

#### 4.0 Committee Observations

The Committee's mandate in this Petition is to establish whether the grounds for the removal of the Commissioners are satisfactory to the Committee.

In making the determination, the Committee addressed its mind to the following issues:

1. The issue of charge of Commissioner Ronald L. Musengi for willful failure to comply with law relating to procurement contrary to Section 45(2) (b) as read with Section 48 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003
2. Appointment of police officers to the rank of Senior Assistant Inspector General, Assistant Inspector General and the rank of Commissioner of Police in relation to allegations of incompetence in the conduct of the process without proper regulations in the place to guide the process
3. The Commission undertaking vetting of senior Police Officers despite the vetting regulations being declared unconstitutional by the High Court;
4. The Commissioners being in serious violation of the Constitution and the Laws of Kenya;
5. The Commissioner being culpable for gross misconduct in performance of their functions;
6. Serious gender and regional disparities in the promotion of Police Officers to senior ranks;
7. Vacancy in the Commission as a result of the death of the late Commissioner Esther Chui-Columbini;
8. That one of the Commissioners is bed-ridden as alleged due to illness and thus being unable to perform his duties thereby reducing the number of serving Commissioners to four (4) consequently resulting in the Commission transacting business without the requisite quorum.

The Committee made the following observations:

1. **Any person may present a petition to the National Assembly for the removal of Commissioners from Commissions as provided for under Article 251(2) of the Constitution. However, the architects of our Constitution placed a high threshold for the removal, therefore requiring that there be sufficient and credible grounds for which the National Assembly should be satisfied with before a petition is sent to the President.**
2. **When a Commissioner is charged for an offence, the accused Commissioner is presumed to be innocent until proven guilty as provided for Article 50(2) (a) of the Constitution. A Commissioner may be removed after a conviction of a felony. Commissioner Ronald**

**(d) Gender and regional disparities in promotion of Police Officers to Senior Ranks:**

The petitioner has used a list of Senior Officers appointed to new police ranks as contained in the National Police Service Act under the Second Schedule to substantiate allegations of gender and regional disparities in promotions. The lists refer to the senior ranks of Senior Assistant Inspector-General (SAIG), Assistant Inspector-General (AIG) and Commissioner of Police (CP). These are not promotions as alleged by the petitioner but are migration of the old senior ranks which were abolished to the new ranks of Senior Assistant Inspector General, Assistant Inspector General and Commissioner of Police.

The National Police Service Act abolished the old Police ranks of Senior Deputy Commissioner of Police I and II (SDCP I & II), Deputy Commissioner of Police (DCP), Senior Assistant Commissioner of Police (S/ACP) and Assistant Commissioner of Police (ACP). These were 5 ranks in total. Officers who were in the five abolished ranks were migrated to the three new ranks.

Senior Officers in the old ranks who had been vetted and found suitable and competent to be retained in the Service were migrated and appointed to the new ranks. The Commission's mandate under the Constitution and enabling legislation includes appointing persons to hold or act in offices in the Service. The Commission had made deliberate efforts to ensure gender and regional balance are taken into account during the decision making process.

Within the Service there exists a disparity in gender, ethnic and regional representation. It is these disparities that need to be corrected in the reform process. The migration of officers from the old senior ranks to the new senior ranks would necessarily still have the disparity because the Commission still has to work with what is currently obtaining in the Service.

The procedure used to effect the migration was made on a clear criteria which included academic qualifications; professional knowledge in matters relating to one or a combination of the following disciplines: Criminal Justice, Policy development and implementation, Finance and Public Administration, Strategic Management, Security, Law, Sociology, or Governance; experience in the Police Service, years served, current rank held, human resource qualities including leadership, communication skills, innovation, ICT and change management skills and gender, regional and ethnicity composition.

The submitted list for the three senior ranks takes into account ethnic and regional issues as well as gender representation to the best extent possible given the pre-existing officers. There was not a single officer from the old senior ranks who were left out in the migration to the new senior ranks, except those that were removed through the vetting process and whose cases were still pending in court. The Commission was taking steps to address the existing disparities through affirmative action and that promotions strictly take into account gender and regional representation. The Committee expressed displeasure with the migration process which was not a fair competition and opened doors to favouritism.

accordance with Section 6 of the same Act which outlines the procedure to be followed, and in such a procedure, the Commission does not take any part in the process. The Commission had made several notifications for an appointment to be made to fill the vacancy.

The Committee observed that the requisite quorum for a meeting was 5 members and the quorum was raised to 6 members pursuant to the amendment of the National Police Service Commission Act in April 2014 which provides that the Inspector-General and the two Deputy Inspectors-General are members of the Commission and not ex-officio members so as to constitute quorum in meetings.

The Committee further observed that at all times, the Commission had the requisite number of Commissioners to hold Commission meetings and that under Article 250 (1) of the Constitution, the membership of the Commission is at least 3 and not more than 9 members. The Commission is therefore properly constituted if it consists of at least 3 members.

- d) **That one of the Commissioners is bedridden due to illness, thus unable to perform his duties, reducing the number of serving Commissioners to four (4). As a result, the Commission has been transacting business without the requisite quorum:**

The Petitioner seems to be of the incorrect view that the serving Commissioners are five (5) and that they are now reduced to four, thus affecting quorum. However as per Article 246(2) of the Constitution, the Commission is composed of 9 members. With the illness of Commissioner Major (Rtd.) Shadrack Muiu in May 2013, the number of Commissioners became 8.

Thereafter, Commissioner Esther Chui-Columbini passed away on 25<sup>th</sup> November 2013 and the number of Commissioners reduced to 7. The requisite quorum for a meeting was 5 members and the quorum was raised to 6 members pursuant to the amendment of the National Police Service Commission Act in April 2014.

The Commission therefore had the requisite number of Commissioners to hold Commission meetings at all times. Article 250(1) of the Constitution provides that each Commission shall consist of at least 3 and not more than 9 members. The Commission has notified the appointing authority of the need to replace the ill Commissioner pursuant to Article 251 (I) (c) of the Constitution.

In the event that the court convicted Commissioner Musengi, the procedure for his removal as enumerated under Article 251 (1) (a) of the Constitution would become operational and the procedure applicable would be as captured in Article 251 (2) – (7) of the Constitution. Further, the Commission by a letter dated 1<sup>st</sup> December, 2014 requested for an advisory opinion from the Attorney General with a reminder dated 29<sup>th</sup> January, 2015. The Commission is still awaiting the advisory so that it may be guided accordingly.

- b) **Vetting:** The petitioner has relied on the Judgement in respect of Petition No. 6 of 2014 consolidated with Judicial Review Miscellaneous Application No. 11 and 12 regarding the vetting of police officers. The petitioner has wrongly construed the judgement to be that the vetting regulations have been declared unconstitutional. The Commission had been vetting police officers using the National Police Service (Vetting) Regulations, 2013 which were gazetted on 16<sup>th</sup> December 2013.

The gist of the cases referred to is that the affected officers moved to the High Court to challenge their removal on several grounds and were seeking orders that include a declaration by the court that the vetting process be stopped and declared unconstitutional. The officers also raised the issue that the vetting began within 24 hours of the gazettelement of the vetting regulations and that they were not accorded fair administrative action.

The judgment given by the Court was that:- the vetting regulations were properly gazetted; the Commission had the power to gazette the regulations and the vetting process was properly carried out by the Commission. The court did not grant the orders prayed for by the officers and did not declare the vetting regulations and/or the vetting unconstitutional.

The Committee observed that Hon. Justice Odunga directed the Commission to expeditiously commence afresh the process of vetting the affected officers ( Applicants in the case) because the vetting process in respect of the affected officers did not meet the Constitutional and administrative threshold of fairness. The Committee further observed that the High Court did not declare the National Police Service (Vetting) Regulations 2013 unconstitutional.

- c) **Vacancy upon death of the late Commissioner Esther Chui:** The petitioner seemed to allege that the Commission had failed to fill the vacancy created in the Commission due to the death of Commissioner Esther Chui-Columbini. Indeed as per section 8(1) (a) of the National Police Service Commission Act the death of a Commissioner creates a vacancy. However, section 9 (1) of the same Act provides that where a vacancy occurs in the membership of the Commission, the President shall appoint a replacement in

c) **Integrity:** The petitioner raised concern that one of the Commissioners, Ronald Musengi, had an ongoing court case and therefore did not meet the integrity requirements to hold public office as per Chapter 6 of the Constitution. The petitioner provided a copy of the charge sheet for the case in reference (Police Case No. 121/272/2014).

d) **Vetting:** The petitioner noted that the ongoing vetting of police officers was being carried out without regulation and were therefore illegal. He provided a copy of a court ruling dated 20<sup>th</sup> May, 2014 that declared the vetting exercise not meeting the threshold of fairness. The petitioner noted that the issues raised were serious issues of integrity and breach of law and prayed that the Committee would hear the cries of the residents of Bura constituency and respond to the prayers raised in the petition.

### 3.2 Meeting with the National Police Service Commission

On 26<sup>th</sup> March 2015, the President, in his Annual State of the Nation Address at the National Assembly, annexed to his report a confidential report of the Ethics and Anti-Corruption Commission. The Chairperson of the NPSC has been named in the report and had stepped aside to allow for investigations. Commissioner Murshid Mohamed represented the Chairperson of NPSC. During the meeting, the Committee was informed that:

a) **Court Case against Commissioner Ronald Musengi:** Commissioner Musengi had a case in court which was still ongoing. Under Article 50(2)(a) of the Constitution, accused persons have a right to a fair trial and shall be presumed innocent until it is proved otherwise. The Commissioner was not charged under the Anti-Corruption and Economic Crimes Act but under sections 275, 313 and 393 of the Penal Code relating to stealing, conspiracy to commit a felony and obtaining by false pretence. The charge sheet submitted by the petitioner did not relate to Commissioner Musengi but to one Bitange Ndemo who was charged under the Anti-Corruption and Economic Crimes Act.

Section 62 of the Anti-Corruption and Economic Crimes Act which the petitioner refers to only applies to public officers charged under the Act and sub-section 6 states that this section does not apply with respect to an office if the Constitution limits or provides for the grounds upon which a holder of the office may be removed or the circumstances in which the office must be vacated. In this case, Commissioner Musengi was not charged under the Anti-Corruption and Economic Crimes Act.

specified in Article 151(1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

Subsequently, under Article 151(3) of the Constitution, the National Assembly is mandated to consider the petition and, if it is satisfied that it discloses a ground under clause (1), it shall send the petition to the President.

After the President receives the Petition, Article 151(4) of the Constitution provides that the President—

- (a) may suspend the member or office holder pending the outcome of the complaint;*
- and*
- (b) shall appoint a tribunal in accordance with clause (5).*

Finally, as provided by Article 151(6) of the Constitution, the tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.

### **3.1 Meeting with the Petitioner**

The Committee was taken through the issues raised in the petition by the petitioner. The petitioner addressed the Committee by elaborating the various grounds in his petition for the removal of the five Commissioners of the National Police Service Commission:

- a) Promotion:** The Commission reportedly promoted eight (8) officers to the position of Senior Assistant Inspector General of Police without consideration of gender and regional balance. The petitioner submitted a copy of a letter from the National Police Service Commission to the Inspector General of Police (Ref: NPSC/1/3/10/VOL.III/3) indicating the officers who had been appointed as Senior Assistant Inspector General of Police.
- b) Quorum:** According to the petitioner, the Commission had been meeting without the requisite quorum of five Commissioners as per the National Police Service Commission Act. Commissioner Major (Rtd.) Shadrack Muiu had been away on sick leave and the Vice-Commissioner Esther Chui Colombini was deceased. The petitioner provided a copy of the Commission's Minutes dated 21<sup>st</sup> August, 2013 to substantiate the claim that Commissioner Major (Rtd.) Shadrack Muiu had been absent from meetings on medical grounds. The Chairperson of the Committee clarified that the Inspector General of Police and the two deputy Inspectors-General were no longer *ex-officio* members of the Commission as per the National Police Service Commission (Amendment) Act and would therefore be part of the quorum whenever the Commission sits.

### 3.0 Consideration of the Petition

The Committee held four sittings to consider the matters raised in the petition. During the first sitting, the Committee considered the gist of the petition and came up with a programme of meetings to be held in consideration of the petition.

The second meeting was held between the Committee and the petitioners where the latter expounded on the rationale behind the prayers in the petition and provided further evidence to their claims.

The third meeting gave a chance to the Commissioners to respond to the allegations raised in the petition. Finally, the Committee held one last sitting to consider and adopt the report of the petition.

The grounds for the removal of a Commissioner are set out in Article 251(I) of the Constitution which provides as follows—

*251. (1) A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for—*

*(a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;*

*(b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;*

*(c) physical or mental incapacity to perform the functions of office;*

*(d) incompetence; or*

*(e) bankruptcy.*

Section 5(5) (e) of the National Police Service Commission Act, 2011, provides that a person shall not be qualified for appointment as a chairperson or member if the person—

*(e) has been convicted of a felony; or*

*(f) has been removed from office for contravening the provisions of the Constitution or any other law.*

Section 8(1) (c) of the National Police Service Commission Act, 2011, provides that the office of the chairperson or a member shall become vacant if the holder—

*(c) is removed from office—*

*(i) for failure to meet the requirements of Chapter Six of the Constitution, or*

*(ii) under any of the circumstances specified in Article 251 of the Constitution.*

Further, Article 151(2) of the Constitution provides that a person desiring the removal of a member of a Commissioner of a holder of an independent office on any ground

The evidence/documents attached to the Petition are:

1. A copy of Charge Sheet O.B. No. 43/18/2012, wherein, among others, Ronald L. Musengi was charged with willful failure to comply with law relating to procurement contrary to section 45(2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003.
2. A copy of a letter by Ojango Omumu (Commission Secretary/Chief Executive Officer, National Police Service Commission) dated 6<sup>th</sup> November 2014 to the Inspector-General conveying decision of the Commission of appointment of police officers to the rank of Senior Assistant Inspector-General, Assistant Inspector-General and to the rank of Commissioner of Police.
3. A copy of the Gazette Notice No. 4775 amending the First and Second Schedules of the National Police Service Act so as to amend the ranking structure of the leadership of the Kenya Police Service and Administration Police Service
4. A copy of a letter dated 7<sup>th</sup> October 2013 written by Johnstone M. Kavuludi, Chairperson for the National Police Service Commission, to Mr. Ojango Omumu (Under Secretary, National Police Service Commission) appointing him as Commission Secretary/Chief Executive Officer in an acting capacity.
5. A Copy of Judgement of Petition No. 6 of 2014 (*Immanuel Masinde Okutoyi & Others-v-The National Police Service Commission & Another*)
6. A copy of the Commission's Minutes dated 21<sup>st</sup> August, 2013 to substantiate the claim that Commissioner Major (Rtd.) Shadrack Muiu had been absent from meetings on medical grounds.

The Petitioners prayed that:

1. The House resolves that the Petition discloses ground for removal of the named Commissioners under Article 251(a), (b), (c) and (d) of the Constitution;
2. The House recommends to the President to form a tribunal to investigate the named Commissioners.



## 2.0 Background Information

The Petition by residents of Bura Constituency was tabled in the House having been signed by thirteen residents of the constituency.

The petitioners have petitioned for the removal of five (5) commissioners of the National Police Service Commission, viz:

1. Johnstone Kavuludi (Chairman)
2. Ronald L. Musengi
3. Murshid A. Mohammed
4. Major (Rdt.) Muiu Shadrack Mutia (Dr)
5. Mary Auma Owuor

The petition enumerates grounds for removal of the Commissioners as follows:

1. Serious violation of the Constitution and the Laws of Kenya
2. Gross misconduct in performance of their functions as Commissioners
3. Incompetence in the conduct of vetting and promotion of Police Officers without proper regulations in place to guide the process
4. One Ronald Musegi continuing to serve as a Commissioner despite having been charged with willful failure to comply with law relating to procurement contrary to section 45(2) as read with section 48 of the Anti-Corruption and Economic Crimes Act 2003.
5. The position of the Commission Vice-Chair has never been filled following the death of the late Esther Chui
6. The Commission has been vetting senior Police Officers using the regulations which were declared unconstitutional by the High Court;
7. A serious gender and regional disparities are evident in the promotion of Police Officers to senior ranks
8. One of the Commissioners, Major (Rtd.) Shadrack Muiu, is bed-ridden due to illness, thus being unable to perform his duties, reducing the number of serving Commissioners to four (4). As a result, the Commission has been transacting business without the requisite quorum.

Mr. Speaker, Sir.

The Committee considered the petition and recommends the following:

1. That it finds that the Petition has failed to disclose sufficient and credible grounds for the removal of the five (5) Commissioners of the National Police Service Commission as set out in Article 251(1) of the Constitution.
2. That it urges His Excellency the President to expedite the replacement of the two vacancies of Commissioners after the death of Commissioner Esther Chui-Columbini on 25<sup>th</sup> November 2013 and the sickness of Commissioner Major (Rtd.) Shadrack Muiu since May 2013.
3. That it urges the Commission to brazenly and constitutionally address the systemic and deep-seated gender, regional and ethnic imbalances as a result of past disparities evidenced in the recruitment, appointment and promotion of police officers. The Commission should transform the Service so as to adhere to Article 246(4) of the Constitution which provides that the composition of the National Police Service should reflect the regional and ethnic diversity of the people of Kenya.
4. That the Committee, while underscoring the constitutional right of persons to petition under Articles 119 (1) and 251(1) of the Constitution, urges petitioners to take cognizance of the high threshold of evidence required for the removal of Constitutional Commissioners.

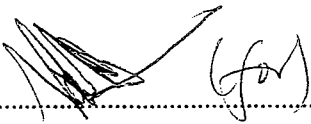
#### 1.4 Acknowledgement

Mr. Speaker,

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

Mr. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 227 (2), it is my pleasant duty to table in the House the Report of the Departmental Committee on Administration and National Security on its consideration of the Petition by residents of Bura Constituency seeking the removal of five Commissioners of the National Police Service Commission.

Signed.......... Date.....16/04/2015.....

**Hon. Asman Kamama, MGH, OGW, MP**

**Chairman, Departmental Committee on Administration and National Security**

within 60 days. The Commission considered the petition pursuant to the provisions of Standing Order 227 (1) and (2).

The Committee held four sittings to consider the prayers of the petitioners. In their petition, the petitioners wished to **draw the attention of the House to the following matters** regarding the National Police Service Commission in the exercise of its powers or in the performance of its functions;

1. The Commission was in serious violation of the Constitution and the Laws of Kenya;
2. The Commissioners committed gross misconduct in performance of their functions as Commissioners;
3. The Commissioners were incompetent in conducting the vetting and promotion of Police Officers without proper regulations in place to guide the process;
4. One Ronald Musengi continuing to serve as a Commissioner despite having been charged with willful failure to comply with law relating to procurement contrary to section 45(2) as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003;
5. The position of the Commission Vice-Chair has never been filled following the death of the late Esther Chui;
6. The Commission has been vetting senior Police Officers using the regulations which were declared unconstitutional by the High Court;
7. Serious gender and regional disparities are evident in the promotion of Police Officers to senior ranks;
8. One of the Commissioners, Major (Rtd.) Shadrack Muiu, is bed-ridden due to illness thus being unable to perform his duties, reducing the number of serving Commissioners to four (4). As a result, the Commission has been transacting business without the requisite quorum.

Therefore, the petitioners **prayed that the National Assembly through the Departmental Committee on Administration and National Security:-**

1. Resolves that the petition discloses grounds for removal of the five Commissioners under Article 251(a), (b), (c) and (d) of the constitution;
2. Recommends to His Excellency the President to form a tribunal to investigate the five Commissioners.

## 1.2 Committee Membership

**Mr. Speaker, Sir,**

The following are the Members of the Committee:

The Hon. Asman Kamama, MGH, OGW, MP - **Chairperson**  
The Hon. Alois M. Lentoimaga, MP - **Vice Chairperson**  
The Hon. Ababu Namwamba, EGH, MP  
The Hon. Joseph Lekuton, MP  
The Hon. Alice Wahome, MP  
The Hon. Zakayo K. Cheruiyot, MP  
The Hon. Timothy W. Wetangula, MP  
The Hon. Patrick Ole Ntutu, MP  
The Hon. Ali Isaack Shaaban, MP  
The Hon. Samuel Moroto, MP  
The Hon. Humphrey Njuguna, MP  
The Hon. Francis K. Mwangangi, MP  
The Hon. Rashid J. Bedzimba, MP  
The Hon. David Gikaria, MP  
The Hon. Mohamed Shidiye, MP  
The Hon. Jane Machira, MP  
The Hon. Ibrahim Abdi Saney, MP  
The Hon. Joseph O. Ndiege, MP  
The Hon. (Maj. Rtd.) John K. Waluke, MP  
The Hon. Wanjiku Muhia, MP  
The Hon. Akuja Protus Ewesit, MP  
The Hon. Joseph M. Kahangara, MP  
The Hon. Ahmed Abdikadir Ore, MP  
The Hon. Regina Nthambi Muia, MP  
The Hon. Grace Kiptui, MP  
The Hon. George Theuri, MP  
The Hon. James Bett, MP  
The Hon. Benard Shinali, MP

## 1.3 Consideration of the Petition

**Mr. Speaker,**

On Thursday 10<sup>th</sup> December, 2014, a petition was tabled before the House pursuant to Standing Order No. 225 (2)(a) by the Hon. Ali Wario, MP, on behalf of residents of Bura Constituency.

Pursuant to House rules, the petition was referred to the Departmental Committee on Administration and National Security for consideration and preparation of a report

## PREFACE

### 1.1 Committee Mandate

Mr. Speaker, Sir,

The Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No. 216(1) of the National Assembly and has executed its mandate in accordance with the provisions of the said Standing Order 216 (5), which mandates the Committee to, inter alia;

- (i) study and review all legislation referred to it;*
- (ii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (iii) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- (iv) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
- (v) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister;*

Mr. Speaker,

The Committee, according to Schedule II of the Standing Orders, examines the following subjects:

- i) Public Administration
- ii) National security
- iii) Internal Security
- iv) Immigration
- v) Prisons Service
- vi) National Youth Service, and;
- vii) Natural disasters

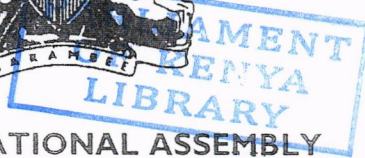
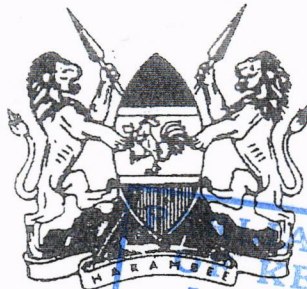
The Committee oversees the following Ministries and Departments:

- i) The Presidency (Cabinet Services & State Affairs)
- ii) Ministry of Interior and Coordination of National Government
- iii) Public Service Commission
- iv) National Police Service Commission
- v) Independent Policing Oversight Authority

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REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

*Approved*  
*Xelors.*  
*16/4/15*

ELEVENTH PARLIAMENT – THIRD SESSION – 2015

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DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

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REPORT ON THE PETITION BY RESIDENTS OF BURA CONSTITUENCY  
SEEKING THE REMOVAL OF FIVE COMMISSIONERS OF THE NATIONAL  
POLICE SERVICE COMMISSION

CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
**NAIROBI**

APRIL, 2015

**L. Musengi's case is still ongoing. The fact he has been charged with an offence does not of its own constitute a ground for his removal or the removal of the other Commissioners.**

- 3. Gender parity, regional and ethnic diversity in the recruitment, appointment and promotion of police officers is encapsulated in our Constitution and the National Police Service Commission Act. Indeed, Article 246(4) of the Constitution provides that the composition of the National Police Service shall reflect the regional and ethnic diversity of the people of Kenya. This is also evidenced under Section 6(12) of the National Police Service Commission Act which provides that in shortlisting, nominating or appointing persons as Chairperson and members of the Commission, the selection panel, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.**
- 4. The gender disparity, regional and ethnic imbalances in the National Police Service are still evident in the new ranks of the Police Service. However, since there have been systemic gender, regional and ethnic imbalances in the Service, the new ranks reflect these imbalances.**
- 5. The alleged lack of regulations to guide the process of appointment of police officers to the new ranks may affect the credibility of the appointment but may not be a ground to impeach the character/competence of the Commissioners and therefore be a ground for their removal.**
- 6. Under Article 250 (1) of the Constitution, membership of the Commission consists of at least 3 and not more than 9 members. Therefore, the Commission is properly constituted if it consists of at least 3 members. The Commission submitted that the number of the Commissioners is currently seven (7). In any case, the composition of the membership does not constitute a ground for the removal of Commissioners.**
- 7. There are two vacancies in the Commission as a result of the death of the Vice-Chairperson Esther Chui-Columbini and the prolonged illness of Commissioner Major (Rtd.) Shadrack Muiu. Section 8 (1) of the National Police Service Commission Act provides that the office of the chairperson or a member (of the Commission) shall become vacant if the holder dies. When this happens, Section 9 (1) provides that the President shall appoint a replacement in accordance with**



Section 6 which provides for the procedure of the appointment which is to be used also in the replacement.

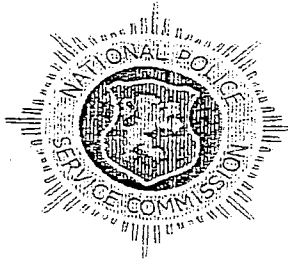
8. It is the duty of His Excellency the President to appoint replacements of the two Commissioners. Commissioner Esther Chui passed away on 25<sup>th</sup> November 2013 whereas Commissioner Major (Rtd). Shadrack Muiu fell ill in May 2013. These vacancies affect the constitutional functions of the National Police Service and replacement of the Commissioners should be given priority.
9. The Commission, under Article 250(10) (b) of the Constitution, has the power to elect a vice-chairperson to fill the vacancy in the office of the vice-chairperson after the death of Commissioner Esther Chui-Columbini and it will be their constitutional duty to ensure that the Chairperson and Vice-chairperson of the Commission are not of the same gender vide Article 250 (11) of the Constitution.
10. The Hon. Justice Odunga in the case of *Immanuel Masinde Okutoyi & Others—Versus—The National Police Service Commission & Another* (Petition No. 6 of 2014 consolidated with Judicial Review Miscellaneous Application Nos. 11 and 12 of 2014) directed the Commission to expeditiously commence afresh the process of vetting the affected officers ( Applicants in the case) because the vetting process in respect of the affected officers did not meet the Constitutional and administrative threshold of fairness. Thus the High Court did not declare the National Police Service (Vetting) Regulations 2013 unconstitutional. Therefore, this cannot constitute a ground for the removal of the Commissioners.

## 5.0 Committee Recommendations

1. The Committee finds that the Petition has failed to disclose sufficient and credible grounds for the removal of the five (5) Commissioners of the National Police Service Commission as set out in Article 251(1) of the Constitution.
2. The Committee urges His Excellency the President to expedite the replacement of the two vacancies of Commissioners after the death of Commissioner Esther Chui-Columbini on 25<sup>th</sup> November 2013 and the sickness of Commissioner Major (rtd) Muiu since May 2013.
3. The Committee urges the National Police Service Commission to brazenly and constitutionally address the systemic and deep-seated gender, regional and ethnic imbalances as a result of past disparities evidenced in the recruitment, appointment and promotion of police officers. The Commission should transform the Service so as to adhere to Article 246(4) of the Constitution which provides that the composition of the National Police Service should reflect the regional and ethnic diversity of the people of Kenya.
4. The Committee, while underscoring the constitutional right of persons to petition under Articles 119 and 251(1) of the Constitution, urges petitioners to take cognizance of the high threshold of evidence required for the removal of Constitutional Commissioners.

# ANNEX 1

CONFIDENTIAL



NO 1

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Tel No. 0202186053/61

P.O. Box 47363 - 00100  
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Woodvale Close, Westlands  
NAIROBI

Our Ref: NPSC/1/3/10/VOL.III/3

Date: 6<sup>th</sup> November, 2014

The Inspector General  
National Police Service  
P.O. Box 44249-00100  
Jogoo House "A"  
NAIROBI

REF: IMPLEMENTATION OF BOARD DECISIONS – BOARD MEETING OF  
OCTOBER 29<sup>TH</sup> 2014

A. APPOINTMENT TO THE RANK OF SENIOR ASSISTANT INSPECTOR GENERAL  
(SAIG)

I am directed to convey the decision of the Commission that the following seven  
(7) police officers be appointed to the rank of Senior Assistant Inspector General  
w.e.f. October 29<sup>th</sup> 2014 being the date of the Commission Meeting.

NO	NAME	P/NO	OLD RANK	REMARKS
	Sayia William Atswenje, CBS, OGW	81015185	SDCP-I	Position personal to the Officer
	Owino Patrick O.J.	80056853	SDCP-I	Position personal to the Officer
	Kanampiu Julius Kibaara	81157432	DCP	
	Ashimala Joseph Henry	83057531	DCP	
	Kitili Joel M.	85014694	DCP	
	Mwei Fred Mbithi, SS, MBS	94035005	DCAF	
	Kimilu Muoki Gedion, MBS	89107499	DCP	

A handwritten signature in black ink, appearing to be 'D.J.' or similar, written over a horizontal line.

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B. APPOINTMENT TO THE RANK OF ASSISTANT INSPECTOR GENERAL (AIG)

I am directed to convey the decision of the Commission that the following sixty five (65) police officers be appointed to the rank of Assistant Inspector General w.e.f. October 29<sup>th</sup> 2014 being the date of the Commission Meeting.

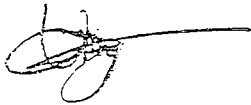
S/NO	NAME	P/NO	OLD RANK	REMARKS
	Kavila Peter L. EBS,OGW	77004669	S/DCP II	
2	Shurie Omar	74013473	S/DCAP II	
	Mwangi Zachary King'ori	88103036	DCP	
	Ijora Leo Nyongesa	77012793	DCP	
5	Mc'opiyo Silas	80077095	DCP	
	Githinji Benson K	78041151	DCP	
7	Munyambu Francis Musembi	78085595	DCP	
8	Muriuki Charlton Murithi	85005069	DCP	
	Kiriungi Nduta Beatrice	75009207	DCP	
10	Adoli Aggrey James Kikuyu	77025990	DCP	
	Ochola Marcus Juma	81117911	DCP	
	Ole Tito Joseph	81004142	DCP	
13	Tuimur Philip K	87089970	DCP	
	Kyule Mwandu Levin	7602566	DCP	
15	Toroitich Chelimo	80025705	DCP	Position personal to the Officer
16	Maingi Boniface N. EBS, ndc(K)	87089962	DCP	Position personal to the Officer
7	Mbithi Rogers M.	09000015	DCP	
8	Mwangi Wanjohi Francis	81117929	DCP	Position personal to the Officer
	Pamba Peter Musanga	79236026	DCAP	
0	Muli Miriam Ngina	87089742	S/ACP	
1	Simatwa K. Kapchanga,	88039635	S/ACP	
2	Kiraithe Erick Kibaara	91010941	S/ACP	
3	Gachina Francis	78041070	S/ACP	
4	Kitur Robert K. HSC	83057646	S/ACP	
5	Ombati Moses N.	81015208	S/ACP	
6	Ndunda Philip Ndolo	83045013	S/ACP	
7	Mbugua Edward N.	78041096	S/ACP	
8	Singoei William K.	84014594	S/ACP	
9	Oyugi Kaol Auma	78030540	S/ACP	
10	Wambura Maurice Amatta	83088244	S/ACP	
11	Massa Hamisi S. MBS	92015180	S/ACP	



S/NO	NAME	P/NO	OLD RANK	REMARKS
32	Amin Mohammed I.	89107621	S/ACP	
33	Kinyua Jacinta Muthoni MBS	87041168	S/ACP	
34	Muhuni Patrick Mugo	79109253	S/ACP	
35	Mugwanja Joseph K	85025271	S/ACP	
36	Kamwende Nicholas MBS	88103125	S/ACP	
37	Angasa Joseph Ngisa	79135270	S/ACP	
38	Simiyu Alice Naliaka	75009249	S/ACP	
39	Osodo Elijah A.	77012751	S/ACAP	
40	Nderitu James	80031104	S/ACAP	
41	Lugusa Wilberforce N.	89135971	ACP	
42	Lamai Stanley Kimaiyo	78121668	ACP	
43	Kipsang Joseph Kiget	81015232	ACP	
44	Ndenda Judy Jebet	89107083	ACP	
45	Nyasing'a Tom Omani, OGW	91034937	ACP	
46	Maalim Abubakar I	88072293	ACP	
47	Cheruiyot Stanley K.	87089849	ACP	
48	Munga Gideon Nyale	91014806	ACP	
49	Sunkuli Julius K.	81124641	ACP	
50	Kinoti George Maingi	92010520	ACP	
51	Thwere Okelo William	76025400	ACP	
52	Otieno Arrison	79102628	ACAP	
53	Chepkaitany Joseph	81059618	ACAP	
54	Kerich Paul	78020634	ACAP	
55	Njiru Dickson Benson	77012272	ACAP	
56	Mwaniki James M.	79107390	ACAP	
57	Kaloki Jones Kavoi	81061178	ACAP	
58	Muthee Christopher	78071091	ACAP	
59	Kirathe Francis N	77069928	ACAP	
60	Mwangi Francis Mburu	81013206	ACAP	
61	Ole Keis Tom Kontire	80076976	ACAP	
62	Mairura Caleb Angonga	78070524	ACAP	
63	Muriithi Peter Macharia, OGW, HSC,	76012059	ACAP	
64	Kipsambu Moses K	82046896	ACAP	
65	Ole Matektek John K.	78020626	ACAP	

### C. OFFICERS PLACED IN THE RESERVE LIST

I am directed to convey the decision of the Board that the following officers who have substantively been appointed to the rank of Commissioner of Police (CP) be further placed in the reserve list for consideration for appointment to the position of Assistant Inspector General (AIG) whenever a vacancy arises in the rank of AIG in the following order of seniority.



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NOI

S/NO	NAME	P/NO	OLD RANK
1	Kebenei Daniel	76035243	S/ACP
2	Amalla Gideon	85021188	S/ACP
3	Hapi Abdi M. OGW	86031013	S/ACP
4	Kibunjah Gideon Mwangi	87089912	S/ACP
5	Kieng Larry Kiplagat	80031162	S/ACP
6	Omar Bashane	82103698	ACP
7	Atinda Gradius	77012298	ACAP
8	Mathiu Silas Gichunge, OGW, HSC	84015605	ACP

**D. APPOINTMENT TO THE RANK OF COMMISSIONER OF POLICE (CP)**

I am directed to convey the decision of the Commission that the following ninety two (92) police officers be appointed to the rank of Commissioner of Police w.e.f. October 29<sup>th</sup> 2014 being the date of the Commission Meeting.

S/NO	NAME	P/NO	OLD RANK
1	Obimo Patrick Ochieng	86063078	S/ACP
2	Koome Japhet N.	91013818	S/ACP
3	Ngului Ikumbu James	80073538	S/ACP
4	Barmao Henry Kosgei	79178074	S/ACP
5	Mwanzia Mwania Peter	81152262	S/ACP
6	Yaah David Baya	76016249	S/ACP
7	Mumanthi Charles K.	89107504	S/ACP
8	Oduori Elias Peter	79041015	S/ACP
9	Kirimi James Ringera, MBS	76041553	S/ACP
10	Kinoti Narangwi Charles	77070262	S/ACP
11	Noor Yarowgabow, OGW	88103303	S/ACP
12	Makau Solomon M.	80077215	S/ACP
13	Njiru Boniface Mwaniki	82085670	S/ACP
14	Kirocho Douglas Kanja, OGW	85039181	S/ACP
15	Ngumi Gideon G., OGW	91035412	S/ACP
16	Adera Patrick Lumumba	84024468	S/ACP
17	Cheserem Samwel Kimaru	83057654	S/ACP
18	Mbaabu Gerald Silas	83027926	S/ACP
19	Kihiko Eunice Wangari	79095632	S/ACP
20	Barasa Pius Thomas	81108417	S/ACP
21	Njiru Francis M.	81004419	S/ACP
22	Kamau Dr. Zephania M	89107449	S/ACP
23	Muthusi Charles Nzioka, MBS, OGW	78041046	S/ACP
24	Ondiek Henry Owira	80006638	S/ACP
25	Munyasya Ambrose O.	85025263	S/ACP
26	Okunnu Vitalis Otieno	215337	S/ACP
27	Mbogho Scavier Archie	79108972	S/ACP

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No1

S/NO	NAME	P/NO	OLD RANK
28	Kyalo Lilian M Kiamba	79109261	S/ACP
29	Okello John Willis	74036926	ACP
30	Situma Fredrick Kadenge	77025974	ACP
31	Kiura Ephantus Kariuki	78036986	ACP
32	Lochakai Samuel Lolli	74013821	ACP
33	Limo Joseph Kimutai	80031146	ACP
34	Mwivanda Noah, OGW	87094161	ACP
35	Musau Gabriel Mutuku	89107465	ACP
36	Sangoroh Allan Onyango	92044391	ACP
37	Hassan Harret Abdi	79109392	ACP
38	Ndiema John Kiplel	78072233	ACP
39	Mwamburi Edward Maghanga	86091330	ACP
40	Karaba Dawson Gatwanjeru M	75089045	ACP
41	Chiwe Emphram D.	09000031	ACP
42	Mulaulu John M.	79037773	ACP
43	Kitili Julius M.	87089475	ACP
44	Kogo Benjamin Kiptoo	82103729	ACP
45	Too Joshua Kiplimo	80031154	ACP
46	Omusanga John	86031372	ACP
47	Barmao Jostine M.	84113958	ACP
48	Muvea Titus M.	82103753	ACP
49	Karuru Angelus G.	81073303	ACP
50	Omollo Leonard O.	83091022	ACP
51	Ongayo Walter Aliwa	77026124	ACP
52	Njiru Nelson Munyi	85011353	ACP
53	Kimani Peris Muthoni	83099127	ACP
54	Mutua Christine M.	79109300	ACP
55	Wandera Humphrey Wanzala	78008941	ACP
56	Nthiga Augastine Kimantiria	79021560	ACP
57	Kodi Joseph D	83045786	ACP
58	Mwangi Johnson G.	82108567	ACP
59	Katana Leonard	85017430	ACP
60	Njirii Nelson Mugweru	89071614	ACP
61	Ngui John N. Mwinzi	81123077	ACP
62	Nthenge Joseph M, OGW	83057638	ACP
63	Olweywe Aineah K.	81051767	ACP
64	Kamitu Anthony, OGW	83057604	ACP
65	Bunei David Rono	84110772	ACP
66	Mbuthia Josphat Kirimi	88039384	ACP
67	Boronjo Job, HSC	82114673	ACP
68	Mbuvi Gabriel S.	78009036	ACP



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S/NO	NAME	P/NO	OLD RANK
69	Barasa Michael Wasieba	81152288	ACP
70	Rutere Julius	86123056	ACP
71	Kilonzo Simon Mboni	79010145	ACP
72	Mwrua Haisi Mohamed	82108949	ACP
73	Cheruiyot David	79041023	ACP
74	Chelelgo Yego Musa	81032713	ACP
75	Macharia Pius M	84024379	ACP
76	Okumu Michael O.	79228471	ACP
77	Dindi Moses Soita	87089857	ACP
78	Iregi Boniface Ngatia	82108583	ACP
79	Ndunda Patrick M.	219755	ACP
80	Mutinda Patrick Kiswii	79170783	ACP
81	Chumo Joseph K. Kimaru	78121642	ACP
82	Munyi Sospeter Njue	<del>89071680</del>	ACP
83	Kimilu Joseph Mativo	75097747	ACAP
84	Ndirangu James Rukwaro	74013774	ACAP
85	Mbugua Samuel Kimwere	76004860	ACAP
86	Ochieng Washington Ajuoga	78071295	ACAP
87	Naibei Benard	79106124	ACAP
88	Ahmed Bashane	78030126	ACAP
89	Wakukha Jacob Sohera	75093939	ACAP
90	Yakub Rashid A.	87086087	ACAP
91	Mukiri Jacob N.	79108689	ACAP
92	Siboro Julius Okere	78131833	ACAP

Please convey the decision of the Commission and make necessary adjustments to their personnel records.



OJANGO OMUMU  
CS/CHIEF EXECUTIVE OFFICER

Copy to: Chief of Staff/Head of Public Service  
The Presidency  
State House  
NAIROBI

Principal Secretary, Interior  
Ministry of Interior & Co-ordination of  
National Government  
NAIROBI

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NOI

GAZETTE

THE NATIONAL POLICE SERVICE...  
TASKFORCE ON COMMUNITY POLICING...

GAZETTE

TASKFORCE ON COMMUNITY POLICING...  
THE KENYA DEFENCE ACT...

Page: 1727

GAZETTE NOTICE NO. 4775

THE NATIONAL POLICE SERVICE ACT

(NO. 11A OF 2011)

AMENDMENT OF FIRST AND SECOND SCHEDULES OF THE NATIONAL POLICE  
SERVICE ACT

IN EXERCISE of the powers conferred by section 22 (2) and 25 (2) of the National Police Service Act, the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government, upon advice of the National Police Service Commission, amends the First and Second Schedules of the National Police Service Act as follows:

RANKING STRUCTURE IN THE KENYA POLICE SERVICE (SECTION 22)

1. Deputy Inspector-General
2. Senior Assistant Inspector-General
3. Assistant Inspector-General
4. Commissioner of Police
5. Senior Superintendent
6. Superintendent
7. Assistant Superintendent
8. Chief Inspector
9. Inspector
10. Senior Sergeant
11. Sergeant
12. Corporal
1. Constable

RANKING STRUCTURE IN THE ADMINISTRATION POLICE SERVICE (SECTION 25)

1. Deputy Inspector-General
2. Senior Assistant Inspector-General
3. Assistant Inspector-General

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4. Commissioner of Police
5. Senior Superintendent
6. Superintendent
7. Assistant Superintendent
8. Chief Inspector
9. Inspector
10. Senior Sergeant
11. Sergeant
12. Corporal
13. Constable

Dated the 1st July, 2014.

JOSEPH ole LENKU,

*Cabinet Secretary,*

*Ministry of Interior and Co-ordination of National Government.*

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# ANNEX 2

POLICE 5

KENYA POLICE

POLICE CASE NO. 121/272/2014

CHARGE SHEET

DATE TO COURT 29/8/2014

O.B. NO: 43/18/9/2012.....

COURT ACC 14/20

Christian Names in full or Name	Surname or Father's Name	Identity Certificate	Sex	Nationality or tribe	Apparent Age	ADDRESS (including district)
1. BITANGE NDEMO	MAWEU NZYUKO MUSENGI MUTHAMA MABEA	NIL	M	KENYAN	A	C/O. MACHAKOS
2. JULIUS KILONZO						"
3. JULIUS MBAU						"
4. RONALD LEPOSO						"
5. JOHNSON NDUYA						"
6. ZABLON AGWATA						C/O NAIROBI
CHARGE COUNT 1.	WILFUL FAILURE TO COMPLY WITH LAW RELATING TO PROCUREMENT CONTRARY TO SECTION 45(2)(b) AS READ WITH SECTION 48 OF THE ANTI CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003.					
PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)	(1) <b>BITANGE NDEMO:</b> On the 27 <sup>th</sup> day of June, 2009 at Teleposta Building in Nairobi within Nairobi County, being the Permanent Secretary and accounting officer of the Ministry of Information and Communication willfully failed to comply with the law relating to procurement to wit sections 27(2) of the Public Procurement and Disposal Act 2005 and regulation 16 of the Public Procurement and Disposal regulations 2006 by signing a contract/agreement for purchase of 5,000 acres of land from Malili Ranch Ltd by the said Ministry vide tender number MIC S 1/2008/2009 whilst he was aware that the said tender was awarded by the Ministerial Tender Committee without being subjected and financial evaluation					
	(other counts see other page)					
If Accused Arrested	Date of Arrest	Without or with warrant	Date Apprehension Report to Court	Bond or Bail and Amount	Is Application made for Summons to Issue	
NO			29/08/2014		YES	
Remanded or Adjourned to						
Complainant And Address	MALILI RANCH SHAREHOLDERS					
Witnesses.	TO BE STATED					
Sentence	.....					
Court and Date	CM'S MILIMANI LAW COURTS ON ..... If fine paid .....					

OFFICER IN-CHARGE  
MUTHAIGA POLICE STATION  
P. O. Box 65928-00618, NAIROBI

Date: .....  
Officer in Charge MUTHAIGA Police station

AD PP  
5/9/14  
Chapter Six  
of the  
Constitution  
NO 3

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