a hurry because constitutional issues are weighty. Kindly, if you would and you are persuaded, stop debate on this matter and give us your considered ruling on it.

Thank you.

Hon. Abongotum: Hon. Deputy Speaker, I just want to state my position on this matter. Hon. Millie actually intends to take us back by way of procrastination. I have confirmed to the House that we did thorough consultations. In fact, after the Constitution that we promulgated, the only other Bill that has undergone a lot of consultation is this Bill.

We have consulted over 21 bodies. The Attorney-General was in this and he said that there were no constitutional issues. The CIC also said that there was no constitutional issue. I want to plead that we proceed and let us not take the route of hon. Millie because she wants to take us back. We want to do away with this Bill before we adjourn. If hon. Millie is interested in changing this Bill, she can bring amendments at the Committee Stage and we will vote for them.

Hon. Mirenga: Thank you, hon. Deputy Speaker. I think we need to confirm to this House that we are not doubting the level of consultation this Bill may have gone through. However, we are raising issues of constitutionality. In fact, even if the CIC was consulted 10 times, the Bill is brought to this House, we read it and find it unconstitutional we will still raise the matter. That is exactly what we are raising.

(Applause)

Hon. Deputy Speaker, we are just requesting that you take your time as the gracious lady who is now in charge and heading this process to ensure that we do not come up with an issue that will later on haunt us. For sure, the constitutional questions involved in this case are very weighty and we do not need to move until this is determined.

Thank you.

Hon. Ababu: Hon. Deputy Speaker, allow me to draw your attention to two issues. One is the customs, traditions and usages that this House has established. We have always said that this is a House of records in the sense that the history of this House will always guide what goes on in this House at any particular moment. As hon. Millie Odhiambo has so lucidly shared with this House, we have established a tradition in this House, especially the very interesting period that marked the era of the Tenth Parliament, when we were right in the crucible of re-making the very foundations of this nation. Time and time again, the Chair was called upon to intervene on matters that touched on the Constitution of the Republic and it was established, as a tradition, that when a matter touching on the constitutionality of any issue is raised to the Chair, it ceases to be merely a debate of whether the matter in issue is constitutional or not and it becomes a matter of procedure as to whether the Chair must, in fact, make a pronouncement on the claim or the assertion.

Therefore, my first point of concern is whether the Chair can let this matter merely pass after we have expressed our sentiments on the same without making a determination. My humble view guided by history and the traditions and customs of this House, is that when such a matter is brought before the Chair, the Chair has no choice, but to make a pronouncement. Therefore, in this matter, it will be important for you either to determine that the matter is frivolous and therefore, of a characterisation that is not worth the intervention of the Chair or that the matter, indeed, raises weighty concern requiring the pronouncement of the Chair. However, it cannot pass without a pronouncement from the Chair.

Secondly and finally, the CIC has a mandate to preside over the implementation of the Constitution. However, the CIC is not a constitutional court. The CIC does not have the constitutional mandate to render binding opinion on the Constitution. The mandate of the CIC is very limited to preside over the process of implementing the Constitution. This House must be very careful and must proceed with a lot of caution on the kind of weight you attach to any pronouncement or opinion from the CIC. For two reasons, namely, one, the reason I have just stated that the CIC does not have the mandate to bind anybody as a constitutional court would do. There is an opinion and it must always be taken as an opinion. Therefore, nobody must ever attempt to gag this House merely on the strength of an opinion expressed by the CIC. There is no constitutional basis whatsoever on the same.

Secondly, the CIC has proven to also be very unreliable in certain instances. It has made many pronouncements that are themselves unconstitutional or contradictory. Therefore, I do not believe and I have a lot of respect for the Chairman of the Committee on Administration and National Security, he is my Chair in that Committee because I humbly serve under his very able leadership in that Committee, but he must know that this House is not bound and subject to the opinions of the CIC. You know that when we sit as the National Assembly of the Republic of Kenya, we have the authority and the ability to interpret the Constitution. Indeed, time and time again, this House has interpreted the Constitution and our interpretation power and authority is superior to that of the CIC. Therefore, yes, we can listen to the opinion of the CIC, but no, we cannot be bound by the opinion of the CIC.

Hon. Deputy Speaker: Hon. Members, you have truly prosecuted your point very well. This is my Communication on the same.

COMMUNICATION FROM THE CHAIR

CONSTITUTIONALITY OF NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL

The issues raised, particularly by hon. Wandayi are truly weighty and require serious consideration. You will, however, recall that the Speaker made a Communication on the same matter on 25th September, 2013. It was on this matter of constitutionality. That Communication was to the effect that the Bill is admissible in Second Reading. However, he welcomed the Members to raise matters that may be unconstitutional, as you are doing now. He also guided the House that should he be convinced that any clause or part of the Bill is unconstitutional, he would use his powers under Standing Order No.1 to rule that such part or clause should not be considered as part of the Bill during the Committee of the whole House. This will, therefore, be deemed to have been deleted from the Bill.

So, Members, in the meantime, because you said this House does not act in vain, already a Communication had been given, I rule that the Bill proceeds for the Second Reading until its conclusion. However, the Bill shall not be committed to the Committee of the whole House until the Speaker guides the House on the matters that you have raised.

(Resumption of Debate)

Hon. Gichigi: Hon. Deputy Speaker, this piece of legislation is long overdue. As was witnessed in this House in the morning, the issue of insecurity in the country is going to the levels of a national disaster. If something is not done about it, this country is likely to fall to the dogs. This has not happened overnight. The growth of insecurity in this country has happened progressively. When I came to Nairobi for my university education, I was welcomed by mugging somewhere at the OCT Stage. Subsequently, I was visited by robbers in the estate that I lived and not long thereafter, I was carjacked. When we, therefore, debate the issue of the instruments of power and the organs of security in this country, it is important that we remove politics from it. It is important that we look at efficiency as well as the constitutionality of the Bill that is in front of us. I agree that there is an apparent contradiction between Article 245(2)(b) which states:-

‘(b) shall exercise independent command over the National Police Service, and perform any other functions prescribed by national legislation’.

My reading of the word ‘command’ in the dictionary is to “direct with authority, give orders to, to have control or authority over, to rule”.

Article 246(3) states:

“The Commission shall –

(a) recruit, appoint persons to hold or act in offices in the service, confirm appointments and determine promotions and transfers within the National Police Service;

(b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service.”

It is clear that there is a problem here. Even though the Constitution permits this House to make laws or state what other functions the Inspector General shall perform, as well as

legislate on Article 246 on the functions of the National Police Service Commission, it is important that we clear the grey areas that the Constitution is creating. I implore the relevant committee of this House to look into this issue as we bring amendments. It is important that the wars that have been there between the Chairman and Inspector General are dealt with. Criminals in this country are no doubt laughing at what is happening between the two arms of Government. It is important to note that what the law tells the Inspector General to do, it does not also tell the Commission to do. One day the Inspector General will transfer a police officer and then the Commission will cancel that transfer. It is also absurd that a constitutional commission would have authority on transfers and promotions over constables in the police service. I, therefore, support this Bill. I will be moving one or two amendments at the relevant stage. I agree with my colleagues on the other side; giving the Cabinet Secretary power over the appointment, discipline and transfer of officers in this service would be unconstitutional. The Cabinet Secretary, no doubt, must be removed from this exercise. It is important that we also consider what is likely to be efficient for this particular service. It is important that this House gives sufficient funding through the budget, to the security organs of this Government so that we can tackle the growing insecurity. I will support, subject to the proposed amendments.

Thank you.

Hon. (Ms.) Mathenge: Thank you, hon. Deputy Speaker. I want to say at the outset that I am supporting the amendment but as we do this, we must look at the amendments that we are proposing. We must ensure that we do not negate the strides that have been made in the police reforms. We must also ensure that there is citizen participation. The Constitution should neither be compromised nor undermined. We must ensure that we do not reinstate the power imbalances that existed previously. When talking about this, I would like Members to remember the Ransley Report. The Ransley Report highlighted among other concerns police conduct that included violence, extrajudicial killings and other harmful rights and violations. So, even as we consider these amendments, let us find out whether we are giving the powers back to the police, to go back to where they were in the years before. As we also do these amendments, we must ask ourselves; what is the role of the Executive? I am feeling a little bit concerned because in Section 12, it says the appointment and removal of the Inspector General can be done. The Bill proposes to amend this process such that the commission's role is totally removed; public invitation, interview process or publication of shortlisted candidates. The proposed process is that the President simply nominates his preferred appointee and forwards to Parliament which may then approve or reject the nomination. Further, if Parliament neither approves nor rejects the nomination within 30 days, the nomination will be deemed to be approved. I do not think this is really acceptable. I think this is what we were trying to move away from. Some of the other proposed amendments seek to alter the functions ---

Hon. Abongotum: Hon. Temporary Deputy Speaker, Sir, I wanted to remind my sister that the amendment that we have in this Report is not the way she is putting it. The appointment of Inspector General has actually been made very competitive. What we have said in the Report is that a panel will be appointed, then after that the panel will advertise and then qualified Kenyans can compete. The panel will come up with three names which will then be sent to the President. The President will appoint one name and forward it to Parliament for approval. That is the position. It is not that the President will appoint directly. So, we have made it very competitive, if you can read this Report exhaustively.

I thank you.

Hon. (Ms.) Mathenge: I may have missed that, but that is how I understood it. I will reread it. The other issue that I am concerned about is the functions of the Commission and the functions of the Inspector General. I believe that we must ensure that these two complement each other and must not contradict each other. They must not be in acrimony. I do not know if you will say I have misread what you are proposing. Some of the proposed amendments seek to alter these functions, like increase the control of the execution in relation to the service. To me, that does not sound quite right. It also talks about transfers, promotions and so on. The functions are being removed from the Commission and taken to the Inspector General. I think that is also not right. Let the Commission do its work. If we give the Inspector General all that, we are creating a monster in the name of Inspector General. So, I think we should support the amendment but we must give it a lot of thought, if we have to take care of security in our country. Thank you.

[Hon. Deputy Speaker (Dr. Laboso) left the Chair]

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

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. You heard me cheer my dear friend, hon. Esther, saying “Esther for President!” The things she has said are really worthy of presidential material.

I want to say that this Bill has come at a timely moment. Just this morning, we were discussing the demise of the parents of one of our colleague, hon. Aduma, who were brutally murdered by very bad elements in our society. Let me take this opportunity to also send my condolences to him, his family and his constituents. Listening to what hon. Members have said, it is clear that insecurity is a big problem in this country. Insecurity does not spare anyone. Only the other day, there was a shootout in Lavington. So, insecurity is everywhere. You cannot say that it is a poor man’s problem. It is a problem which affects the entire country. The Westgate Shopping Mall attack is not a poor man’s issue, even though I know that it is a terrorism issue.

Hon. Temporary Deputy Speaker, what I am saying is that we must be able to deal with the issue of insecurity urgently. For me, it is important that as we look at this Bill, we do so from that perspective. There are issues that are bedevilling the security sector, which we must deal with very honestly. This Parliament should not go down the annals of history as the Parliament that is reversing all the constitutional gains that were made during the Tenth Parliament.

Sometimes I feel amused when I hear Kenyans say how terrible this Parliament is yet not so long ago they said that there could never be a worse Parliament than the Tenth Parliament. I am not saying that we are the worst Parliament but I do not want us to get there. However, given the way we are moving, we seem like we are headed there. Just yesterday, we passed a Bill on matrimonial property that is reversing some of the gains made previously. The amendment we are dealing with is reversing some of those gains. Article 246(3) of the Constitution provides as follows:-

“246(3) The Commission shall –

(a) recruit and appoint persons to hold or act in offices in the service; confirm appointments and determine promotions and transfers within the National Police Service;

(b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and

(c) perform any other functions prescribed by national legislation.”

Hon. Temporary Deputy Speaker, the reason as to why hon. Esther Mathenge is very concerned is that this Bill seeks to do the exact opposite of these provisions. As Parliament, we cannot say anything other than point out the fact that what we are trying to do here is unconstitutional. In fact, some of the proposals contained in this Bill contravene the Constitution directly and by effect. One of the things that this Bill is trying to do is regulating how often the Commission should sit. Some of the members of the Commission are full time commissioners.

The Bill proposes that the Commission has to give a 14 days' notice of its sitting. What happens when they have to meet over very urgent issues? What we are honestly trying to do is killing this Commission, which is a constitutional body. I know that the Police Service has very serious issues that we need to address as a House. We need to give them vehicles. We need to give them better salaries. We need to give them the wherewithal, so that they can perform their duties but this is not the way to go. The way to go is not by creating a monster in the name and person of Inspector General. It may serve their selfish interests now but this is a whole new Government. The other day I was in Government, now I am not. We do not know what obtains tomorrow. So, let us not make laws that serve very selfish interests. Let us make laws that serve this country.

Hon. Temporary Deputy Speaker, as we made the current Constitution, we moved away from all-powerful positions, including an all-powerful presidency. What are we doing now? We are creating an all-powerful Inspector General of Police that is looking bigger than the presidency? Honestly, we respect the Inspector General and the Office of the Inspector General of Police but this is not the culture we want to create. I am a person who is proud to have been nurtured in the civil society. There is a terminology that we use here derogatively, namely, "activist". I am happy that I am an activist.

I come from an activism background even though I am a lawyer. I am happy because it is what brought me here. It is part of my activism that has brought a new Constitution in this country. I have no apologies for coming from that background. We cannot pass things that violate human rights standards and the Constitution because we are trying to cure the issues that we are dealing with. This is a situation where my good friend, PLO, said that we are trying to deal with a mosquito bite with a hammer. We need to relook at some of the proposed amendments.

Hon. Temporary Deputy Speaker, since there are several hon. Members who want to contribute to these provisions, I will not go into them in detail. I have actually made a very detailed analysis. All I can say in summary is that there are very many clauses that contravene the Constitution. It is not just one or two clauses. Most of these provisions are unconstitutional.

Therefore, I do not support them.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, hon. Asman Kamama is the Chair of the relevant Departmental Committee. He did not speak yesterday.

Hon. Abongotum: Thank you very much, hon. Temporary Deputy Speaker, for giving me the chance. Yesterday, my able Vice-Chair seconded the debate on this Bill. Having participated in several forums on this Bill, I want to shed some light, so that hon. Members can know the nitty-gritty of this Bill.

As a Committee, we consulted almost all the stakeholders who are supposed to advise us on the proposed amendments. As I said before, other than the Bill on the Constitution that we have today, the only other Bill in respect of which there were thorough consultations is this Bill because Kenyans have a lot of interest in knowing the powers of the Inspector General, the National Police Service Commission (NPSC), the National Police Service (NPS) itself, under the

Inspector General and the Police Service Board (PSB). The PSB clears some of these things before they are taken to the NPSC for them to prosecute.

Hon. Temporary Deputy Speaker, as a former administrator, I have been very close to police officers. So, I knew their problems from the age of 26 years, as District Officer cadet. I have stayed with them. I know all their problems. There is no way I preside over an institution that erodes the integrity and reduces the benefits that the police are supposed to have. I always wish well the police officers I worked with. I do not want to read out the list of the stakeholders that we met because you have the list. The group I want to mention is the Kenya Citizens Group, chaired by Yash Pal Ghai. We met this group, the Constitutional Implementation Oversight Committee (CIOOC), the Kenya National Law Reform Commission (KNLRC), among others. We brought the Inspector General and his team, together with Kavuludi. I want to say from the outset that we are not making laws for those two persons. We are making these amendments for posterity because as hon. Millie said, today's Government is tomorrow's opposition. We were told that by the Speaker of Ghana. So, I know that tomorrow, I may be in the Opposition. So, I want to say that we also looked at the Ransley Commission Report.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): There is a point of order from hon. Junet. What is your point of order?

Hon. Nuh: On a point of order, hon. Temporary Deputy Speaker. Is it in order for the hon. Member to claim that he is a Member of Government when he is only the Member of Parliament for Tiaty? He is not a Member of any Government here, as far as I am concerned.

Hon. Abongotum: Hon. Temporary Deputy Speaker, I just want to say that, lastly we looked at what the Ransley, Kiruki, Naikuni, Alston, Kriegler and even Waki reports said. We will make sure that their concerns are actually addressed in this document. The gridlock when we came in, especially when this Commission started with a lot of problems; the Chairman together with the Inspector General--- We have sat down with them for quite some time and they are very much in agreement with these amendments.

We have harmonized the mandate of the Commission and that of the IG and the Cabinet Secretary. We have actually reduced the powers of the Cabinet Secretary and that of the IG and given them to the Commission because the Commission is a bigger institution. We have actually taken a lot of powers from the National Police Service to a board that will be introduced later. Therefore, for some of us to tell hon. Members and the country that we have created a monster or a demigod who is even powerful than the President is to mislead the country. We do not want any micro-management by the Cabinet Secretary. We have removed that and given those powers to the Commission itself.

Hon. Temporary Deputy Chairlady, in this Report we have said that the appointment of the Inspector General must be extremely competitive. If the President appoints somebody, a friend or whatever, we want to give it to all Kenyans to contribute. If they are qualified, let them go through a competitive process then the panel will come up with three names which will go to the President and then he will appoint one name. That name will be brought to Parliament and then Parliament will reject or approve it. So, powers have actually been given to this Parliament.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I am sorry. There are two points of order. I will start with hon. Murungi. What is your point of order?

Hon. Murungi: Thank you, hon. Temporary Deputy Chairlady. I need your indulgence because I am wondering whether the Chairman is contributing, or giving some information. We want to know so that we can also have some time also to contribute to this debate.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): He is totally within his limit of time. You are out of order.

Hon. Ochieng: Thank you, hon. Temporary Deputy Speaker. We have two Bills in this House. When the Chairman of that Committee keeps talking about how the Inspector General of Police will be appointed, I have not seen it in the Bill we are currently debating. The Bill is actually Order No.13. We are talking about Bill number 17, which does not talk about the appointment of the Inspector General anywhere. Can the Chair order that he be relevant?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Abongotum, I do believe that you are talking about the Report of the Committee. Can you make it clear?

Hon. Abongotum: This is the Report of the Committee---

Hon. Ochieng: But which Bill are we debating?

Hon. Abongotum: This is the National Police Service Commission (Amendment) Bill. Then we will, of course, later deal with the National Police Service Bill.

Therefore, I just want to say that I will be brief because most hon. Members want to contribute. I want to say that when it comes to the removal of the Inspector General, the petition will be made by a Kenyan and the President will appoint a tribunal which will hear the ---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Abongotum, I can see the hon. Member coming towards me. Could you be clear with the issue you are currently talking about in terms of the Inspector General? Is it in the National Police Service Commission Bill or in the National Police Service Bill that is yet to come?

Hon. Abongotum: Thank you, hon. Temporary Deputy Speaker, some of the issues raised are actually in the other Bill. But I am explaining so that confusion is not caused.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Abongotum, you being the Chair of this Committee, be clear about the current Bill that is in front of the House.

Hon. Abongotum: Hon. Temporary Deputy Speaker, the last one is on the issue of quorum. We said that the quorum used to be five members, but now it will be six members and this will make the Commission more effective. We have always insisted that in every meeting, the two uniformed officers must be present.

Therefore, the Bill in a nutshell does not create a monster in the name of Inspector General. In fact, even the powers of the Inspector General have been reduced and given to the Commission.

With those many remarks, I support this amendment Bill as the Chairman.

Hon. (Dr.) Nyikal: Thank you hon. Temporary Deputy Speaker. I rise to oppose this Bill and I will be very simple. The essence of creating the National Police Service Commission (Amendment) Bill and the National Police Service (Amendment) Bill was basically to separate two functions; the function of operation and that of human resource. What this Bill is doing is definitely reversing that.

If you look at Section 246(3), it is very clear there is the issue of recruitment that is given to the Commission. There is no duplication in the National Police Service (Amendment) Bill because there they are just talking about delegated power. If you look at the original Act, it gives the Inspector General some authority to recruit below a certain level. So, the statement by others that the old Act creates a situation where the Inspector General has no authority on recruitment is not true. It is only at the higher level. In fact, the Commission can delegate the powers of recruitment to the Inspector General. The areas they are seeking to correct are also ambiguous because it says: "On the recommendation of the Inspector General---" That is regarding recruitment by the Commission and also introducing the Cabinet Secretary. But it is also interesting because the Inspector General himself is in the Commission. He will be sitting with

the Chair and the Chair has to get recommendations from him to do certain things. How will that operate? So, what I am seeing is that we are going to create a much bigger problem, if we pass this Bill as it is. This is because you will have two officers sitting in the Commission, but the one who is a member has more authority than the one who is chairing.

So, in my mind, unless that is sorted out, we will continue with the confusion that we have now, that I believe is the root cause of most the problems we have.

Hon. Temporary Deputy Speaker, I do not know about consultations because I have talked to very many police officers both in the Administration Police (AP) side and the regular police and most of them are keen to have the Commission in place as it is without these amendments. If we go ahead now and remove the amendments and take the police officers back to where they were, I think we are going backwards on what we as a country has achieved through the reforms and the Constitution.

So, hon. Temporary Deputy Speaker, I oppose this amendment basically because it is totally against what is in the Constitution. I appreciate what has been said that when we come to the Third Reading, we will look at parts that are against the Constitution and either delete them or assume that they are not there. However, I think the whole essence of the amendments is to actually reduce the powers of the Commission.

With that, I beg to oppose this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Muriithi Waiganjo.

Hon. Waiganjo: Thank you, hon. Temporary Deputy Speaker for also giving me an opportunity to give my views on this very important Bill. I think it is important to bear in mind where we are coming from and what informed the drafters of the Constitution to try and create a commission to harmonise the roles between the commission and the Inspector General of Police.

Hon. Temporary Deputy Speaker, first I would want to thank the Committee for a job well done. Unfortunately, despite them having sat for 18 sittings and taking views from over 10 stakeholders, it appears that they have not really hit it where we need it. This is because the Police Service as we knew it previously came from a colonial structure. When we create a commission, it is supposed to have the participation of the people, but what they appear to be doing is to remove the people's participation. It is unfortunate because if we remove people's participation, we are going back to the dark old days. We need to look at our police force for what it is.

We know there have been a lot of problems within the force. We know that there have even been institutional crimes within the force itself and I think that is why we need to have a commission whose mandate is to regulate. Let us not consolidate power within the Inspector General of Police because that is what we seem to be doing. The Constitution envisaged a situation whereby the National Police Service Commission which is a constitutional creation would regulate, participate and hold the police accountable within a legal framework. However, what we have now are amendments which purport to remove the investigative powers of the Commission. I mean, you remove the criminal investigations from the Commission and it is supposed to investigate the members of the force. The Constitution envisaged that it should stop being a force but a service. Who shall then investigate the police officers when they commit crimes like extrajudicial killings and torture? I mean, those are important functions of this Commission.

Hon. Temporary Deputy Speaker, so any amendment that attempts to remove the role of criminal investigations from the Commission is a bad amendment. Even if the Committee has

done a good job, we must refuse those amendments that appear to be taking us back from where we are coming from. Again, the mandate of the Commission is recruitment.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Waiganjo, one minute please. There is a point of order from the Chair of the Committee.

Hon. Abongotum: Hon. Temporary Deputy Speaker, I want to inform my brother---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Is that a point of information?

Hon. Abongotum: Yes.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Waiganjo, do you want information from him?

Hon. Waiganjo: Yes.

Hon. Abongotum: Hon. Temporary Deputy Speaker, he has said that the issues of crimes in the police are not being investigated. These powers are actually vested in the Independent Policing Oversight Authority (IPOA) which is an independent body.

Hon. Waiganjo: Hon. Temporary Deputy Speaker, the mandate of the Committee was to look holistically at the structure of our police force and, therefore, the Chairman is right in giving me that information but I still insist that do not as a Committee rob the Commission its mandate. Do not put power around the Inspector General of Police because we will be going back to where we are coming from. We know what has happened within the police force. There is nothing to hide. In fact, this debate should be taken across both divides of the House because it is not a political debate. We are not on party lines. We simply want a clean police force for posterity.

Hon. Temporary Deputy Speaker, we know that within the police force there are rogue officers. How do you explain an impostor within the police force like Waiganjo who even unfortunately used my name "Waiganjo"? He even carried out the duties of senior police officers in Baragoi and precipitated murders of our officers. So, what we are saying is that let us reform this force. Let us agree there is a problem. Look, we are talking about insecurity. How many Motions for Adjournments have we had in order to talk about insecurity? In fact, this debate is more or less a waste of time because if you ask a villager what amendments we are discussing here, they will ask you: "How will they help to stop cattle rustling or how do those amendments you are talking about in Parliament help in stopping sexual offences which are very rampant?"

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Waiganjo, do you really mean that this debate is a waste of time? Use better language

Hon. Waiganjo: I withdraw, hon. Temporary Deputy Speaker. It is not exactly a waste of time but the matters that are facing this country are so grave so that we should not be discussing some of the crimes that are happening and the police are there. What is happening to the road carnage that has decimated most of our citizens?

So, hon. Temporary Deputy Speaker, what I want to say in conclusion is that this Committee has done a good job but let it know that we can see the import of some of the stakeholders that they invited to come and discuss with them. I am looking at the contribution by the Kenya National Commission on Human Rights and one of the things we are saying here, they said it at the Committee level and yet we do not now see it in the Report. So, it means that even some of the stakeholders that appeared before you just came to express their frustrations before the Committee but as soon as they left, you also did your own bit.

So, hon. Temporary Deputy Speaker let us discuss this Bill holistically. Let us know what we are doing. It is for the interest of this country. Let us know that in the past we had a former Police Commissioner charged at The Hague and thank God that he was acquitted. He was charged at The Hague and yet we are rolling back the gains that we have made. So, I want to

urge Members that if the Bills must pass then we must look at them. We must scrutinise them. We must pass only what is good for this country and reject those other amendments that appear to be rolling us back in time.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I want to read Standing Order No.141 (1) and please listen to me, both sides on this debate. It is on re-introduction of Bills. I am reading it so that you know the import of the decision made at the Second Reading. It states:

“A Bill, the Second Reading or Third Reading of which has been rejected may be introduced again in the next Session, or after the lapse of six months in the same Session but subject to fresh publication as provided in Standing Order 114 (*Introduction of Bills*).”

I am reading that Standing Order so that you are aware of the implication of a rejection of a Bill. I hope you understand why I have read that particular Standing Order. I will give the chance to hon. Kaluma who does not have his card.

Hon. Kaluma: Thank you, hon. Temporary Deputy Speaker. I am grateful for the opportunity to add my voice to my colleagues who have contributed to this Bill. I have looked through the Bill and the question I do not find the Bill answering is what it seeks to achieve that we lack in our security operators.

Security is a serious issue and hon. Waiganjo has said an important thing that when you are dealing with security apparatus and the manner in which they should be governed, we should be very bipartisan, we should be very sober and we should be thoughtful about it.

I want to take the House to the proposed Clause 3 and see what is being proposed to be added. Before I take the House through the various provisions of the Bill, may I confirm what the Constitution says under Article 246. Remember the composition of the National Police Service Commission. The Inspector General is already a member of that Commission. His two deputies are also members of that Commission. Among the other members is a person who qualifies to be a High Court Judge. You also have two senior police officers who have retired.

Look at the composition. Even by the composition of the Commission alone you want to ask why somebody can sit somewhere and imagine the Inspector General should be having some gigantic powers over the Commission. There is a good thing that is being said in terms of the mandate of the Commission under Article 246(3). The Commission deals with recruitment, appointment, confirmation of appointment, transfers and others. I believe that I know because we all read newspapers. We know what is happening within State security apparatus even as we speak here.

Even before this Bill has passed, look at the changes already made in the police force by the Inspector General. There was a complaint in the media though we should not quote it in this House, that the police force is being tribalised at a very quick rate despite these provisions. This is the wisdom that the nation and the people of Kenya had in saying that the idea of recruiting people to the force will be a mandate not of one individual; the idea of transferring officers within the force will be a mandate not of an individual. The Constitution says that a commission made up of people who have served this country with distinction either as police officers or in other areas of public service should be there. Look at the transfers and talk to the individual police officer in the force. When the police was headed on those matters by a single Commissioner as opposed to a Commission--- I am telling you that this is happening under this Inspector General and the Departmental Committee on Administration and National Security Chair is aware. Look at the changes; we have members of the force being transferred, we have

people being promoted and we have people being moved by the Inspector General without reference to the Commission even as the Commission exists and even before this Bill passes. What will happen when we ultimately give that Inspector General the power to do as he wills? We have had cases related to disciplinary control and I take this very seriously.

Hon. Temporary Deputy Speaker, I have my background in law as, indeed, most of us do have. However, the Constitution says that the issue of disciplinary control is a matter for the National Police Service Commission. Can anyone by dint of a statute or an Act of Parliament seek to define what that disciplinary control is so that we are essentially seeking to limit what the Constitution has already given, being aware of what it is we are seeking to limit by a statute or an Act of Parliament? Where will it be sustained? It cannot be sustained.

Look at the changes that are proposed under Clause 4 to the current Section 10 which deals with the functions of the Commission under the Constitution. Why would a person, for instance, seek to remove a provision like Section 10(1)(k) because this provision gives the Commission the power to investigate, monitor and evaluate the organization, the administration and the personnel services of the Service? Why would a person not want the Commission whose mandate it is to superintend the Police Service not to have views on how the organizational structure and the administration of the police is performing?

Look at the proposed amendment to Section 10(1)(k) which essentially says that the Commission shall hear and determine appeals from members of the Service. Where do these members of the Service go to if the Commission cannot deal with this matter?

There was a proposed amendment to Paragraph L. How will the Commission act if you remove all these powers from them? It may be a beautiful thing and I say this with a heavy heart. Let me clarify that this Bill, using a softer language, seeks to address issues which we do not need as a nation.

We are engaging our time inventing ways in which we can reverse what the Constitution very clearly stipulates. I will look at this Bill in a very bipartisan way. There is nothing we are doing other than disabling the Commission and seeking to transfer powers properly given to it.

Hon. Temporary Deputy Speaker, may I indicate something about the Commission's powers. I think I accompanied hon. Aduma Owuor when we went to see his parents. I was with him from the airport to his home. May I condole the family. If you look at the organization of the police system around that area, you will know why we should be looking at how we can firm up the police force rather than insisting on acknowledging something that is not properly constitutional.

I urge hon. Members to oppose this Bill. On my part, I reject it. Hon. Temporary Deputy Speaker, I thought I would speak for 20 minutes because I stepped in as the Acting Minority Leader.

(Laughter)

Hon. Shinali: Hon. Temporary Deputy Speaker, I have two issues to raise on this Bill. One is Clause 7 which deals with quorum. The Commission consists of nine Commissioners and the quorum is given as two-thirds. If we said that we needed two-thirds to conduct any business in this House, right now we could not be conducting our business here. The clause goes ahead and says that we must have two uniformed officers in the Commission to attain quorum.

Hon. Temporary Deputy Speaker, the Inspector General and his two deputies will at one time have one decision already made. For this Commission to continue to conduct its business,

we must have one uniformed officer or an appointee of the Inspector General. That should either be the deputy or the Inspector General. This should be mandatory. We should then pick one of the retired police officers who are already in the Commission.

I also feel that there is a problem if we increase the number of Commissioners from five to six. We need to reduce the number of Commissioners to five. I would also like to look at the appointment of the Inspector General which my able Chairman has already talked about. The appointment of the Inspector General brings in the Public Service Commission (PSC) as the people who should constitute a committee that will sit for the first time to vet the Inspector General. I feel that this is against Article 246(3) of the Constitution. It goes ahead to give the PSC powers to provide--- Let me read it out. It says:

“Convene the first meeting of the selection panel at which the members of the selection panel shall elect a chairperson from amongst the members.”

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, which Bill are you quoting?

Hon. Shinali: Hon. Temporary Deputy Speaker, I am quoting the Police Service---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Please, let us keep to the Bill that is currently on the Floor. It is a bit confusing if we keep bringing issues from the Police Service Bill. We need to have a good debate. If you have an issue on that Bill, please, hold it until the Bill comes to the Floor.

Hon. Shinali: Hon. Temporary Deputy Speaker, I am commenting on this Bill because it has been commented on here.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I gave directions to the Chair himself not to go into the National Police Service Bill. Therefore, please, I want to give you the same instructions that I gave the Chair.

Hon. Shinali: Thank you for that ruling, hon. Temporary Deputy speaker. I will stick to the issue of quorum. By putting such a high threshold on forming the quorum, we want to crowd the operations of the Commission. If you will be asking the Police Service, at any time, to remove two of its top officers to go and sit on a commission, which is permanent, we are simply saying that the police will also have problems.

Hon. Langat: On a point of order, hon. Temporary Deputy Speaker. There is confusion in this debate. You need to give guidance on the reporting by the Committee. If you look at the Report by the Committee, they have mixed two Bills in one report, which is against Standing Order No.127(4), which provides that there must be a separate report for every Bill. The Report by the Committee is what is causing confusion in the House.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Kamama, could you, please, clear the issue of your Report? It seems to be why there is confusion with the Members. Could you, please, clarify?

Hon. Abongotum: Hon. Temporary Deputy Speaker, I thought these Members are intelligent enough to draw a dichotomy between the two Bills. It will do no harm if we continue. Just draw the dichotomy between the two and debate on the Commission and next, we will debate the other one.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chair, I think that is really unfair to the Members. The reason why committees are given the work to scrutinise Bills is to give guidance to the House. Therefore, I will agree with hon. Langat that the Committee's Report has brought a bit of confusion in this debate. However, I urge Members, so that we can continue with the debate, to please, limit yourselves to the National Service Commission Bill that

we are currently debating. Hon. Ouma, you had spoken before. I am made aware of this by the Clerk. Hon. Midiwo, are you on a point of order or you want to contribute? You have indicated here that you want to raise a point of order. Could you raise the point of order because there are many Members who have interest in contributing on this issue?

Hon. Midiwo: On a point of order, hon. Temporary Deputy Speaker. The issue raised by hon. Langat is substantial. Even the Chair himself, I watched him debating on both sides of the Bills. We cannot continue debate. What if we end this debate now, and we have every right to end it and vote, will we be throwing out both Bills and reports or what would we be doing? It is an illegality. We cannot continue debate where there is no report. In as far as I am concerned, there is no legitimate report before the House.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Midiwo, the Chair has said that the report that they did as a Committee was a combined report of both Bills. We have already given the Committee the indication that, as a House, we are not happy with that situation. However, for the sake of the debate to continue, it is only prudent that we look at the Committee Report on this particular Bill that we are currently debating. Hon. Midiwo, in your leadership of this House, it would be prudent to continue with this debate.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will allow points of order on the issue raised by hon. Midiwo, before we make a ruling.

Hon. Wandayi: On a point of order, hon. Temporary Deputy Speaker. Indeed, the issue raised by hon. Langat is weighty. I would want to ask the Chair if we are so much in a hurry that we cannot put things right before we can embark on debating this Bill. Initially, I had serious misgivings, but given the guidance I was given by the Deputy Speaker, I agreed to move on. In my view, and more so in view of the fact that it is clear that the report is referring to two Bills, namely, the National Police Service Commission Bill and The National Police Service Bill, Members are at a loss.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Temporary Deputy Speaker. First of all, I want to thank you because you have been guiding this House very well. Having said that, I want to indicate that given that this is a new House, it is important that we set things right and we move procedurally. I have not been in this House for very long; five-and-a-half years is not too long, but within that time, I have not seen a situation where we are discussing a Bill and we have a joint report. It is not procedural. So that we put things in order, would I be in order to request that you order that this matter be deferred and that the Committee brings a specific report that relates to this Bill? As hon. Midiwo has indicated, what will we be voting to? The Standing Orders do not say that when you are discussing a Bill, there shall be a report of another Bill attached to it. What this Committee has done is absolutely unprocedural. You need to guide the House.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I want to go back to hon. Langat's point of order. Could you quote the Standing Order again and what your concern was before I combine with what hon. Jakoyo and hon. Millie have said?

Hon. Langat: Hon. Temporary Deputy Speaker, I was relying on the Standing Order No.127(4), but if you read the whole of 127, it does not say that there has to be a report. In fact, it says that the Committee will produce a report. However, Second Reading can even proceed without a report. I was just raising the issue as a matter of procedure that the report is what is causing the confusion in the House.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Members, we have agreed, as a House, that we are already debating this Bill substantially and the Chairman has admitted that they combined the reports. We have said that, as a House, we are not happy with that kind of combination, but for the sake of debate, we should continue debate on this Bill. I hope hon. Midiwo and hon. Millie will agree with that recommendation from the Chair, so that we can complete a Bill that has a lot of implications to this country. I have confirmed that hon. Ochieng had not spoken. He rose on a point of information. So, hon. David Ouma Ochieng.

Hon. Ochieng: Thank you, hon. Temporary Deputy Speaker. Debating this Bill requires some bit of history. The Commission we are talking about here is not very old. However, in its short life, it has seen the body - or is it the head - of a dead person dropped at the door of the Chairperson of this Commission. Basically, this was to tell the Chairperson to stop discharging, refrain from or go slow on discharging his duties as the Chairman of the Commission. It is very important for this House to know why that Commission was formed. Article 249 states that the objects of constitutional commissions and offices are as follows:-

“protect the sovereignty of the people; to secure the observance by all State organs of democratic values and principles and to promote constitutionalism.”

The history of the police force in this country cannot be over-emphasized. However, the major reason is that we must have that Commission independent and able to discharge its duties. That is that we need in order to instill some sense of civility in the way the police force is run. That is why Kenyans, in August, 2010, voted that we establish the National Police Service Commission. What we are seeing here is that we are introducing a stranger. The Constitution is very clear on who shall be a member of the National Police Service Commission. It states there very clearly that the Cabinet Secretary is not a member. Therefore, introducing him to this Commission is introducing a stranger.

Just last week, we were on the neck of the Judicial Service Commission (JSC) for having done a letter to the Inspector General not to do something. Now, we are saying that we are going to allow the Cabinet Secretary to order a Commission that the law says should be independent.

Hon. Temporary Deputy Speaker, the language of the police is that you will hear them say, “*Kuja kipande hii*”. For a while, our Police Service was so much about one single ethnic group that you could definitely know what kind of language they will speak. That is why the law says under Article 246 that the National Police Service Commission shall ensure that the composition of the National Police Service shall reflect the regional and ethnic diversity of the people of Kenya. So, this is not left to one person - the Inspector General - so that you do not have one people of the same language. That is what we are looking for. However, we are now saying that the Cabinet Secretary should tell the Commission what to do. The same law, under Article 249, says that the commissions and holders of independent offices are subject only to this Constitution and the law and are independent and not subject to direction or control by any person or authority.

Further, Article 254, on reporting of commissions and independent offices states that as soon as practicable after the end of each financial year, each commission and each holder of the independent office shall submit a report to the President and to Parliament and that at any time, the President, the National Assembly, or the Senate may require a commission or a holder of an independent office to give a report on a particular issue. Remember, it is not talking about the Cabinet Secretary. Here, we are seeing a situation where we are asking the Commission to refer to the Cabinet Secretary.

This Bill, at the proposed Clause 5 says this: “The commission may, with the consent of the Cabinet Secretary, appoint such officers and staff for the proper discharge of its functions under this Act.” Nothing could be further from an attempt at gagging the Commission. In fact, the Commission is being told: “If you want to employ a sweeper, you must ask the Minister. If you want to employ anybody, you must consult the Minister.” That is what this clause is saying. Which parliament does this? Which parliament creates a commission and goes back to say that the commission cannot employ anybody? It is Parliament that approves the budget of the Commission and not the Cabinet Secretary. Parliament has approved a budget for the Commission to employ. So, this proposed law suggests that for the Commission to employ, it has to go back to the Cabinet Secretary to ask whether it can employ or not. We will be doing a very wrong thing.

Hon. Temporary Deputy Speaker, I speak with a very heavy heart because just this year - and this one I must declare - one of my constituents who was a senior officer in the police force was promoted then demoted. When the Commission came to be, he was promoted to the rank of Director, Internal Affairs. I am talking about the immediate former Acting Police Spokesperson. The same week he was promoted to the position of Director of Internal Affairs, he was demoted by the Inspector General to serve as an officer in Vigilance House. Last week, that person who was very senior up there having been promoted by the Commission was transferred to serve as the OCPD, Njoro Police Division. It is all because the Inspector General does not think the Commission can promote or transfer.

Hon. Temporary Deputy Speaker, we cannot have a rogue Inspector General or a rogue police force. This Parliament will be doing a great disservice to the people of this country.

With those very many remarks, I wish to oppose and ask the Chairman of the relevant Departmental Committee to go back, consult and know where this country is coming from, so that we have in place laws that serve this country. I oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Ferdinand Wanyonyi has left. I do not see him. I am afraid that I have Members from one side of the House only. Hon. Junet.

Hon. Nuh: Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to contribute. I stand to oppose this Bill for the reasons that the intentions of this Bill, or the people who drafted this Bill, had no other intention, but to negate---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Just hold on, hon. Junet. Hon. Mbadi, if you come near me again, I will not allow you to speak. You have been here three times and I have confirmed that you are on the list. Please, do not interfere again with the Chair.

(Laughter)

Hon. Nuh: Hon. Temporary Deputy Speaker, the purpose of this amendment Bill is nothing other than to erode and to negate the gains made by the people of Kenya in the new Constitution. The spirit and the letter of the new Constitution that Kenyans got through their blood was to have a civilian police service. They were tired of the kind of police force they had before the coming into force of the new Constitution. After the new Constitution was promulgated, a commission was formed to regulate and run the police service in Kenya. For all purposes and intent, the Commission could not take off. They were denied all avenues to operate. Since the Commission was constituted, it has not done any meaningful work. This was done by some *mafia* who have a lot of interest in the security system of this country.

As you are aware, Kenyans have suffered in the hands of the police.

Hon. Temporary Deputy Speaker, what this amendment Bill seeks to achieve is to take Kenya back to the old ways of doing things in the National Police Service, by creating the kind of super-monster police chiefs that have been in this country since Independence. If we did not achieve any results by having powerful Police Commissioners for 50 years, what makes someone believe that we will have results by having a powerful Inspector General, who becomes law unto himself and who reports to none other than himself? As hon. Members are aware, the Inspector General and his deputies are members of the National Police Service Commission. The work of the Chairman of the NPSC is chairing commission sessions. The power of the Commission Chairman ends when he finishes chairing meetings.

The Inspector General and his two deputies are part of any deliberations of the Commission. If they have any issues to raise, any recommendations to make or anything that is disturbing them in terms of police operations, they have the liberty to bring those matters to the Commission and have them deliberated, so that the Commission can arrive at a conclusive decision. The only thing that we are seeing here is an Inspector General and his two deputies who have refused to work with the Commission. They have literally said that they are not ready to work with the Commission. For that reason, they instigated people to bring these amendments, so that the powers can be returned to them. We will not allow that to happen. Any Kenyan who allows this to happen will be taking Kenyans back to where they came from.

As hon. Members are aware, our National Police Service is rotten. It used to be a police force before the new Constitution came into place. It needs a lot of work to change its image and its welfare. We need a commission to do that work. The Inspector General alone, as a person, cannot achieve the kind of things that NPS requires. So, I do not see why there should be that kind of disconnect between the Inspector General's Office and NPSC. This can only happen where there are personal vested interests. We are seeing a situation where the NPS is going to be returned back to where it used to be – taking orders from political appointees and Cabinet Secretaries, who are the equivalent of the former Cabinet Ministers.

When are we going to have an NPS that is independent of political machinations? When are we going to have an NPS that does not work in accordance with the whims of politicians or the Executive? The intention of creating the NPSC is to ensure that the NPS is protected from interested parties who have political and commercial interests. We will be doing disservice to this country if we allow demotion of NPSC and put all the powers in the hands of the Cabinet Secretary and the Inspector General. If there is a good law that was passed by the Tenth Parliament, it is the law that created NPSC.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Junet, there is a point of order. Committee Chairman, are you on a point of order?

Hon. Abongotum: Hon. Temporary Deputy Speaker, I just want to inform my good friend, the Member for Migori County that we have substantially reduced the powers of the Cabinet Secretary after providing for the President to appoint. So, the hon. Member should not mislead the House. Let us deal with the substantive issues in the Bill.

Hon. Nuh: Hon. Temporary Deputy Speaker, the Committee Chairman did not understand what I am talking about. You know, he is the gatekeeper of the NPS in this House. So, I am telling him that we do not want an NPS that does not want to work with NPSC that is taking care of their welfare. That is the only thing I was saying. The exclusive powers of human resources are constitutionally vested in the NPSC. When we transfer those powers to the Cabinet Secretary, are we giving the Commission more powers or are we removing the powers that they

have to enable them run NPS? So, the Chairman has misled himself. Therefore, he needs to read the amendments very well.

With those few remarks, I oppose the amendment Bill and urge all Members to oppose it vehemently, so that we can have a prosperous nation.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, hon. John Mbadi.

Hon. Ng'ongo: Hon. Temporary Deputy Speaker, I was actually worried that my name would go to the tail end of the queue, having switched me off. I do not take kindly what hon. Junet has said. I want to remind him that we are not in Migori County Council.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Junet, would you like to apologise to hon. John Mbadi?

Hon. Nuh: --- (*off-record*)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Mbadi, hon. Junet would like to apologise.

Hon. Nuh: --- (*off-record*)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Junet, please, note that whenever you speak to me, as the Chair of this session, I take it seriously. So, if you want to apologise, please, do so. Otherwise, I will insist that you apologise.

Hon Nuh: Hon. Temporary Deputy Speaker, I apologise to hon. Mbadi and withdraw the remarks.

Hon. Ng'ongo: Thank you, hon. Temporary Deputy Speaker. The day on which this amendment Bill will pass in its current form will be a very sad day for me. The Constitution is very clear. Some of us have spoken to it. If you look at Article 249(2) (b), you will appreciate that it gives all constitutional commissions total independence. They are independent, and not subject to direction or control by any person or authority. Clause 3 of the amendment Bill seeks to delete Section 10 of the existing Act and substitute therefor the following new paragraph:-

“---on the recommendation of the Inspector General and approval of the Cabinet Secretary, develop and keep under review all matters relating to human resources policies of members of the service.”

Article 246 of the Constitution, clearly, defines the functions of the Commission to include recruitment and appointment of persons to hold or act in offices in the service, confirming the same appointments and determining promotions and transfers within NPS as well as observing due process and exercise disciplinary control. These provisions are clearly about human resource matters. So, what are we doing? Once we pass this amendment, we will be limiting the work of NPSC as clearly defined and provided for in the Commission and subjecting the Commission not only to the Inspector General Police, but also to the Cabinet Secretary.

Hon. Temporary Deputy Speaker that will be clear interference from the Executive, which is not envisaged in the Constitution. There is no pretence about it. Just by reading the Memorandum of Objects and Reasons of this Bill, it would make us throw it away. One of the objects of the Bill is to provide for the limits of the Commission while undertaking its functions. It also provides that the Commission shall not undertake investigations on criminal matters. You cannot, through legislation, limit the functions of the commission, unless you want to introduce an amendment to the Constitution through the backdoor, through legislation. Where on earth have we ever set the limit of the number of meetings that a commission needs to hold in a year? You cannot do such a thing.

Further, the drafters of the Bill are cunning because they say that it provides for consultations between the Inspector General and the Cabinet Secretary while dealing with the

human resource function. It is not consultations. If you read what the Bill seeks to do, you will appreciate that it is subjecting the Commission to the recommendation of the Inspector General and the Cabinet Secretary. Actually, it says: “---and approval of the Cabinet Secretary.” This amendment is not definite. It is calling for approval of the Cabinet Secretary in order for the Commission to discharge its functions. This amendment is absurd. This House cannot approve it.

Hon. Temporary Deputy Speaker, this House has passed legislations here in the past, which this country has even called upon the President not to assent to. Even Members of this House are on record calling the President not to assent to them. I have restrained myself from doing so because I know that, as a Member of Parliament, it is not right for me to go out there and call upon the President not to assent to a Bill I have participated in passing. Even if you were absent when the Bill was passed, no one knows that fact. You take collective responsibility. This should not be one of those Bills that we are going to call upon the President not to assent to. We have done it with the VAT Bill, we have done it now with the Media Council Bill and now we want to repeat it?

Hon. Temporary Deputy Speaker, you read this again with me. Clause 5 says “...which the Commission may, with the consent of the Cabinet Secretary---”. What if the Cabinet Secretary says no? It states:-

“Appoint those officers and staff as may be necessary for the proper discharge of its functions under this Act.”

We have so many commissions. What we do with these commissions is to approve their budgets as Parliament. Once we approve their budgets, it is the duty of the commission to look at the desired establishment and the positions that they need to have and recruit accordingly. You cannot subject a commission to the consent of Cabinet Secretary in order to make decisions of this nature.

Hon. Temporary Deputy Speaker, I want to plead and I am happy that this House has decided to remove the “Berlin Wall” that has been around for some time. There has been this “Berlin Wall” in this House dividing the Jubilee Coalition and the CORD Coalition. Unfortunately, recently, in the case of the Ministry of Lands and the Judicial Service Commission, we decided to remove the wall. This is another case where this House needs to continue removing the walls and make decisions that are good for this country. I want to remind this House that Kimaiyo is there for a time. What if his term ends, and it is coming to an end very soon? By the way, he has a four-year term, which is non-renewable. Who knows who is going to be the Inspector General? Therefore, if you are making a decision in this matter, make a decision based on what is good for this country. Do not have the officers in mind, because you do not know whether Kavuludi or Kimaiyo will be there tomorrow.

Hon. Temporary Deputy Speaker, my plea would be that these amendments are not good for this country. As a matter of fact, looking at the Memorandum of Objects and Reasons, this is a Bill that is a candidate for defeat. These amendments are making this Bill a candidate for defeat. If you want us--- I want to correct that---

Hon. Temporary Deputy Speaker, you were right to say that it will require six months. If we feel as a country that we need to re-introduce this Bill or a similar one, we can still do it, with the approval of the Speaker, as he has done with the VAT (Amendment) Bill. He has already approved and it is being printed. So, this House should not fear defeating this amendment. Let us send a signal to those people with ill intentions and evil schemes to take away the powers that the people of Kenya, through a referendum, gave to an independent commission and give it to some individuals whose loyalty we do not know.

Hon. Temporary Deputy Speaker, the Cabinet Secretary is an appointee of the President, fine; but you cannot give such a person more powers more than the President. You are giving the Cabinet Secretary to direct and control a commission, even the President does not have such powers. In fact, there is nowhere in law where the President can direct and control any commission. Not even the Public Service Commission or the Parliamentary Service Commission can do that. What you are doing here is like having a Cabinet Secretary controlling the work of the PSC. This is unacceptable!

Hon. Temporary Deputy Speaker, I oppose.

Hon. Gimose: Thank you, hon. Temporary Deputy Speaker. I want to add my voice to this debate by opposing this Bill.

I do not want to say much. Many hon. Members have debated this Bill. I want to associate myself with their views. First, the Attorney-General of the Republic of Kenya who is the principal legal advisor, in his letter dated 1st February, 2013, advised against these amendments. In fact, in his recommendation, he says:-

“I, therefore, suggest that, any possible overlap in the functions of the two offices ought to be resolved through constructive discussion within the Commission of which the IG and his deputy are members.”

Hon. Temporary Deputy Speaker, there is an apparent go slow in the police force. This is information from the grapevine and I have a letter here from the Deputy Inspector General. He says as follows---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, you need to lay that document on the Table.

Hon. Gimose: I will do so.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You need to do it before you read it out.

Hon. Gimose: Let me just make a statement, then I lay it on the Table.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, I am giving you directions so that you are able to execute what you want to do. Let us just see that letter. Just show it to me; let me see that it is a letter that you can quote on the Floor of the House. Give it to the Table then you can proceed.

(Hon. Gimose laid the document on the Table)

Hon. Gimose, please wait for your papers. I have seen that they are dully signed and so far they deem to be authentic, you can go ahead and quote. You can use the Dispatch Box to make it easier, because you will then leave that letter on the Table once you have finished.

Hon. Gimose: Hon. Temporary Deputy Speaker, I have some other documents which I need to pick from my seat.

(Loud consultations)

Hon. Member: Let him organize *tusikie ukweli*. He needs a table.

Hon. Gimose: Sorry, hon. Temporary Deputy Speaker. I have been disrupted, but I will move from that point.

Hon. Member: You need a secretary!

Hon. Gimose: Hon. Temporary Deputy Speaker, I was alluding to the fact that there is a letter from the Administration Police Service written by the Deputy Inspector General, Administration Police Service and his name is Mr. S. M. Arachi, EBS and OGW; whatever it means.

(Laughter)

The letter is directed to David M. Kimaiyo, CBS, DCM; it reads as follows:-
“In this regard, our view is that any other basis for seeking amendments to the National Police Service Act and National Police Service Commission Act this early can only result in unnecessary disruption from the important task of transforming the services and will not be supported by the AP service.”

Hon. Members: *Endelea, soma zingine.*

Hon. Gimose: Hon. Temporary Deputy Speaker, I have another letter addressed to the Chairman, National Police Service Commission, Mr. Johnstone Kavuludi, EBS. This letter is from Mr. Kimaiyo. I just want to underscore the fact that the function of deployment in the National Police is the function of the Inspector General. So, in this respect, to say that the Inspector General has no powers is a misnomer. He clearly indicates in his letter, which---

Hon. Member: Read the relevant part.

Hon. Gimose: Hon. Temporary Deputy Speaker, the relevant part is a monster!

(Laughter)

Anyway, hon. Temporary Deputy Speaker---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You cannot refer to a letter and then not quote the relevant part. Just look for the relevant part that says what you have said is actually in the letter.

Hon. Gimose: Hon. Temporary Deputy Speaker, this letter is indicating that after the national elections---

Hon. Member: When is it dated?

Hon. Gimose: It is dated 16th April, 2013, hon. Temporary Deputy Speaker. It was received in the office of the Chairman on 17th April, 2013. In this letter, the Inspector General proposes the structure of transfer of police officers and purports to allocate them certain duties.

In this letter, he creates five directorates. What I intend to demonstrate by this letter is that, there is no power---

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. (Ms.) Wahome, I do not see your intervention in the system. Could you rise on your point of order? Just one minute, let me hear this point of order.

Hon. Member: *Wacha tu aongee. We simama hapo na uendelee kusoma tu.*

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, please, you are not the Chairs. Hon. Midiwo and the rest, please do not mislead him.

Hon. (Ms.) Wahome: Thank you, hon. Temporary Deputy Speaker. My good learned friend, the hon. Member of Parliament, has referred to a document and he started by saying: “Let me read” then he abandoned it. If he is going to continue to explain matters that are within that letter for us to authenticate because we do not have copies of that letter, he needs to first read the

letter so that we can follow the discussion from the wordings of the letter and then he can expound.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member on the Floor, I think I made it clear that you must quote and I think that is what you were doing. Please quote.

Hon. Gimose: I will quote. In fact, hon. Temporary Deputy Speaker, I cannot read the entire letter. This entire letter, in my view, is important. The whole of it is important.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, I am not going to entertain your point of order. I am just going to remind that Member that you have two minutes to complete. So, please try to be very specific.

Hon. Gimose: I want to conclude by saying this: This letter shows that the Inspector General was assuming the powers of the Commission by intending to arrogate himself the responsibility of transferring officers and creating positions in the police force, which is not constitutional. That means if he is given these powers we are talking about, what will happen?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Please, table the documents.

(Hon. Gimose laid the documents on the Table)

Hon. Millie, what is your point of order?

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Speaker. If you notice, what the hon. Member has raised are very weighty issues and indeed the documents that he has tabled, which you have authenticated as genuine, really would put the hon. Member in a very precarious position. Would I be in order to ask that Parliament avails extra security for the hon. Member given that the Commissioner had received a human head? I do not know what he might be receiving especially given the person he is working with. So, would I be in order to ask for security for him?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Millie, I think there are people who have said more than what he has actually said in this House since we begun the debate and, therefore, I do not think there is any danger to his life. I want the Member to complete his presentation. Hon. Kamama, do you really want to contribute?

Hon. Abongotum: Yes, hon. Temporary Deputy Speaker. If my good friend hon. Gimose is talking about the letter by Arachi, we have had over 15 meetings between Kimaiyo, Arachi and Kavuludi and they are in concurrence. So, it should not be an issue.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chair, you will be able to respond to that letter at the appropriate time because you know that you will be responding. So, please take note and be able to respond. I want the Member to complete because there are very many requests.

Hon. Gimose: Hon. Temporary Deputy Speaker, I want to finish by saying that the intention of reforming the police force was not to arrogate power to an individual. It was to create a relationship in the performance of duty. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Please table both letters that you have quoted – that is the one from Arachi and the other from the Inspector General. Hon. Abdikadir Aden.

(Hon. Gimose laid the documents on the Table)

Hon. Aden: Thank you very much, hon. Temporary Deputy Speaker for giving me the opportunity to give my contribution on this very important discussion on the Floor today. I want to say from the outset that from 27th August, 2010, Kenyans made a very deliberate step to move from a Constitution and regimes that empowered either individuals or specific officers, to devolution of not only resources but indeed authority. We moved from the Westminster approach of Government to the American model of governance so that decision-making, indeed, is empowered and given to the people.

Hon. Temporary Deputy Speaker, I want to start at the outset by saying that what Kenya needs today are strong institutions and not strong men, strong women, strong individuals in strong offices that can abuse and subject Kenyans to difficulties and sufferings. What this Bill is trying to achieve today is to return Kenya to the past where there were individuals or specific office holders who had more power and ability to make life difficult for Kenyans.

The contentious issues being proposed in this particular Bill are trying to take away the constitutional mandate given to the Commission in this Constitution, under Article 246. They want to give the management of the human resource of the Police Service to an individual and further even to weaken the Commission as was very well articulated by my colleagues before me. They want to subject decisions to the approval or consent of a Cabinet Secretary who, indeed, is not a member of this Commission under the Constitution. How can he be involved or how can he be sought for consent, for the Commission to do its constitutional mandate when he is not a member? I want to say that just last week this noble House was accused of trying to negate or bring back the gains under the freedom that was achieved in our media.

Hon. Temporary Deputy Speaker, this House is today standing another test or trial. We must stand firm to make sure that Kenyans, Police Service and administration are not taken back to the draconian days when power was abused using this particular force. The Inspector General is very well represented in the Commission. He sits in that Commission with his two deputies. In addition to that, he sits in the Commission with two previous colleagues who have served in senior positions in the National Police Service. What decisions can he not push through the Commission if he really wanted? What is the power that he wants to steal from the Commission? If he cannot convince his two deputies, two very distinguished retired police officers and other noble Kenyans who will sit in this Commission, anything else that he wants to achieve is but a mischievous ambition and we must not allow that to happen to Kenyans.

Hon. Temporary Deputy Speaker, Sir, the Commission has a free hand in regulating and ensuring that there is a smooth running of the Police Service. Indeed, it can empower and delegate to the Inspector General certain issues which are within its mandate and under its supervision to give him the powers to be able to suggest or ensure that the Police Service is moving on well.

I want to turn your attention to an amendment that is being proposed. I just want to point out the caution that we might put on this particular amendment. Clause wants to amend Section 28 of the principal Act by amending subparagraph (n). I want to turn your attention to that subparagraph (n) which deals with the vetting of the applications by the Commission.

If we do not stop this from happening, we will have very many unvetted officers showing up in the police force. We will have very many “Waiganjos” showing up in various parts of our police force.

Hon. Anyango: On a point of order, hon. Temporary Deputy Speaker. The hon. Member is again mixing the two Acts. The section he is quoting relates to the Police Service Act and not the National Police Service Commission Act.

Hon. Aden: Hon. Temporary Deputy Speaker, I am looking at the National Police Service Commission (Amendment) Bill which we are discussing today. If you look at Clause 6 of that particular amendment which is amending Section 28, you will find that it wants the deletion of paragraph “n” that deals with the vetting process. So, I am rightfully on this. What that means is that the Inspector General wants to have exclusivity of vetting these officers himself. He is taking this away from the noble men under a commission that has been established. There is something very wrong in this amendment. If we allow this Bill to pass, we will kill meritocracy in the Police Service. We will also have rogue individuals being elevated because the power of doing that will be in the hands of one person. We will have men and women who would have worked very hard for this country and deserve recognition and promotion not being able to get promotion and recognition because their fate will rest in the hands of one particular person.

Hon. Temporary Deputy Speaker, as I end, I want to challenge my fellow colleagues that this House’s ability to stand and defend the Constitution and the right of Kenyans is on trial again today. We must stand strong and say no to these amendments. We must ensure that Kenyans have decided to devolve power and we must not negate that achievement by passing this kind of Bill. I rest my case.

Thank you very much.

Hon. Mwaura: Thank you, hon. Temporary Deputy Speaker. I rise to oppose this draconian law as presented to this House. The duty to defend the Constitution of this Republic is not a monopoly of anybody, neither is it the duty to exercise powers therein which is properly delineated according to any State office or constitutional office that is created by the very document.

We have just come from a history of the second liberation struggle where Kenya had just become a police State; where you did not know who you were talking to because they could be informers of the Government. The police were used to torture, intimidate and deny privacy to Members who had different opinions.

If this Bill were to pass, I believe that the first casualty will be Members of Parliament.

(Applause)

This is because they are the ones who have divergent opinions and they are the representative of the people and they speak in a manner that those that are in high places may not agree. There are reasons why Kenyans accepted to have a commission; it was in order to look at the conduct of even the Inspector General. We have a history where the President would sack the Police Commissioner at will because of a disagreement of this nature or another.

Hon. Temporary Deputy Speaker, if we have a Cabinet Secretary appointed by the President and approved by this House, how is it then that we still go ahead and give this same person sweeping powers that are totally unacceptable, are undemocratic and are anti-devolution as if the Cabinet Secretary has a monopoly of thinking about the security of this country?

If you look at the proposals of these amendments you will find that they are totally unconstitutional. In fact, if we were to pass this Bill in this House by whatever numbers that you may want to use, it will be challenged in court and I am sure that the court will agree with the petitioners.

Hon. Temporary Deputy Speaker, there is no way we can have a rogue police continue to be under the command of one individual. The Commission has been given express powers by the

Constitution to ensure that there is discipline in our police force. In fact, police officers are complaining because while they are being told to do things that they do not agree with, they are also becoming victims of the same.

You cannot have amendments that also allow the Cabinet Secretary to determine what kind of staff the National Police Service Commission can recruit. You are actually making this Commission toothless. If the Cabinet Secretary can also decide who will make tea for the Commissioners, then what powers do they have? They would rather be abolished.

This House has a threshold of a quorum of 50 Members out of a House of 349 Members. This Commission is being told to have a quorum of two-thirds of its members. Clearly, there is a deliberate attempt to ensure that the Commission does not function. If you look at the manner in which proposals to recruit the Inspector General are being proposed here---

Hon. Abongotum: On a point of order, hon. Temporary Deputy Speaker. With all due respect to my friend, hon. Mwaura, there is this notion that has been created about the involvement of the Cabinet Secretary in the National Police Service Commission. If you look at page 9 of this Report – for those of you who have it---

Hon. Members: We do not have it!

Hon. Abongotum: You are supposed to collect it from Room 8.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Abongotum, address the Chair. What is out of order from what hon. Mwaura has said?

Hon. Abongotum: Hon. Temporary Deputy Speaker, for avoidance of doubt because this issue has been prosecuted by hon. Junet and hon. Millie, I want you people to understand this: It says that Clause 3 be amended in paragraph (a) by deleting the words - and this is what people are talking about so that you are not irrelevant which is against our Standing Orders - “and approval of the Cabinet Secretary” appearing in the proposed new paragraphs. So, the approval by the Cabinet Secretary, the Member for Balambala, hon. Mwaura, hon. Junet and the rest is not there. I told you initially that we have reduced the powers of the Cabinet Secretary up to and including the powers of His Excellency the President who appoints unilaterally. So, let us not talk about things that are not there because we have cured this problem.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chair, that is a very valid point. I have heard it being repeated many times. Hon. Mwaura, can you confirm that what the Chair has said is the position so that we stop quoting what is not right.

Hon. Mwaura: Hon. Temporary Deputy Speaker, I beg to differ with the Chair and of course, he is doing his job to defend the Government. I am also entitled to my opinion.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Mwaura, I would like you to be clear on that particular point of order. This is because it is not a point of argument but it is quoting something that does not exist in the Bill that we are currently debating. Could you quote what is---

Hon. Mwaura: Hon. Temporary Deputy Speaker, Sir, it is a matter of interpretation and we are entitled to having different opinions or interpretation. We have powers that are being proposed here that the President can recruit the Inspector General. I think this is very unfair because, first and foremost, it takes away powers from the Commission. It does not also give the Inspector General an opportunity to defend himself in case there are allegations of whatever nature. Therefore, this is an opportunity---

Hon. Members: On a point of order.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, can we allow hon. Mwaura to conclude?

Hon. Mwaura: Hon. Temporary Deputy Speaker, I do not need any information.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Do you want to give information to hon. Mwaura?

Hon. Mwaura: I do not want any information, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): He does not want information. Please, go ahead.

Hon. Mwaura: Hon. Temporary Deputy Speaker, I do not want the information.

Hon. Aden: The Chairman is misleading us!

Hon. Mwaura: Okay.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Have you accepted the information?

Hon. Aden: Hon. Temporary Deputy Speaker, I just want to go to the point the Chairman has pointed out and I am looking at the amendments he has given us as proposed. I would like to draw your attention to Clause 5, which says:-

“Section 17 of the principal Act is amendment by deleting sub-section 1”.

I want to read sub-section 1, the one that the Chair wants to delete. The section states that:-

“The Commission may appoint such officers and staff as may be necessary for the proper discharge of its functions under this Act upon such terms and conditions of service as it may be determined”.

This amendment seeks to delete this clause and replace the same with:-

“The Commission may, with the consent of the Cabinet Secretary appoint such officers and staff as may be necessary for the proper discharge of its functions under this Act and upon such terms and conditions of service as it may be determined taking into consideration the gender, county and ethnic balance”.

I stand to correct the Chair and not the Chair correcting us.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You are giving information to hon. Mwaura. I think the information that you have given can be executed by hon. Mwaura as he completes his contribution.

Hon. Mwaura: That is very good information, hon. Temporary Deputy Speaker, because it clearly delineates the fact that the Chair of the Committee was misleading the House. However, if the structure of the National Police---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Dalmas Otieno, would you, kindly, allow hon. Mwaura to complete? I see you as one of those who are supposed to contribute to this particular Bill.

Hon. Anyango: Hon. Temporary Deputy Speaker, the Chairman is not misleading the House. The report says the clause be deleted.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Dalmas, please, let hon. Mwaura complete because you are soon going to be contributing.

Hon. Mwaura: Hon. Temporary Deputy Speaker, people are eating into my airtime. We cannot allow a situation where the command structure of the National Police Service shall be determined by one individual, in this case, the Cabinet Secretary. This country has suffered a lot from impunity. We must ensure that there are accountability measures. You cannot be doing the same thing time and again and expecting different results. After 50 years of Independence, we need to experiment with proper structures.

Hon. (Ms.) Kajuju: Thank you, hon. Temporary Deputy Speaker. I stand here today to support this Bill with the amendments as presented. It is time that this House realised that it is

not making laws for individuals. We are making laws for institutions and posterity. If our minds are going to be clouded by the Kimaiyos and the Kavuludis of this world, then it means that we will not move as a House and the “Berlin Wall” that was said to have been removed, might forever remain.

Most of the speakers are saying that Inspector General, Mr. Kimaiyo, will not remain in office forever. However, I want to correct them that there is no law that is being made here because of Mr. Kimaiyo or Kavuludi. We are making laws today for the 40 million Kenyans. With that, I further state that after we passed the Constitution in 2010, this House must realise that the Constitution is the supreme law of the land. The same Constitution indicates that there must be subsidiary legislation that is enacted to give effect to the Constitution. Therefore, the National Police Service Act that was enacted in 2011, and these amendments of 2013, are just subsidiary legislation that are meant to give effect to the Constitution.

Saying that a law that is seeking to amend another law is unconstitutional is totally misleading this House. Article 246(2)(b) sets out the structure, but thereafter, subsidiary legislation must be enacted, so that we can work under the spirit of the Constitution.

Hon. Mwaura: On a point of order, hon. Temporary Deputy Speaker. Is the Member in order to mislead the House? While it is true that we need to enact subsidiary legislation to give effect to our Constitution, she is misleading the House by saying that the very subsidiary legislation should negate the letter and the spirit of the Constitution. Is she in order?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Did she really say that, hon. Mwaura? That is just a point of argument. Please, do not use that to speak again.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Speaker, I beg to proceed so that I can make my submissions and make the Member understand because some of these things are legal technicalities and need to be put in simpler terms.

This Bill seeks to set out the distinctive roles, functions and responsibilities of each of the bodies that are created by the Constitution. We have a set up that shows what each person or body is supposed to do. Therefore, by us passing these amendments, they will allow each of the employees of the Republic of Kenya to undertake their duties without any conflict. When I joined this Parliament, there were issues about the Sarah Serem-led Commission. The Members did not remember that this was an independent commission and many issues arose. Much as we have a Commission that is established under Article 249, we also must have the distinct roles and functions of everybody that is set up by the Constitution. The Memorandum of Objects and Reasons of the amendments were read by my good friend, hon. Mbadi.

Hon. Temporary Deputy Speaker one of the issues that my good friend hon. Mbadi raised in the House is that the Bill provides that the Commission shall not undertake investigation on criminal matters. That is quite true because the Constitution gives the jurisdiction on criminal matters and investigations to particular persons to undertake. We have the Office of the Director of Public Prosecutions which deals with matters of crime. We have the Inspector General who deals with matters of crime, and most importantly, investigations. The question I have been asking myself is this: Why would this Bill be challenged? Is it just because it seeks to set out the roles and functions of particular bodies that are established under the Constitution?

This is a proper amendment that is being carried out in this House and I do not see why any issue should be raised. It should be supported. The Chairman of the Committee should be supported with all the support that this House can give him.

Thank you.

Hon. Midiwo: Hon. Temporary Deputy Speaker, I rise to oppose this amendment with a very soft heart; not with a heavy heart. That is because I think it is unconstitutional and unnecessary and it takes this country back to the dark ages that we left many years back. Many people who are supporting this Bill have never and were never victims of police brutality.

(Applause)

Many of those people have never come close to any kind of training in Kiganjo anyway. We have come to this at a very unfortunate time. As you know, and you have been in the struggle, we have come so far that we cannot afford to allow a couple of people who are disagreeing to make us do a bad law. National Police Service Commission is one of the independent commissions listed in this Constitution. The Constitution states that an independent commission cannot be under direction of any person or anybody. The problem we had in this House last week about the Minister for Lands is that many people here were castigating Madam Ngilu. This House has a duty. What the House should have done was to make the Land Commission independent from anybody. That is the intention of the commission. The Land Commission should be the one running those issues so that we do not talk about Cabinet Secretaries, individuals or bodies.

This Constitution in Article 246(3) says:-

“The Commission shall recruit and appoint persons to hold or act in offices in the service, confirm appointments and determine promotions and transfers within the National Police Service; observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the service---”

I participated in the appointment of my friend Kimaiyo, but he has been doing those transfers. He has been doing these things--- This is the law of the land. He did not even wait for the shenanigans of this Committee and a few people to give him those powers. He has arrogated himself powers. He does not have those powers. This is the law. By the way, it is also defined here; penalties to people who breach the Constitution. We have chosen to move forward as a country. We were told in this country that this Constitution is 80 per cent good and 20 per cent bad. This is one of the 20 per cent which is bad. Let us address it constitutionally.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Jakoyo, let me hear the point of order from hon. Lang’at.

Hon. Lang’at: Hon. Temporary Deputy Speaker, I heard hon. Jakoyo telling the House that the Inspector General of police has been breaking the law. In fact, he is saying that he has been breaking the Constitution. I would want him to give us any one incident in which the Inspector General has broken the law. We cannot come to the House and spoil the names of the people who cannot be here to defend themselves. I request you to order him to give us any substantiation on one of the incidents.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Jakoyo, I am sure you know the rules of the House.

Hon. Midiwo: I know the rules of the House, but I think the hon. Member is frivolous. Let me just give you a simple example. Even the appointment of the so-called County Police Commissioners, it is the work of the Commission and not the work of the Inspector General. I have just read the Constitution. Even the appointment of the so-called County Police Commanders is illegal. I have just read the law and these are the letters showing those appointments. We are not trying to blame my friend Kimaiyo---

Hon. Lentoimaga: On a point of order!

Hon. Midiwo: You may want to raise all the points of order, but I think it is fair to let me develop my point.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Jakoyo, on the point of order that was raised by hon. Langat, you have been able to articulate. However, it is fair that if people have points of order, we allow them. I will allow the Vice-Chairman.

Please, say what is out of order.

Hon. Lentoimaga: What is out of order is the issue of the Inspector General transferring people. I want to say that the Inspector General is also a member of that Commission. I want to read. "The Commission consists of the Inspector General, the Deputy Inspector General---" The Inspector General sits in the Commission and he provides the agenda.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Jakoyo, please, complete your presentation.

Hon. Midiwo: Hon. Temporary Deputy Speaker, you have a duty. It is no wonder that some of these people have been DCs, DOs--- The mentality is interesting.

(Laughter)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, if you do not have your cards, I really cannot know who is calling out for a point of order. The only interventions I have seen, I have given them.

Hon. J.K. Bett: Hon. Temporary Deputy Speaker, I think it is out of order for hon. Midiwo not to provide documentary evidence to the effect that the Inspector General has transferred people, or that he transferred County Commissioners and yet, he was acting based on the recommendation of National Police Service Commission. The fact that he sent the letters does not mean that---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Jakoyo, would you want to quote the letter or whatever it is you are using to substantiate your remarks?

Hon. Midiwo: Hon. Temporary Deputy Speaker, the letter is dated 16th April, 2013. "Office of the Inspector General, National Police Service Commission. Appointing Directorates: Director of Internal Affairs; Director of Police Reforms; Director of Administration---".

(Laughter)

My friend, hon. Kajuju, has said that we must make laws that have nothing to do with individuals. So, let us say that we already have a problem. This morning, you led us in a debate about security. We accepted that there is a problem with security. Everybody knows that the police are in a go slow. The fact that the police can engage a couple of people for five hours in an upmarket area like Lavington shows that something is amiss. Let us all speak the truth as Kenyans. We will work with the Inspector General and the Commission. As public servants, we have a duty to do so.

If we, as a House, agree that this Commission is part of the 20 per cent wrongs that are included in the Constitution, how do we move forward? Would we let the conservatives who do not want change to guide us or do we move forward in a way that will cure our security problems? There is a problem. We chose to devolve our systems. One of the things that we must do is devolve police services because the system is simply too large to be managed from the

national level. Some of the police functions can remain national while those related to cattle and banana theft and rape in the counties can be dealt with in Siaya or Isiolo, under the Governor, without making reference to Nairobi. That is what we said we should do.

Hon. Temporary Deputy Speaker, what we have currently are a few people who want to have a hold onto everything. I am speaking as the Leader of the Minority Party. So, my time should be more. Let me tell those colleagues of ours who think that we are opposing simply because we are in the Opposition, this will come back to bite them very soon. It has bitten us before and it will bite them. Those who think that this is about Kimaiyo, you should remember that he has about 19 months left. Who knows the person who will take over from him? Who can guarantee that it will not be a rogue Inspector General? The Government is now not even working. That is why some people are going and some people are not going.

(Laughter)

So, you may be there but you are like a tick on the skin of a cow that has been slaughtered. You are just hanging there.

Hon. Member: Who?

Hon. Midiwo: Part of that tyranny of numbers. So, we have already agreed that the “Berlin Wall” is coming down. I want to plead with my friend, the Committee Chairman, the National Police Service needs reforms. Many police officers are saying that they are not happy.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I can see that there are many requests for points of order. Please, because of time, let hon. Jakoyo Midiwo continue. He has only one minute to complete what he is saying, and then I can allow a few interventions. Hon. Kimaru, you are actually one of the next persons who will be speaking.

Wrap up your contribution, hon. Jakoyo.

Hon. Midiwo: Hon. Temporary Deputy Speaker, what the police officers are saying is that their history has been so bad. They are saying that they have served under a tyrannical regime, where---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up, hon. Jakoyo. I have actually given you the 15 minutes that are required for your status. Please, allow other hon. Members to also speak.

Yes, hon. Kimaru!

Hon. Kimaru: Hon. Temporary Deputy Speaker, I had to let my friend hon. Midiwo, whom I respect very much, continue. He is an able debater but I must disagree with him..

I think the Bill that is being proposed is going to bring order in command of the police force. The police and the military are not like any other civilian organization where you have a collegiate command centre. I would like to qualify what I am saying today. We have heard of incidents in Migori and Busia. I sought a statement this afternoon about dysfunctional police force.

Hon. Temporary Deputy Speaker, today in my constituency, a certain community has been evicted by another and there has not been any action taken. The people on the ground have asked for reinforcement and it is now over a month and nothing has happened. What does that tell you? There is a lot of confusion. If you have a situation and you want a couple of civilians to sit down and decide whether deployment has to be done or not, are we not having our priorities upside down? Before these civilians politicize everything and make a decision, how much harm would have been done?

Hon. Temporary Deputy Speaker, when you ask for County Commanders of Police to be appointed by other people, where is their loyalty? Are we not bringing politics into the police force? Are we not creating a situation where even the field commanders will not obey their commanders in the force? They will say their allegiance is to Mr. Kavuludi or whoever else. They will obey the person who is supposed to issue orders directly to them.

Hon. Temporary Deputy Speaker, when we are at these issues, let us be objective. Look at the Teachers Service Commission, there is a commission that gives orders. Who deploys, is it the whole commission or the Secretary? This is a civilian unit which has one centre of command. But then you have a militarized unit and you want to have a disjointed centre of command. Let us be realistic. Some of the things that we are having today are as a result of us mixing issues and allowing armed forces to operate the way they do.

If we look at the nation itself, where we have the President as the Commander-in-Chief he has a command centre that advises him. But at the end of the day, where does the buck stop? Who makes the final order? Is it everybody in that committee? If you go to the military, for example, on matters of promotion, you have a board that deals with promotions. But when you have a promotion board which does not involve anybody anyway; you only have a select group of people made up of, maybe, senior military officers, who make recommendations, what are we saying? Why do we want to have a police force that has no teeth or a structured command? These Bills will streamline the Police Service.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, this debate will continue tomorrow. Hon. Kimaru, you will have a balance of five minutes when debate continues.

Hon. Members, we have come to the end of business of today. Therefore, this House stands adjourned until tomorrow, Thursday, 14th November, 2013 at 2.30 p.m.

House rose at 6.30 p.m.