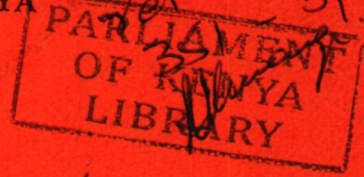




REPUBLIC OF KENYA



*Paper laid by
the A.K. O.P.
C.M.S. Kingi in
relation to Q No
3/8/06.*

Report of the
Judicial Commission
Appointed to Inquire
into

Bombolulu Girls High School
Fire Tragedy
of
25th/26th March, 1998

Chairman:

BISHOP LAWI IMATHIU (RTD.)

Presented to

His Excellency

Hon. Daniel T. arap Moi, C.G.H., M.P.
President and Commander-in-Chief of the Armed Forces of the
Republic of Kenya

July, 1998

PARLIAMENT
OF KENYA
LIBRARY

Report of the
Judicial Commission
Appointed to Inquire
into
Bombolulu Girls High School
Fire Tragedy
of
25th/26th March, 1998

NATIONAL ASSEMBLY LIBRARY

1000680

CLASS NO. 362.65 IMA


Report of the Judicial
Commission Appointed to
Imathiu, Lawi
362.65 IMA

1000680

TABLE OF CONTENTS

		<i>Page</i>
	Letter of Transmittal.. .. .	v-vii
	Acknowledgements	ix-xi
	Executive Summary	xiii-xv
Chapter I	Introduction:	1-5
Chapter II	The Evidence - Procedure	6-7
Chapter III	The Ill-fated Dormitory	8-11
Chapter IV	The Fire Tragedy & its Circumstances	12-68
Chapter V	Other Matters Pertaining to the Fire Tragedy	69-92
Chapter VI	Recommended Remedial & Preventive Measures	93-114
 Appendices 		
Appendix A.1	Rules and Procedure	115-116
Appendix A.2	Rules and Procedure - Amendment	117
Appendix B	Attorney-General's Opening Address at the Official Inauguration of the Commission ..	118-121
Appendix C	Chairman's Address at the Opening Session of the Inquiry	122-123
Appendix D	Witness Summons	124

Appendix E	List of Inquiry Witnesses	125–129
Appendix F	List of Inquiry Exhibits	130–135
Appendix G	Chairman’s Closing Address at the Conclusion of the Public Inquiry	136

Bombolulu School Fire Tragedy
Commission of Inquiry,
Town Hall,
Treasury Square,
P. O. Box 16634,
Mombasa,
Kenya.

31st July, 1998.

His Excellency the President,
Hon. Daniel T. arap Moi, C.G.H., M.P.,
State House,
NAIROBI.

Your Excellency,

By Gazette Notice No. 1760 published on 17th April, 1998 you appointed us Commissioners to inquire into the circumstances surrounding and leading to the fire tragedy which occurred at Bombolulu Girls High School, Coast Province on the night of 25th/26th March, 1998.

We would like to state that we felt honoured to be so appointed.

We have completed our task and now humbly submit our Report in accordance with the provisions of section 7(1) of the Commissions of Inquiry Act, Chapter 102 of the Laws of Kenya, and as directed in Gazette Notice No. 1761 published on 17th April, 1998 which also set out our Terms of Reference.

We remain,

Your Excellency's Most Obedient Servants,

Bishop Lawi Imathiu (Rtd.)
CHAIRMAN

.....

Mohamed Hatimy (Capt.)
COMMISSIONER

Mohamed Sururu
COMMISSIONER

Samuel arap Ng'eny
COMMISSIONER

Priscilla Mrabu (Mrs.)
COMMISSIONER

Dr. Eddah Gachukia
COMMISSIONER

Zainab Haji (Mrs.)
COMMISSIONER

Dr. Shahnaaz Kassam Sharif
COMMISSIONER

Stevens Marangi Mbogho
COMMISSIONER

Mohamed Said Demu
COMMISSIONER

Samuel Chityeke Tuku
COMMISSIONER

Ambassador Japhet Gideon Kiti
COMMISSIONER

Benjamin Patrick Kubo, E.B.S.
SECRETARY

ACKNOWLEDGEMENTS

We would like to thank the Attorney-General, Hon. S. Amos Wako, E.B.S., E.G.H., M.P., who appeared *amicus curiae* in these proceedings.

Likewise, we wish to record our appreciation of the work of the two Counsel, Miss Muthoni Kimani and Mr. George Dulu who assisted the Commission in assembling and presenting evidence pertaining to the Inquiry. Their assistance was invaluable to our assignment.

This Judicial Commission of Inquiry had only one Secretary, Mr. Benjamin Patrick Kubo, E.B.S., described by the Attorney-General in his opening address as "an old hand in working with Commissions of this nature in the past". Mr. Kubo brought his legal knowledge and administrative experience to bear on all aspects of the Inquiry and we found him to be a great asset.

We also extend our appreciation to the Support Staff drawn from Government Ministries and Parastatal Organizations. Despite initial logistical problems, they worked long hours and with dedication in order to, and did, render necessary support services.

Additionally, we thank the Cabinet Office and other Government Ministries/Departments and Parastatal Organizations which gave us logistical support. We wish to single out for special commendation the Municipal Council of Mombasa for availing to the Commission, at short notice, four offices and the Council Chamber at Town Hall for purposes of the Inquiry. We also thank the Mombasa Serena Hotel and the Mombasa Club for the welfare services rendered by them to the Commission.

Further, we wish to acknowledge the important role played generally by the Inquiry Witnesses who appeared before the Commission to testify on the fire tragedy.

Last, but not least, we thank the media for regularly informing Kenyans on how the Inquiry was progressing.

Bishop Lawi Imathiu (Rtd.)
CHAIRMAN

Mohamed Hatimy (Capt.)
COMMISSIONER

Mohamed Sururu
COMMISSIONER

Samuel arap Ng'eny
COMMISSIONER

Priscilla Mrabu (Mrs.)
COMMISSIONER

Dr. Eddah Gachukia
COMMISSIONER

Zainab Haji (Mrs.)
COMMISSIONER

Dr. Shahnaaz Kassam Sharif
COMMISSIONER

Stevens Marangi Mbogho
COMMISSIONER

Mohamed Said Demu
COMMISSIONER

.....

Samuel Chityeke Tuku
COMMISSIONER

.....

Ambassador-Japhet Gideon Kiti
COMMISSIONER

.....

EXECUTIVE SUMMARY

We were appointed by His Excellency the President vide Gazette Notice Nos. 1760 and 1761 dated 16th April, 1998 and published on 17th April, 1998 and Gazette Notice No. 2046 dated 28th April, 1998 and published on 30th April, 1998 as a Commission to Inquire into Bombolulu Girls High School Fire Tragedy of the night of 25th/26th March, 1998.

The Commission began its work on 29th April, 1998 and completed the Inquiry on 29th June, 1998. All the Inquiry proceedings were held in public in the Council Chamber of the Municipal Council of Mombasa at Treasury Square, Mombasa. Witnesses were examined on oath or affirmation.

Two Counsel were appointed along with us to assist in assembling evidence and presenting it before the Commission. Three police officers were attached to the two Assisting Counsel to help them in tracing witnesses and bringing them before the Commission.

Four theories arose for our consideration as possible causes of the fire tragedy as follows:-

- a Electrical Fault.
- b Arson.
- c Accident.
- d Spontaneous Combustion.

With regard to the Electrical Fault theory, we heard evidence of various procedural irregularities and omissions in the manner the electrical installations were carried out in the ill-fated dormitory. The evidence adduced before us did not establish Electrical Fault as the cause of the fire.

Electric lights in the ablution sub-block of the dormitory block and security lights outside the dormitory block were "ON" even as the fire was burning the dormitory. We were told that the lights could not have been "ON" in those circumstances if the fire had been caused by an electrical fault. We have made appropriate recommendations regarding the irregularities and omissions brought to our attention.

In the course of examining the Electrical Fault theory, we also had occasion to consider static electricity as a possible cause of the fire. The ideal environment for static electricity to cause ignition is the presence of materials such as textiles, temperature of 27°C - 28°C and *humidity of 20% - 25%*. We heard evidence from a Meteorologist, Mr. Richard Adera (I.W.74) that the humidity on the fateful night averaged 90%. In our view it was not possible for static electricity to have caused the fire.

As to the Arson theory, we heard evidence that there were no proper security arrangements at the school. Not a single teacher lived in the school. Only a lowly qualified matron stayed with the girls at night. Two watchmen undertook security duties at the school at night. They reported to nobody in particular.

On the fateful night, one watchman was found sleeping outside the administration block of the school away from the dormitory as the girls proceeded that side after running out of the burning dormitory. He was totally unaware of the fire and he told the girls to go back and sleep!

Circumstantial evidence was given that the Bombolulu students were stoned twice at Mazeras on their way back from extra-curricular activities on 14th and 21st March, 1998. No tangible evidence came forth to establish to our satisfaction that Arson was the cause of the fire tragedy. We have made appropriate recommendations with regard to inadequacies in the management of the school.

Turning to the Accident theory, we heard evidence that there was a Science Congress at Matuga Girls Secondary School on Saturday 21st March, 1998. Some 11 Bombolulu Girls Secondary School students attended the Congress. They carried the requisite science equipment/apparatus and chemicals to the Congress. Upon their return to Bombolulu in the evening, they did not return the science equipment/apparatus and chemicals to the Laboratory. Instead they kept the equipment and chemicals in the ill-fated dormitory and there they remained until the night of the fire. The science equipment included a gas burner containing gas and a reagent bottle containing a chemical called ethanol. Both gas and ethanol are inflammable substances.

Boxes of matches, lanterns, iron boxes and a paraffin tin lamp were also in the dormitory on the night of the fire. The possibility of the fire

having started accidentally through the use of one of these items was definitely there. However, no tangible evidence came before us to confirm applicability of the Arson theory. In our view Arson was not proved to have been the cause of the fire tragedy.

The final theory was that of Spontaneous Combustion. The theory would apply to situations where materials are tightly packed in a room which is poorly ventilated. This was not the case with the Bombolulu dormitory. In our view Spontaneous Combustion was also not established as the cause of the fire.

The doors of the dormitory opened inwards, against the flow of outgoing traffic. The students had not received any coaching on how to react in case of a fire emergency. Indeed a science teacher at Bombolulu who held a Bachelor of Education Degree told us he had never received instructions on how to use a fire extinguisher and had never used one in his life.

Bombolulu Girls Secondary School students had been gripped by fear of supernatural phenomena. That and non-attendance by the school administration to their grievances even after reporting them seemed to have demoralized the students to the extent of feeling helpless. At one stage the students marched to the office of the Coast Provincial Director of Education to seek redress as, according to them, the school administration displayed insensitivity to their plight.

We have identified the major issues that emerged out of our Inquiry and recommended appropriate measures in Chapter VI.

CHAPTER I

INTRODUCTION

1. We, Bishop Lawi Imathiu (Rtd.) (Chairman), Mohamed Hatimy (Capt.), Mohamed Sururu, Samuel arap Ng'eny, Priscilla Mrabu (Mrs.), Dr. Eddah Gachukia, Zainab Haji (Mrs.), Dr. Shahnaaz Kassam Sharif, Stevens Marangi Mbogho, Mohamed Said Demu, Samuel Chityeke Tuku and Japhet Gideon Kiti were appointed Commissioners by His Excellency the President of the Republic of Kenya under the Commissions of Inquiry Act, Chapter 102 of the Laws of Kenya (hereafter referred to simply as "the Act") as per:
 - i. Gazette Notice No. 1760 dated 16th April, 1998 and published in the Kenya Gazette of 17th April, 1998.
 - ii. Gazette Notice No. 1761 dated 16th April, 1998 and published in the Kenya Gazette of 17th April, 1998.
 - iii. Gazette Notice No. 2046 dated 28th April, 1998 and published in the Kenya Gazette of 30th April, 1998.

Under Gazette Notice No. 1760, Benjamin Patrick Kubo was appointed Secretary to the Commission while under Gazette Notice No. 1761 he was also appointed Commissioner.

Citation

To inquire into the circumstances surrounding and leading to a fire tragedy at Bombolulu Girls High School on 25th/26th March, 1998.

Terms of Reference

- a) To inquire into the circumstances surrounding and leading to the fire tragedy which occurred at Bombolulu Girls High School on the night of 25th - 26th March, 1998;
- b) To inquire generally or in particular into any other matter pertaining to the above;

- c) To make such recommendations on the matter as may appear to the Commission to be necessary and in particular such recommendations as will assist to prevent similar accidents in institutions of learning;

and in accordance with the provisions of section 7(1) of the said Act, to report thereon.

2. Under Gazette Notice No. 1761, Muthoni Kimani and George Dulu were appointed Counsel to assist the Commission.
3. Further, by the said Gazette Notice No. 1761 we, the Commissioners, were directed in accordance with the provisions of section 10(1) of the Act to summon any person or persons concerned to testify on oath and to produce books, plans and documents that the Commissioners may require.
4. In accordance with section 5 of the Act, we made and subscribed an oath in the prescribed form. The Chairman and Commissioners Hatimy, Sururu, Ng'eny, Mrabu (Mrs.), Haji (Mrs.), Dr. Sharif and Mbogho made and prescribed the oath on 28th April, 1998 before the Honourable the Chief Justice. The Secretary to the Commission, Mr. Kubo and the two Assisting Counsel, Miss Kimani and Mr. Dulu also made and prescribed the oath before the Honourable the Chief Justice on the same date. Commissioners Tuku and Demu made and prescribed the oath on 29th and 30th April, 1998, respectively, before Judge Hayanga of the High Court while Commissioners Kiti and Dr. Gachukia made and prescribed the oath on 4th and 11th May, 1998, respectively, before Judge Waki also of the High Court.
5. As at the 17th April, 1998 when the appointment of the Commission was gazetted, there were no regulations made under the provisions of section 19 of the Commissions of Inquiry Act. So, under the powers conferred by section 9 of the Act, we made our Rules and Procedure for the conduct and management of the Inquiry proceedings. As at the official opening of the Inquiry on Wednesday 29th April, 1998 when the Rules became operational, they provided for sittings from Monday up to Friday. However, after the Inquiry began, it became apparent that the Commission needed to have Saturday sittings as well. Accordingly, on Friday 8th May, 1998 we amended our Rules

to provide for Saturday sittings. The Rules and Procedure made on 29th April, 1998 are at Appendix "A.1" while the Amendment made on 8th May, 1998 is at Appendix "A.2".

6. The venue for the Inquiry had initially been specified by Gazette Notice No. 1761 as the Mombasa Law Courts. Subsequently, it became necessary for the venue to be changed. The change was effected by Gazette Notice No. 2046 dated 28th April, 1998 and published on 30th April, 1998 which changed the venue from Mombasa Law Courts to Town Hall, Mombasa. This latter Gazette Notice also announced the enlargement of the Commission by three additional members: Messrs. Mohamed Said Demu, Samuel Chityeke Tuku and Japhet Gideon Kiti. The Inquiry was, therefore, conducted at the Town Hall, Treasury Square, Mombasa.
7. The Attorney-General, Hon. S. Amos Wako, E.B.S., E.G.H., M.P., appeared *amicus curiae* and addressed the Inquiry at the official opening on Wednesday 29th April, 1998. His opening address is at Appendix "B".
8. After the Attorney-General's address, the Chairman also addressed the gathering. The Chairman's address is at Appendix "C".
9. The Inquiry was held in public in accordance with the provisions of section 3 (4) of the Act. All the hearing sessions took place at the Town Hall, except for two occasions when Inquiry Witness No. 64, Tsui Mkuzi Jacca, the Sub-Contractor who had carried out electrical installations in the ill-fated dormitory and Inquiry Witness No. 89, Jackson Kiema, the Investigating Officer were cross-examined at the scene of the fire tragedy.
10. Ninety witnesses were summoned to, and did, testify before the Commission. A sample of the Summons is at Appendix "D". Particulars of the Inquiry Witnesses are given in Appendix "E". Fifty-two Inquiry Exhibits were produced during the proceedings. The Exhibits are listed in Appendix "F".
11. Two people submitted memoranda addressing various policy issues pertaining to the subject matter of the Inquiry. The first of these people was Dr. Sobbie Mulindi, Senior Lecturer/Consultant in the

Department of Psychiatry at the College of Health Sciences, Nairobi. He gave his memorandum the telling title: *After Bombolulu Disaster What Next? Lack Of Policy On Safety*. The second person was Mr. Ali Abdulla El-Maawy, an educationist. He gave his memorandum the title: *Character – The Bombolulu Girls Secondary School*. Mr. El-Maawy basically lamented the incidence of moral decadence and abdication of social responsibility in society, including the education sector. He wondered how the fire could engulf the sleeping children before anyone seeing its beginning and predicted: “There will be many more Bombolulus if we do not build a strong charactered man with high moral values to care for responsibility as a commitment to God, the society and himself”.

12. There are two other written communications we wish to acknowledge. One came from Mr. Mwero of Kenya Power & Lighting Company in Mombasa. He wrote to us from an unspecified hospital in Nairobi saying he would have liked to talk to us in person but he could not do so on account of illness. Mr. Mwero repeated certain allegations we heard during the Inquiry proceedings about the goings-on at Bombolulu Girls Secondary School. These included allegations of witchcraft practices. He warned about some hypocrites in the area who professed Christianity by day but resorted to charms by night. The last person to send a written communication to us was Mzee Mombasa Mwambao of P. O. Box 88455, Mombasa. He lodged with us a Kiswahili poem entitled “Pongezi Na Wote Wenye Kushiriki” in honour of the girls who perished in the Bombolulu inferno. In his poem, Mzee Mwambao, inter alia, decried witchcraft practices. He hailed the appointment of the Commission of Inquiry and hoped it would unearth the truth about the tragedy. Finally, he urged that the tragedy be not politicised.
13. We heard evidence from Inquiry Witnesses over a period of 33 working days, including Saturdays, and heard legal submissions from Assisting Counsel on the 34th day, i.e. Monday 29th June, 1998. This marked the last day of the public hearings after which we retreated to consider the evidence and make this Report.

14. Professor Juma Lugogo who, as Chairman of Bombolulu Girls Secondary School Board of Governors had earlier testified as Inquiry Witness No. 3, considered himself adversely affected during the evidence of Inquiry Witness No. 20 - Lawrence Bora Herbert - on the question of whether the Board of Governors held any meetings immediately after the tragedy and also on the question whether donations towards the Bombolulu Girls Secondary School Fire Disaster Fund were being received by him secretly or publicly. The Professor, therefore, applied to appear again before the Commission "to set the record straight". We granted his application and he appeared again before us and made his representations after the testimony of the eighty-sixth witness.
15. Magdalene Kamene Maluki who had earlier testified as Inquiry Witness No. 41 and Monica Gakii who had earlier testified as Inquiry Witness No. 43 were recalled to give certain clarifications. They reappeared under their respective original Inquiry numbers and testified for the second time after the seventieth witness.
16. After the Commission heard legal submissions from Assisting Counsel, the Chairman gave a final address and declared the Inquiry formally closed. The Chairman's closing address is at Appendix "G".
17. There is a question of nomenclature we wish to clarify at this early stage of the Report. The Gazette Notices appointing the Commission and giving its Terms of Reference referred to the institution subject matter of the Inquiry as a "High School" while the evidence tendered during the Inquiry proceedings alluded to the same institution as a "Secondary School". We understand that the description "High School" was previously reserved for schools which offered education from Form I up to Form VI while schools which offered education from Form 1 up to Form IV only were described as "Secondary School". Following the removal of Forms V and VI from educational institutions at this level, the distinction between "High School" and "Secondary School" also disappeared and the two titles became interchangeable. Accordingly, we have retained "High School" in the title to the Report and in every other place where the title of the Commission has been cited. However, in the text we have referred to the institution under Inquiry as a "Secondary School".

CHAPTER II

THE EVIDENCE - PROCEDURE

18. During the preparation of this Report, we were mindful that while our appointment made us a judicial tribunal for the purpose of receiving and assessing the evidence adduced before us, we were not a trial court. Our task was to conduct the Inquiry specified in our Terms of Reference, find, to the extent possible within the given time, facts pertaining to the subject and make appropriate recommendations. We followed the provisions of the *Evidence Act* (Cap. 80) governing the admission of relevant and hearsay evidence as well as the rules of natural justice in so far as they were not excluded by the nature of the Inquiry being a probe. We did not, therefore, discount any evidence as irrelevant or useless until the Report stage.
19. An Inquiry such as this, not being the trial of any person, may go on what are called "fishing expeditions" thereby permitting the reception of hearsay evidence as it may lead to the discovery of matters of great public importance. If it does, the result justifies its admission. If it does not, we believe no injury is occasioned. (*Royal Commissions and Boards of Inquiry*, by Leonard A. Hallett, 1982 Edition).
20. We accepted certain hearsay evidence on the basis explained above and acted upon it only where it became authenticated by other evidence.
21. Evidence was adduced before the Commission under oath or affirmation by the question and answer method. Assisting Counsel conducted the examination-in-chief of Inquiry Witnesses, followed by their cross-examination as the situation demanded. Commissioners also questioned Inquiry Witnesses as they deemed necessary. Undue technicalities did not arise in the course of the Inquiry proceedings.
22. Some of the evidence tendered before us was technical. The Commissioners were drawn from diverse callings and professional fields as follows: Bishop Lawi Imathiu (Rtd.) - Theologian; Mohamed Hatimy (Capt.) - Merchant Shipping; Mohamed Sururu -

Chief Fire Officer; Samuel arap Ng'eny - Teacher/Politician; Priscilla Mrabu (Mrs.) - Retired Nurse; Dr. Edda Gachukia - Educationist; Zainab Haji (Mrs.) - Educationist; Dr. Shalnaaz Kassam Sharif - Physician; Stevens Marangi Mbogho - University Senior Lecturer/Electrical Engineering; Mohamed Said Demu - Retired Senior Collector of Customs & Excise; Samuel Chityeke Tuku - Retired Senior Chief; Ambassador Japhet Gideon Kiti - Diplomat/Educationist; and, Benjamin Patrick Kubo - Advocate. Where evidence adduced before the Commission fell within the area of expertise of any of the Commissioners, such Commissioners led their colleagues in evaluating the evidence.

CHAPTER III

THE ILL-FATED DORMITORY

23. Bombolulu Girls Secondary School is situated on a ridge and commands a panoramic view of its surroundings. A shallow valley separates the school from Mazeras (Boys) High School about 500 metres to the south; the land in the west sags, rises gently and undulates leisurely away into the neighbouring savannah hinterland; the immediate north is dotted with thinly spread-out coconut and mango trees interspersed with small-scale seasonal subsistence crop farming activities; and, the east is adorned predominantly by plantations of coconut palms whispering softly and swaying gently in graceful response to the refreshing winds blowing from the Indian Ocean approximately 22 kilometres further east.
24. According to Inquiry Witness (I.W.) 84, Assistant Chief Stephen Nyawa Mwachiti of Mazeras Sub-Location and I.W. 87, Morris More Mwenda, a Trustee of the Methodist Church which is the sponsor, the Church set aside some 35 acres of its 500 or so acres of land at Mazeras Methodist Mission for the school. Mr. Mwenda testified that Bombolulu Girls Secondary School was an off-shoot of the then Mazeras High School which was co-educational. The vision then was “to start a Girls High School similar to the Alliance Girls High School, Kikuyu” and the Bombolulu site was chosen with that objective in mind. The school was started in 1982 at an old site building belonging to the Methodist Church less than a kilometer away. Mr. Mwenda, however, lamented that those who took on the responsibility of transforming the founders’ vision into reality lost sight of the vision and many things went wrong in the implementation of the school’s development programme. He recalled that professional building plans had been obtained from Dr. E. May & Partners but these were not followed. This, according to him, was the origin of many things going wrong. He considered some of the buildings eventually put up there to be sub-standard.
25. The dormitory gutted down by fire on the night of 25th/26th March, 1998 was the only completed dormitory at Bombolulu Girls Secondary School. The dormitory was officially opened by Mrs.

Khadija Karim, Coast Provincial Director of Education (I.W. 81) on the 18th May, 1996. She conceded that the dormitory was congested, a factor she ascribed to high demand for education. We heard evidence from the school Headmistress, Mrs. Pricilla Mwasi (I.W. 1) that no certificate of occupation was issued before the official opening of the dormitory. A second dormitory was near completion as at the time of the tragedy. In the course of investigations, the Investigating Officer, Inspector Kiema (I.W. 89), inter alia, drew a Sketch Plan of the ill-fated dormitory. The Sketch Plan was produced as Inquiry Exhibit No. 47 (a). The dormitory block is rectangular and is set in an east-west direction. It is divided into two parts. The dormitory itself measures 76' 8" by 32' 2". The second part consists of the Matron's room and a common ablution sub-block. The main external door is on the western side and it measures 4' wide. At the eastern end of the dormitory part of the block, there is an internal door giving access to the Matron's room and the ablution block. Opposite the Matron's room is the rear external door situated on the southern side of the building. Evidence adduced before the Commission was to the effect that both external/exit doors opened inwards, against the line of traffic flow. This came out vividly through the testimony of Mombasa Municipal Fire Brigade Fireman, William Madafu Chikejo (I.W.65). According to him the dormitory should have accommodated a maximum of 40 students on single beds or a maximum of 80 students on double-decker beds.

26. The Headmistress (I.W.1) told the Commission that although the dormitory's capacity was for 100 students, she fitted into it some 75 double-decker beds to accommodate 150 students. On the material date the number of boarders was listed as 146. The effect of the evidence of Mr. Madafu (I.W.65) and the evidence of the Headmistress (I.W.1) is that the dormitory's human population capacity was exceeded by at least 50 students!
27. As to the location of Bombolulu Girls Secondary School, it was established through the evidence of a number of Inquiry Witnesses that the site where Bombolulu Girls Secondary School was built is in Mazeras Sub-Location, Kasemeni Location, Kwale District, Coast Province (I.W. 59, I.W. 81 and I.W. 84). We had the distance from the school to the junction of the school access earth road and the

Mombasa-Nairobi highway at Mazaras measured up to the Kenyatta Avenue/Digo Road roundabout in Mombasa and it was found to be around 20 kilometres. Jomo Kenyatta Avenue in Mombasa is the main road passing through the centre of the town towards Nairobi via Mazaras. We find the distance from the school to the junction of the school access road and the Mombasa-Nairobi highway at Mazaras to be 1.7 kilometres and the distance from that junction at Mazaras to Mombasa to be 20 kilometres.

28. There is one other aspect of the historical development of Bombolulu Girls Secondary School which deserves recording here. Professor Lugogo (I.W. 3) told the Commission that after being elected the Chairman of Bombolulu Girls Secondary School Board of Governors in July, 1993, he became aware that the Methodist Church had requested the girls to vacate the premises they had been residing in at the old site building belonging to the Church because "The Church have alternative use for the premises". The previous Board had decided to build dormitories for the girls at what is now Bombolulu Girls Secondary School. A contractor had been engaged to put up the first dormitory but it collapsed in its early stages of construction. The new Board gave dormitory construction top priority and the first dormitory (the ill-fated dormitory) was officially opened for occupation in May, 1996 as reported at paragraph 25. According to the Headmistress (I.W. 1), the school enrolment at the time was around 181 students. Some of them remained as day scholars but the Headmistress had to squeeze into the dormitory more students than it was designed to accommodate, as already recorded in paragraphs 25 and 26. Morris Mwenda (I.W. 87), a Trustee of the Methodist Church, however, denied any knowledge that the girls had to vacate the old premises when they did because there was any other use those premises were required for. He stated categorically that the premises were still vacant even as at the 12th June, 1998 when he came to testify before the Commission.
29. Earlier on, Professor Lugogo (I.W. 3) had testified that one of the problems which necessitated the construction of a self-contained school for girls at Bombolulu was the fact that previously the girls had to go for preps in the Village Polytechnic within Mazaras, escorted by a watchman who had to wait until the girls completed their preps and then he would take them back to their residential

premises at the old site. It later came to the knowledge of parents that there were occasions when the duty watchman did not discharge his security escort duties and the girls were accosted. The Board of Governors and Parents -Teachers Association decided around October, 1993 that a dormitory construction project must be embarked upon as a matter of urgency, and so it was.

30. While we appreciate the problems involved in the girls having had to trek to the Village Polytechnic for preps and back without attendant efficient security escort services, we are, nevertheless, of the considered view that the better course would have been to retain the girls in their old residential premises but strengthen the security escort services and concurrently speed up the construction of adequate residential accommodation at Bombolulu before removing the girls from the old premises. Alternatively, the removal of the girls from the old residential premises could have been staggered. As it happened, the girls were hurried out of the old residential premises into an overcrowded dormitory, with the catastrophic consequences subject matter of this Inquiry, while the vacated residential premises at the old site have remained vacant ever since!
31. In our view the removal of the girls from the residential premises at the old site to the new site at Bombolulu before adequate residential accommodation was put in place at the new site was short-sighted and unfortunate.

CHAPTER IV

THE FIRE TRAGEDY & ITS CIRCUMSTANCES

32. As already recorded in paragraph 1, our Term of Reference (a) enjoined us:

“To inquire into the circumstances surrounding and leading to the fire tragedy which occurred at Bombolulu Girls Secondary School on the night of 25th/26th March, 1998”.

This chapter attempts to ascertain those circumstances.

Attendant Loss in Human and Property Terms

33. On the night of 25th/26th March, 1998, agents of death and destruction in the form of flames descended upon the only completed dormitory at Bombolulu Girls Secondary School and caused havoc of a magnitude that will be difficult for Kenyans to forget for a very long time. We were told by Inspector Jackson Kiema (I.W. 89), who carried out police investigations with others into the fire, that 22 girls died instantly in the inferno and their bodies were burned beyond recognition.

34. Inquiry Witness No. 67, Dr. Kishor Narsinch Mandaliya, Coast Provincial Pathologist carried out post-mortem examinations on the bodies of the 22 deceased girls on 26th March, 1998 and recorded his findings in Inquiry Exhibit No. 27. He, inter alia, made the following ghastly findings:

“Most of the bodies were in a severe stage of incineration. There were many burst fractures of the bones and abdomens. No facial characteristics were noted. It was impossible to make any possible identification of the victims. Many had limbs which were either lost or completely burnt away. Therefore the heights taken were those of the burnt remains of the bodies. True heights were therefore not possible to measure. Likewise it was not possible for identification by dental examinations as no dental records of the victims were available. As such in most parts of Kenya and Africa in general dental records are usually not

available or kept by the authorities. Also poor and irregular dental examinations are a major constraint when identifications by dental methods has (sic) to be carried out.... In view of the above findings I feel that proper and true identifications of all the deceased persons would not be possible. I would therefore conclude by noting that these were 22 bodies of young females in their late teens that were burnt beyond recognition.”

35. The list of the 22 girls who perished instantly in the Bombolulu inferno was furnished to the Commission by the Investigating Officer, Inspector Jackson Kiema (I.W. 89) as follows:-

a) Lucy Mwanzala	-	Form IV
b) Mary Nzaro	-	Form IV
c) Mbeyu Mshenga	-	Form IV
d) Rabia Shauri	-	Form IV
e) Alice Kithome	-	Form IV
f) Eddah Kagwi	-	Form III
g) Halima Suleiman	-	Form III
h) Jedidah Muthoni	-	Form III
i) Nyamvula Mkuba	-	Form III
j) Riziki Juma	-	Form III
k) Selina Yama	-	Form III
l) Vivian Mwikali	-	Form III
m) Zainabu Mwakweli	-	Form III
n) Uchi Morris	-	Form III
o) Loise Kwenenda	-	Form III
p) Dzame Mshenga	-	Form II
q) Mongeli Kimuyu	-	Form II
r) Mwanaidi Ali Mwamzuri	-	Form II
s) Muthoki Joshua	-	Form II
t) Nancy Mwero	-	Form II
u) Margaret Mbeyu Chengo	-	Form II
v) Maria Patrick	-	Form I

36. We also have it on the authority of the Bombolulu Headmistress (I.W. 1) that 32 more girls got injured during the fire. They were initially treated in different hospitals in Mombasa but the majority were taken to the Coast Provincial General Hospital. Some were later transferred to the Pandya Memorial Hospital. The majority

were subsequently discharged from the Coast Provincial General Hospital but 4 subsequently died at the Pandya Memorial Hospital as a result of the injuries sustained during the fire. Medical reports obtained by the Investigating Officer and produced by him as Inquiry Exhibit No. 47 (b) gave the particulars of the 4 girls who died and their fatal injuries as follows:-

a) Rachel Umazi

She sustained deep burns in the legs, arms, head and chest. The surface area under the burns was about 36% of the total body surface. She died of "cardio-pulmonary (sic) arrest" at midnight on 30th March, 1998.

b) Mwanisha Diyo

She sustained burn wounds on various parts of her body including her head, back and arms, an area covering about 35% of her body surface. The burns in her back and arms were particularly deep. She died of cardio-pulmonary arrest at 4.00 a.m. on 4th April, 1998.

c) Mwanhamisi Mwasabuni

Upon her admission in hospital, she was diagnosed to have sustained inhalation burns and 30% surface burns to her face, neck, both upper limbs and posterior trunk. She died of septicaemia and pneumonia, being complications of the burns, at 11.30 p.m. on 1st April, 1998.

d) Betty Kitonga

She was admitted in hospital with extensive deep burns from hot flames. The burns were facial, trunkal and involving both the upper and the lower limbs. There was evidence of respiratory tract burns and inhalation of toxic fumes with subsequent chest infection and shock lung. The initial assessment of extent of the burns was 50% but it later tallied at 70% of total body surface area. She died of cardio-pulmonary collapse on 9th April, 1998.

37. The Doctors who treated the above 4 girls were not called to testify before the Commission. The report of Dr. J. M. Muthuri who

treated Betty Kitonga before she died observed that she “was admitted.... with extensive deep *burns from hot flames (hot coals?)*”. Before the Investigating Officer produced Dr. Murthuuri’s report, we had heard evidence from Inquiry Witness No. 37, Faiza Mohamed Mwachome who, among other things, repeated certain comments made by Doctors at the Coast Provincial General Hospital, where the victims of the fire were first taken for treatment, which comments in our view warranted to be probed. The comments, repeated in Kiswahili before us, were partly as follows:

“Eeh, wengine walisema labda ni petrol bomb, labda ni nini, kwa sababu *wale walisema labda ni electricity*. Halafu *wale madaktari wakakataa wakasema kama ni electricity wangukuwa weuse mwenye vidonda.... Wakasema haiwezi kuwa electricity.*” [Eeh, some said it could be a petrol bomb, it might be what not, because they said it was electricity. Then the doctors dismissed that and said if it was electricity the victims’ wounds would have been black..... They (doctors) said it could not be electricity.]

38. The above evidence introduced a rather controversial theory to the effect that it was possible to deduce from the nature and colour of the girls’ burn wounds whether or not they were caused by electricity. Commissioners intimated, in the course of the Inquiry, their desire to have the validity or otherwise of the theory tested through interrogation of the Doctors concerned. The intimation was given to Assisting Counsel informally and also to them and the Investigators in a formal session. The intimation to the Investigators was given to the Investigating Officer, Inspector Jackson Kiema (I.W. 89) in the following terms:

“Commissioner:

We were told in evidence here by one or two students, I can’t know the exact number but I think one was Faiza, something to the effect that when the surviving girls were taken to hospital, I think she talked of another hospital, it doesn’t matter, that the hospital staff there expressed a certain opinion regarding the burns which they (girls) had suffered. The tapes are there, we shall verify the actual terminology. But basically the issue I want

to raise with you is this: Those members of hospital staff gave a certain opinion to the effect that it couldn't have been an electrical fire because if it had been, then the burns would have been of a colour different from the colour which appeared on these girls. Did this information come to your knowledge in the course of your investigations?

Kiema:

No, your honour.

Commissioner:

Well, it has come to our knowledge here and we would be interested in knowing, from these members of whichever hospital it was, whether medical science has reached that level of sophistication to enable us to say that this colour of fire or burns corresponds to this cause, if you see what I mean?

Kiema:

I understand, your honour."

39. Comparative analysis of the medical reports of 2 of the 4 girls who died in Pandya Memorial Hospital, Mombasa gave us cause for some anxiety. The two girls were: Mwanaisha Diyo and Rachel Umazi. The medical report on Mwanaisha Diyo by Dr. L. G. Gathua, Consultant Surgeon who treated her at the Pandya Memorial Hospital, inter alia, stated:

"Initial treatment was in the Coast Provincial General Hospital. At 8.00 p.m. 26.3.96 (sic), she was transferred to the Pandya Memorial Hospital where I was consulted to treat her. *I.V. fluids were re-started* and antibiotics, and analgesics commenced, saline baths and flamazine applications were prescribed and tetanus toxoid administered."

The medical report by the same Consultant Surgeon on Rachel Umazi on the other hand, inter alia, stated:

“She was first attended to in the Coast Provincial General Hospital and was thereafter transferred to the Pandya Memorial Hospital. I was called to see her at around 8.00 p.m. on 26.3.98. Dehydrated and in pain and weak, *resuscitative treatment with I.V. fluids, antibiotics, and analgesics was commenced*. Tetanus toxoid was given, and saline bath and flamazine application to the wounds carried out.”

In the case of Mwanaisha Diyo, we interpret the expression “*I.V. fluids were restarted*” at the Pandya Memorial Hospital to mean that this treatment had begun at the Coast Provincial General Hospital. However, in the case of Rachel Umazi, we interpret the expression “*resuscitative treatment with I.V. fluids, antibiotics, and analgesics was commenced*” to mean that this treatment had not began at the Coast Provincial General Hospital. If the latter be the case, it means that it took a whole 24 hours after the fire before Rachel Umazi received treatment! If so, that would be a most serious matter on which we, the Commissioners, would have liked to question the Doctors concerned. But, as already observed, the Doctors were not called despite our intimations that they should be called.

40. Opportunity may also have been taken of the Doctors’ appearance before the Commission to ascertain from them whether, before dying, the girls had shared with them any information as to the cause of the fire.
41. Non-attendance of the Doctors in the Inquiry proceedings left the questions posed above hanging unanswered in Commissioners’ minds. With respect, we think the Assisting Counsel and Investigators erred in making the omission.
42. The total number of girls who died in the Bombolulu inferno was 26. These were girls in their late teens, 22 of them having been burned beyond recognition. Mrs. Rachel Umazi Mambo (I.W. 83), grandmother of the late headgirl, Rachel Umazi, aptly summed up the unfathomable agony resulting from the Bombolulu fire tragedy as she narrated that when she reached the scene that fateful night, the fire was raging, the girls trapped inside the ill-fated dormitory, who included 5 of her grandchildren, were roasting helplessly in the flames but she and everyone else around could do absolutely nothing

to save them! And, as if that were not enough, four days after the fire, one other grand-daughter, the Bombolulu headgirl, Rachel Umazi succumbed to her burns and also died, bringing to six Mrs. Mambo's loss of grandchildren in a single, senseless fire!

43. The agony of parents, relatives and friends of the victims was further aggravated by the inability of the parents, relatives and friends of the 22 girls whose bodies were charred beyond recognition to identify those bodies, thereby making it impossible for the bodies to be taken for individual burials in their respective homes or cemeteries as is the revered tradition in our society. Those girls had spent the material night in the ill-fated dormitory but their identities had to be determined en-mass by a process of elimination following a school roll call at which they were conspicuously absent, never to surface again. Faced with that harsh reality, the frustrated and bitter parents, relatives and friends had to settle for a mass burial at Bombolulu Girls Secondary School. What a lonely way for those girls to make their exit!
44. As many as 32 other girls sustained injuries of varying degrees. Some suffered disfigurement of various parts of their bodies. Disfigurement of girls may have adverse implications on their potential for marriage. It is a traumatic experience which could very well shadow around some of them for life. We say no more at this stage.
45. With regard to damage caused by the fire to property, we heard the evidence of Fire Prevention Officer F.O. III, Henry Kyalo Mukima (I.W. 68) who estimated the cost of such damage at Kshs.5,721,000.00. He gave the particulars of destroyed property in Inquiry Exhibit No. 29.
46. There were two classes of witness presented before the Commission, i.e. lay witnesses and those deemed to be experts. Lay witnesses are those with evidence of what they knew, saw, found or heard. The role of this class of witness is to give factual evidence from which conclusions may be drawn. Expert witnesses are those specially skilled in the matter in question. Such witnesses are permitted by law to give opinion evidence from which conclusions may also be

drawn. Opinions by experts are, however, not necessarily binding on a tribunal, such as this Commission was constituted to be.

47. The non-binding nature of expert opinions is well settled in law as demonstrated in the case of *Nyinge s/o Suwatu v.R* [1959] E.A. 974. Nyinge was charged before the Supreme Court in Mombasa with the murder of one Hamisi Sharbaid who was a police inspector. Under a delusion that the inspector was plotting his death, Nyinge killed him. He then surrendered to the police and stated that having killed the inspector "I have come here to be killed because they wanted my head". At Nyinge's trial, a mental specialist, Dr. Margretts gave evidence for the Crown that the accused would know what he was doing, but not that it was wrong. The trial judge, while accepting that the accused was, at the material time, insane in a medical sense, held that the accused's statement to the police showed that he knew that what he had done was wrong and convicted him of murder, instead of finding him "guilty but insane". Nyinge appealed against his conviction to the Court of Appeal for Eastern Africa. The Court of Appeal dismissed Nyinge's appeal. In the process of addressing Nyinge's defence of insanity, the Court of Appeal said:

"On this evidence of Dr. Margrett's, it might have been expected that the learned trial judge would have found the appellant guilty but insane.... *But a court is not obliged to accept medical testimony if there is good reason for not doing so*".

This Commission will, therefore, subject the testimony of any witness to critical scrutiny and act on it only when satisfied of its validity.

Accounts of the Inferno

48. Three theories of possible causes of the Bombolulu fire were advanced directly by Inquiry Witnesses. These are:-

- a) *Electrical Fault.*
- b) *Arson.*
- c) *Accident*

- ^ A fourth theory arose by way of inference from the evidence. This is:-

d) Spontaneous Combustion.

We examine them serially in the ensuing paragraphs.

Electrical Fault

49. We start our examination of the evidence in this regard by revisiting a statement made on 26th March, 1998 by the late headgirl, Rachel Umazi at her hospital bed to her uncle, Gibson Richard Chiwaya Mwanguma (I.W. 56) and her mother, Mary Henry Sita (I.W. 58) to the effect that when she (Rachel Umazi) went to switch "OFF" the electric lights in the dormitory that fateful night, "switch ilikuwa moto sana" (the electric switch was very hot). She also said that when she made the announcement that the switch was hot and that lights had to go "OFF" immediately to facilitate the cooling down of the switch, her colleagues protested against early switching "OFF" of the lights. Nevertheless, she used her powers as headgirl and switched "OFF" the lights and instructed her colleagues to go to sleep. Thereafter Rachel retired to her bed. After a while and before falling fully asleep, she saw flames from upwards, towards the roof. She scrambled out of bed and made for the main door, as did also several of her colleagues. A lot of struggling ensued at the main door, which was "locked." Rachel thought it was locked from outside. She and her colleagues struggled to open the door but, according to her, they did not succeed until Mazeras (Boys) High School students arrived and banged the door from outside when one shutter broke open. When asked what he understood Rachel Umazi's allusion to flames to mean, Inquiry Witness No. 56 replied: "Nilielewa kwamba ni miali ya spaki" (I understood Rachel to allude to electric sparks). It may be worth recording here that Rachel was not alone in thinking that Mazeras High School students took part in breaking the main dormitory door open. Phoebe Mshambala (I.W.21) and Mwanaiki Salim (I.W.35) thought so too.
50. As reported in paragraph 36(a), Rachel Umazi died on 30th March, 1998. She could not, therefore, testify before us. We admitted her

statement in evidence under the provisions of section 33 of the Evidence Act. That section, so far as relevant , states:

“33. Statements, written or oral of admissible facts made by a person who is dead... or has become incapable of giving evidence ... are themselves admissible in the following cases-

- a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are admissible whether the person was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

51. With regard to Rachel Umazi's statement and Phoebe Mshambala's testimony that Mazeras (Boys) High School students may have assisted in breaking the dormitory main door open, we heard the evidence of three Mazeras High School students, i.e. the headboy, Peter Rai Mwamkono (I.W. 71), Michael Sifuma (I.W. 72) and Nassir Rashid Mbwana (I.W. 73). The Mazeras High School students proceeded to Bombolulu Girls Secondary School on hearing the girls' screams on the fateful night. Sifuma said his two colleagues were ahead of him and that he found the main door on fire upon his arrival at the scene. Mwamkono said he found the main door already broken and on fire and that there were villagers trying to help in carrying the victims. Nassir said he was the first among the three to reach the burning dormitory. He found a girl on fire at the main door-step struggling to come out of the dormitory. Nassir was shocked but nevertheless tried to reach out to the burning girl to rescue her. As he stretched out his hand towards the girl to pull her out, hot flames, as if thirsty for more human blood, were advancing in his direction. He was overwhelmed by the heat from the approaching flames, fell down and lay there helpless and unable to fulfil his rescue mission. A wire fell across the doorway and Nassir feared that the wire might have caused an electric shock. When he composed himself, he found his colleagues from Mazeras High School had arrived. He and his colleagues teamed up to render such assistance to the fire victims, including Rachel Umazi, as was

possible. Nassir stated categorically that Mazeras (Boys) High School students did not break the front door open. No other credible evidence was tendered before us to confirm the theory that the dormitory main door was locked from outside on the material night. Indeed, Phoebe Mshambala (I.W. 21) who had been in that school for 2 years told us that the door was never locked from outside at night.

52. In our respectful view, the late Rachel Umazi was mistaken in her belief that the door was locked from outside. We conclude that the dormitory main door was not locked from outside on the night of 25th/26th March, 1998 and find accordingly.

53. We accept the evidence of Peter Raj Mwamkono (I.W. 71), Michael Sifuma (I.W. 72) and Nassir Rashid Mbwana (I.W. 73) that they found the main dormitory door already open. Indeed Barbra Adhiambo Owudo (I.W.39) testified that Mazeras boys came after she had struggled and got out of the dormitory through the main door. We find that Mazeras (Boys) High School students did not participate in breaking the said door open.

54. The next person to suspect an electrical fault as a cause of the fire was Rev. Pius Ndung'u Kagwi (I.W. 57). He told us that he was the Religious Education Secretary employed by the Methodist Church in Kenya and posted at Mombasa. The Church, as the sponsor of Bombolulu Girls Secondary School, had been involved in the running of the school and used to receive reports on the school's performance, which was average. As an employee of the sponsor, Rev. Kagwi took an interest in the school. He also had a daughter in Form III there who perished in the fire tragedy [see paragraph 35 (f)]. Being a parent there gave him added interest in the school. Rev. Kagwi said that his first reaction on hearing about the fire tragedy was that "Kaya Bombo has just struck again" and that the fire was caused by a petrol bomb. Asked what he meant by his reference to "Kaya Bombo", he said "Kaya Bombo" was a nickname given to the raiders of Likoni Police Station and its environs last year who unleashed what later became known, rightly or wrongly, as the Likoni violence. However, upon becoming aware, through the media, of the late Rachel Umazi's statement about the dormitory electric switch being very hot on the fateful night and on further hearing one of the watchmen, Reuben Bwepwe Cholo (I.W.4) saying

he saw Kenya Power & Lighting Company personnel remove something from the meter box at the school after the fire, he (Rev. Kagwi) began to suspect strongly that the fire was caused by an electrical fault.

55. The Headmaster of Mazeras (Boys) High School, Milton Martin Luchu (I.W. 9) whose school neighbours Bombolulu Girls Secondary School told us that there were two power surges at his school in the evening of 25th March, 1998. One was at around 7.30 p.m. and the other at around 11.15 p.m. Asked by a Commissioner about the weather condition that day, he said it was sunny, it did not rain at all. He added that in the evening, it was not raining. The Commissioner clarified to the Headmaster that the questions regarding the weather condition were being asked in the context of his allusion to power surges. The Commissioner continued:

“Commissioner:

Was this surge caused by weather condition?

Luchu:

I wouldn't know but in Mazeras that day there was no rain at all, at all.

Commissioner:

So this power surge was a power failure?

Luchu:

No, it was not kind of a power failure but it was just flickering.

Commissioner:

Coming on and off?

Luchu:

It does go off completely, just one second there is no light and then it comes on automatically”.

The Headmaster thought the power surges were caused by an electrical fault.

56. One of the school watchmen, Reuben Bwepwe Cholo (I.W.4) testified that there were 3 power blackouts at Bombolulu Girls Secondary School in the evening of 25th March, 1998. The first blackout occurred at around 7.30 p.m. and lasted until 7.40 p.m., followed by 2 others before preps ended at 9.30 p.m. A second watchman, Samuel Alex Mangale (I.W.5) also told us of power failure at the school at 7.30 p.m. in the evening of 25th March, 1998. Frederick Odhiambo Okoth (I.W.12), a teacher at Bombolulu Girls Secondary School was in his rented house in Mazeras village at around midnight on the night of 25th/26th March, 1998 when he learnt from the Bombolulu Girls Secondary School Deputy Headmistress, Miss Mercy Mnengwa Wakesho (I.W.11) that there was fire in the Bombolulu dormitory. Mr. Okoth alerted his fellow teachers residing at the same estate and they proceeded to the school. After viewing the site of the dormitory, they went to the staff room. They stayed there for about 5 minutes trying to think of what could have caused the fire "and the watchman, Mzee Bwepwe told us that he suspected the cause of the fire could have been electrical fault. I (Okoth) can also recall that, on the night of 25th, there were power fluctuations, because my bulb was flickering, the supply of power was not constant. There was (sic) power fluctuations, so I thought it could be true, electrical fault." We were also told by Inquiry Witness No. 70, Richard Joshua Muiru of Kenya Power & Lighting Company Limited that Mazeras High School and Bombolulu Girls Secondary School got their electric power supply through the same transformer, an 5kVA transformer initially installed to supply Mazeras (Boys) High School.
57. The electrical installations in the ill-fated dormitory were carried out by Tsui Mkuzi Jacca (I.W. 64), aged 34 years. He told us that he left school in near-by Rabai at Standard VII in 1980. Thereafter he joined a private garage and learnt motor mechanics for 4 years. He could not read or write English well. After the training in motor mechanics, he found employment with Relco Power Systems Company in Mombasa in 1986. His employer was a building construction company concerned with electrical installations. Mkuzi remained on casual terms for a year, then his duties were changed

and he was given on-the-job training in “kazi ya kutengeneza stima”. He received no formal training in electrical installations and had no certificate in that field but he said he worked under the supervision of an Engineer for 4 years. Mkuzi came into the Bombolulu Girls Secondary School dormitory project following an invitation in July, 1996 from the mason, Andrew Jacca (I.W.63), a distant relative, who had been awarded the contract to build the dormitory. Andrew Jacca sub-contracted the electrical installations component to Mkuzi.

58. The work of carrying out electrical installations was done under a labour contract arrangement, as was also the case in the construction of the dormitory itself. The school supplied the materials to be used. The Headmistress (I.W.1) did the purchases. Mkuzi did the work on part-time basis, on Saturdays and Sundays. He took 2 months to do the job. When he finished, he asked the Headmistress if he could bring in an Engineer of his choice to inspect the installation works but the Headmistress refused and said she would bring her own inspector. Mkuzi did not, therefore, take anyone to inspect his electrical installation works. Later Mkuzi was called by the Headmistress and asked to re-do electrical installations done wrongly by someone else previously in the school administration block. According to Mkuzi, the Engineer brought by the Headmistress to inspect the electrical installation works at the school “did not reject my work but he rejected the wiring of other electricians”.
59. Mkuzi told us that he had no electrical drawings while carrying out the electrical installations. The Headmistress told him where to put sockets and switches and he did so. He drew his own sketch of the dormitory while carrying out the electrical installations but disposed it off after completing the electrical installations. He conceded that he did not do any tests for his electrical installations but said he did his job properly.
60. After Mkuzi’s examination-in-chief at Town Hall, the Inquiry proceedings were adjourned to Bombolulu Girls Secondary School where he was cross-examined. In the course of cross-examination at the scene of the fire tragedy on 28th May, 1998, Mkuzi was made to do a sketch of the electrical installations he had previously carried out in the ill-fated dormitory during its construction. The Sketch was produced by him as Inquiry Exhibit No. 24.

61. It transpired during the testimony of Richard Joshua Muiru (I.W.70), Technical Audit Manager with the Kenya Power & Lighting Company Limited that according to the company's records, the person who carried out the electrical installations in the ill-fated dormitory was *M/S Bangubangu Electrical Contractor*. We were told that the proprietor of that electrical firm was one Ibrahim Ramadhani. As Tsui Mkuzi Jacca (I.W.64) had earlier testified that he was the person who carried out the electrical installations in question, we sought to have Ibrahim Ramadhani's side of the story. Eventually the latter appeared before us.
62. Ibrahim Ramadhani, aged 62 years, told us that he left school in Standard VI way back in 1954. In 1956 he was employed and engaged in the installation of generators and laying of electric wires. Thereafter, in the same year, he joined Elmengo Limited where "kazi yangu ilikuwa ni kushika ngazi nikiandamana na fundi wa kuweka waya za umeme" (my work was to accompany electrical artisans and hold up ladders for them to lay electric wires). He continued being involved in electrical installations work and in 1959 sat for Trade Test Grade III examination and passed. Thereafter, he joined the East African Power & Lighting Company Limited as a Junior Wireman in 1962. While with the company, he underwent training as an Electrical Fitter. He sat for Trade Test Grade II examination and passed. He produced *Stima* Newsletter for First Quarter 1971 as Inquiry Exhibit No. 49 showing that while with the company he was promoted from Wireman to Senior Artisan (Tech.), Generation Department, Ilford Road, Nairobi. Eventually Ibrahim Ramadhani secured an Electrical Installation Licence Class "B", Serial No. 711 dated 6th March, 1980. A Class "B" Licence authorized him:

"To carry out electrical installation work restricted to buildings not used or intended to be used as factories or places of public entertainment."

He worked for Kenya Power & Lighting Company Limited for 15 ½ years, then joined Mackenzie (Kenya) Limited as Boiler Service Engineer in January, 1978 and left Mackenzie (Kenya) Limited in 1982.

63. Ibrahim Ramadhani started his own electrical business under the name *M/S Bangubangu Electrical Contracto* in 1982. He confided in the Commission that at his advanced age, he had diabetes and heart problems and could not walk long distances or climb up ladders to attend to electrical installations work in high-rise buildings. He, therefore, tended to use younger people on casual basis to do the running around. He had known Tsui Mkuzi Jacca for some time as someone with experience in electrical installations work and authorized him to carry out such work under his (Bangubangu's) licence. That is what happened in the case of the Bombolulu ill-fated dormitory. Ibrahim Ramadhani did not know if Tsui Mkuzi Jacca underwent formal training or obtained any certificates in electrical installations work.
64. Ibrahim told us that Tsui Mkuzi Jacca carried out the electrical installations work in the ill-fated dormitory under Bangubangu's licence but wrongly withheld that information when he appeared before the Commission. Before the fire tragedy, Ibrahim did not carry out any tests on Mkuzi's electrical installations in the ill-fated dormitory but left everything to Mkuzi. After the fire, Ibrahim visited the school on 9th June, 1998 to check whether Mkuzi "...alifanya under-rating, yaani kutia wire mdogo au haikutosha ile kazi. Kufika kuangalia tukakuta wire zote ni sawa sawa na tukaaangalia ule moto tukasema haiwezekani kuwa ni moto wa Power and Lighting kuwa utakuwa namna hii. Kama ulikuwa ni moto ule watoto wangukuwa wameshaona, isipokuwa ile iliwaka kama gas au kama petrol ndio ikatoka mambo makubwa kama hayo. Lakini haijatokea moto wa stima kuchoma watu wakiwa wazima wako hai." [After the fire Ibrahim visited the school on 9th June, 1998 to check whether Mkuzi had used electric wires of a lower rating than required. But on reaching there, we found all the electric wires were of the correct rating/size and we said it was not possible for the fire tragedy to have resulted from an electrical fault. Had it been an electric fire the children would have seen it early and averted a tragedy of the magnitude caused, unless what had caused the fire was gas or petrol leading to the destruction experienced. It had never happened for an electric fire to char living human beings as was the case here.]

65. Ibrahim also disclosed that after Mkuzi completed the electrical installations in the dormitory, he went to borrow his (Ibrahim's) Mega or Installation Test Meter to go and test the installations. Thereafter Mkuzi brought to him test results which he (Ibrahim) used to complete the requisite certificates produced in a bundle as Inquiry Exhibit No. 33. Ibrahim was, therefore, surprised to learn from the Commissioners that Mkuzi had told them he did not do any tests of the electrical installations he had carried out under M/S Bangubangu Electrical Contractor's Licence!
66. For the record, the bundle of documents constituting Inquiry Exhibit No. 33 included:-
- a) Installation Report
 - b) Completion Report
 - c) Commencement of Work Notice
 - d) Installation Test Certificate by Electrical Sub-Contractor
 - e) Sub-Station Commissioning Report.
67. Ibrahim Ramadhani ruled out electrical fault as a cause of the Bombolulu dormitory fire of the night of 25th/26th March, 1998.
68. Richard Gicina Wacira (I.W. 66) told us he was a Superintendent (Electrical) in the Ministry of Public Works & Housing Provincial Works Office at Shimanzi, Mombasa. He held an Electrical Engineering Technician Grade III Certificate, Instructor Certificate Course "C" & "B" in Engineering and a Certificate on Supervisory Course in Electrical & Mechanical Services. Mr. Wacira further said he had also undergone an Electrical Engineering Course and "attended Grade I Trade Test Certificate in Electrical". He had been Superintendent (Electrical) for 8 years.
69. At the request of the Officer Commanding Police Division (OCPD) Kwale, Mr. Wacira inspected the ill-fated dormitory at Bombolulu on 27th March, 1998 and compiled a report on the fire tragedy on 1st April, 1998. The report was sent under the hand of his boss, Mr. Iwiya-wa-Mpare, in accordance with ministerial protocol to the Chief Electrical & Mechanical Engineer in Nairobi. Mr. Wacira brought a copy of the report from the Mombasa office file, signed and produced it before us as Inquiry Exhibit No. 26.

70. According to Mr. Wacira, the electrical installations inside the dormitory , done by I.W. 64, were done properly while the electrical installations outside the dormitory were not done correctly. We were made to understand that the electrical installations outside the dormitory were done by Mazeras Village Polytechnic students under the supervision of their instructor. Mr. Wacira said there were no sockets inside the burned dormitory and since sockets are what mainly cause fires, he concluded that “the theory of electrical fire was minimal” and that the electrical wiring could not have caused the fire. He said his inspection was concerned with ascertaining who carried out the electrical installations and their protection devices. In cross-examination, he conceded that socket outlets are not the only causes of electrical fires. Asked whether his specialization was in electrical installations or electrical power, he said his specialization was in electrical power. This prompted further probing of his specialization.

“Commissioner:

So you don't have a certificate? Your certificate does not say electrical installation?

Wacira:

Electrical Engineering and Electrical Installation are the same, more or less the same.

Commissioner:

They are not the same! Where did you train from?

Wacira:

As a Grade I, I did installation.

Commissioner:

No, no, no! Where did you train, Kenya Polytechnic or Mombasa Polytechnic?

Wacira:

Mombasa Polytechnic.”

71. At some stage, Mr. Wacira was asked if he had any electrical drawing to enable him to know the total load of the building and he said he had none.

“Commissioner:

So, it wasn't possible to determine accurately whether the load was 80 Amps or not. Am I right?

Wacira:

It is easy.

Commissioner:

No, answer my question.... Were you given the instruments to decide on the load or have the instruments to decide on the load or have the instruments to enable you to decide on the load, no or yes?

Wacira:

No, but being an experienced person you can judge. The rating if there is any ceiling or if there are any socket outlets in a certain room, it is very possible to know that this socket outlet, this circuit should be fed from that Amps. This rate should be fed by this, this should be fed by this too. Considering the whole load of that school without switch, it is completely overloaded.

Commissioner:

No, I have agreed with you but what I am asking you..... What I am trying to find out from you, you said it is easy with experience, we don't have experience like you. But the point is this: with your experience, now we don't have drawings, did you check in the laboratory how many socket outlets were there?

What equipment were you using in the classrooms, the kitchen, the dormitory, to have arrived at the statement that the load was 80 Amps? Did you do it physically?

Wacira:

Well, I didn't count."

72. A series of other questions followed. Then Mr. Wacira was asked:

"Commissioner:

Yeah, so.... I asked you a question, after you have realized this and formed your opinion that there was an overload, did you pass that information to the Kenya Power and Lighting Company?

Wacira:

When I discovered that there was an overload?

Commissioner:

Yeah, you have said that this main fuse of 80 Amps was of a lower rating, but the actual load of the school, according to you.... Did you really discuss with them after that?

Wacira:

No, they were nowhere but even if you talk to them they have nothing to do unless

Commissioner:

No, answer my question.

Wacira:

No, what I mean by power people

Commissioner:

No, no, just answer my question. Just answer yes or no. Did you talk to them or did you give them this report, that is what I am asking you?

Wacira:

No.”

73. Mr. Wacira’s attention was also drawn to the late Rachel Umazi’s statement that the dormitory electric switch “ilikuwa moto sana” on the material night and he answered as follows:

“Wacira:

The hotness of that switch could not have been so. Could not have any.... the switch itself even if it got hot that is not the cause of it could not ignite the fire.”

74. Mr. Wacira displayed reluctance or evasiveness in answering a number of questions but when pressed he made various concessions. For example, he conceded that certain provisions of the *Electric Power Act*, Cap. 314 (subsequently repealed by the *Electric Power Act*, 1997 which came into force on 9th January, 1998) and the *Institution of Electrical Engineers (I.E.E.) Regulations for Electrical Equipment of Buildings 14th Edition* had not been complied with in carrying out the electrical installations at Bombolulu Girls Secondary School. We shall revert to this subject in our final analysis.

75. There is one other aspect of Mr. Wacira’s evidence we wish to touch on in this broad survey of that evidence. In the course of the Inquiry proceedings, we made a number of visits to Bombolulu Secondary School. During one of the visits on 28th May, 1998, we inspected the meter box which was located at the administration block and found a fuse of 60 Amps rating. However, in his evidence before us on 29th May, 1998, Mr. Wacira said he had found a fuse of 80 Amps rating during his inspection on 27th March, 1998. Questions were put to Mr. Wacira on the subject and he answered as follows:-

“Commissioner:

Mr. Wacira, I want you to assist me, in your knowledge did the Power and Lighting by any way get access to this (your) report?

Wacira:

I still don't get the question.

Commissioner:

You know you have told me it is 80 Amps and I will be honest with you, we were there yesterday and it was 60 Amps.

Wacira:

Yeah.

Commissioner:

So, now I am beginning to wonder in my head I cannot get the answer so I am asking you. Do you think, because this is a report you gave, it has gone through many hands. Do you think that the power people had access to this report?

Wacira:

Somehow.

Commissioner:

Okay.

Wacira:

They have to protect themselves.... Because of late, if I can give an example of Mazeras.

Commissioner:

No, it's okay you have answered my question.”

76. We shall have more to say on Mr. Wacira's evidence in our final analysis.

77. Mr. Henry Kyalo Mukima (I.W. 68) to whom we made brief reference at paragraph 45 told us he was a Fire Officer III in the Ministry of Public Works & Housing at the Provincial Works Office in Shimanzi, Mombasa. He had been a Fire Officer III since 1990. He was a holder of Grade I Certificate and a Junior Fire Officer Certificate, both obtained from the Kenya Aerodromes Training School at Embakasi, Nairobi. His duties as Fire Officer III were:-

- a) To inspect Government infrastructure for any hazardous situation that may cause fires.
- b) To inspect the deployed fire fighting equipment to ensure that they were serviceable and ready for work any time the need arose.
- c) To investigate causes of fire (in Government institutions) when called upon to do so.

He was attached to the Electrical Section dealing with fire prevention and protection.

78. On 27th March, 1998, Mr. Mukima proceeded to Bombolulu Girls Secondary School to investigate the fire tragedy there on instructions from the Coast Provincial Works Officer. Subsequently, he (Mukima) and other officers compiled a report which went under his name to the Chief Electrical Engineer in Nairobi. Mr. Mukima admitted before us that although the report was signed solely by him, it comprised several parts done by different sections of the Provincial Works Office. He produced a Mombasa file copy of the report as Inquiry Exhibit No. 29. The investigations conducted by him and his colleagues took a total of 6 days and the report was finalized on 15th May, 1998. The report covered a wide range of subjects, including electrical installations, and was aimed at determining the cause of the fire. However, as his training was limited to fire prevention, although he also had general training in fire investigations, Mr. Mukima told us that it would be better for questions relating to electrical installations to be referred to the Superintendent

(Electrical), Mr. Richard Gicina Wacira (I.W. 66). As we have already examined Mr. Wacira's evidence in paragraphs 68 - 76, we say no more about Mr. Mukima's evidence at this stage.

79. Mr. Kigo Kariuki (I.W. 69) told us he was a Risk Surveyor in Safety Surveyors Limited, Nairobi. He was a director and shareholder of the company, of which he was also the Chief Officer. The company was incorporated in 1989. He attended the University of Nairobi where he graduated in 1979 with a Bachelor of Commerce Degree, accounting option. Thereafter, he did a Diploma in Personnel Management in Industrial Diseases. He also took a correspondence course and obtained a Diploma in Fire Safety Management from the Institute of Fire Engineers in the United Kingdom. Subsequently he became a member of the Chartered Institute of Insurers of the United Kingdom and a member of the Chartered Institute of Arbitrators, local chapter.

80. Safety Surveyors Limited was registered under the *Commission of Insurance Act*, 1984 as risk surveyors, risk assessors, loss adjusters and investigators. The company's employers are basically insurance companies. Mr. Kariuki described the work involved in investigating risks or losses in the following terms:-

“Counsel:

So, you are employed to investigate risks or loss?

Kigo:

Yes, we do it in two ways. We visit risks before losses have manifested, so that we advise our clients particularly the insurance of the potential hazards on the ground. And after, provide recommendations which are passed over to the property owners for implementation that cuts across basically most areas a company may be exposed to, in terms of physical hazards, that is before they have manifested. That is what we call the risk surveyor. Thereafter, if the losses have manifested, we are called upon to assess the losses, tell of possible causes of the losses and how their losses could be minimized in future or a repeat would be avoided.

Counsel:

So, were you called upon to investigate a loss or risk at Bombolulu?

Kigo:

We were called upon by the insurers of K.P. & L. who are the American Insurance Co. and we were instructed to proceed to Bombolulu and carry out a fire investigation report."

81. Mr. Kigo said that following the above instructions, he and some colleagues in his company proceeded to Bombolulu Girls Secondary School after the fire tragedy and carried out investigations. He and his colleagues carried out investigations starting on 28th March, 1998. Mr. Kariuki said one of his colleagues was an Electrical Engineer. They eventually submitted their report to the Kenya Power & Lighting Company's insurers, Messrs. *Alico (K) Ltd.* Mr. Kariuki produced a copy of the report as Inquiry Exhibit No. 30.
82. We noted from the first page of the report that it was marked "Private, Confidential & Privileged". On the next page there appeared a caution in bold capitals underlined as follows:

"CAUTIONARY REMARKS

The report is based on available facts, interviews with person(s) mentioned herein, documentary evidence made available to us and other circumstantial evidence relevant to the incident at hand. Where the information is purported to have been given by other person(s) it is our belief that the same is correct but we cannot vouch for its authenticity. *The Report and any comments made herein is intended for insurance purposes only and cannot be used for any other purpose whatsoever.*"

In view of the aforesaid cautionary remarks, we sought clarification from Mr. Kariuki regarding his production of the report before us and he said his company had obtained clearance from *Alico (K) Ltd.* for the report to be produced before the Commission. Further scrutiny of the report revealed that at page 18 it had ruled out

electrical fault as a cause of the Bombolulu fire tragedy in the following categorical terms:

‘Given the circumstances therefore and observations coupled with well known facts about electrical fires, the theory of the fire having been electrical is dismissed.’”

However, at page 26 of the same report appeared two concluding paragraphs not couched in similarly categorical terms as follows:

“8.0 CONCLUSION

From the observations made and evidence gathered, *it would appear unlikely* that your insured could have contributed in any way to inception, propagation or subsequent development of the fire that gutted down the school and claimed twenty-six young lives. In the circumstances and *without prejudice we rule out any liability likely to attach to your insured* in respect of the subject inferno.

9.0 ADVICE

We advise that you reserve an amount of Kshs.500,000.00 (Read Kenya Shillings Five Hundred Thousand) in respect of this incident being likely litigation costs in the event that some party may decide to take your insured to court.”

83. Mr. Kariuki conceded that the section of the report dealing with the electrical fault theory was outside his competence and he left it to be presented by its author if the Commission required. Ultimately, the section was not presented and we ignore it. We shall revert to other aspects of the report of Safety Surveyors Limited at the appropriate place in our Report.
84. Mr. Richard Joshua Muiro (I.W. 70) told us he was the Technical Audit Manager with the Kenya Power & Lighting Company Limited. He had held that position for 6 months but had otherwise been in the company’s employment for 20 years. He was a holder of a Bachelor of Science in Electrical Engineering Degree obtained in 1977 from the University of Nairobi. He was also a holder of a Master of

Science in Electrical Engineering Degree from the University of Aberdeen in Scotland. As Technical Audit Manager, his duties included auditing of engineering operations and ensuring they complied with the standards and safety requirements and any other norms that had been set by the company. His duties also included investigation of accidents and abnormal occurrences.

85. Following the Bombolulu fire tragedy, Mr. Muiru visited Bombolulu Girls Secondary School on 28th March, 1998 to conduct investigations. He subsequently submitted a report, Inquiry Exhibit No. 32 to the Ministry of Energy and also to the Government Electrical Inspector as required by law on 31st March, 1998. It was a brief report basically giving a brief account of what he found at the scene. Under the sub-heading on action taken, he reported:

“The 60A cut-out fuse was removed to isolate supply to the entire school. This was found to have operated on responding to fault conditions created by the fire.”

The Kenya Power & Lighting Company Limited is the body that connected power to the Bombolulu Girls Secondary School in October, 1997. Mr. Muiru said investigations by the company involved him and other company officers. He also produced copies of other documents extracted from the company's office files. As far as investigations about the transformer which supplied power to Mazearas (Boys) High School and Bombolulu Girls Secondary School were concerned, they consisted of a visual check of the transformer, which was pole mounted, to see if there was any distress. If there was distress it would be manifested in, for example, excessive leakage, which Mr. Muiru said was not there.

86. Mr. Muiru and his colleagues from the company ruled out electrical fault as a cause of the fire tragedy.
87. Mr. Muiru was questioned at length and his answers considered along with the evidence given by other witnesses on the electrical fault theory already outlined in paragraphs 49 – 83. We round up our deliberations on electricity as a possible cause of fire with an analysis of the major components of the electrical fault theory,

including ignition due to static electricity, and draw our conclusions thereon.

Ignition due to static electricity

88. Mr. Richard Adera (I.W. 74) told us he was employed in the Ministry of Transport & Communications as the District Meteorologist, Coast. He was a holder of a Bachelor of Science Degree in Meteorology obtained from the University of Nairobi in 1981. He joined the Ministry of Transport & Communications on 12th October, 1981 and his duties involved keeping weather records. He produced as Inquiry Exhibit No. 34 a weather report for Mazeras taken at half hourly intervals from 10.00 p.m. up to 12.00 mid-night on 25th March, 1998. The wind was blowing from South - South West at less than 10km/hr and the visibility, i.e how far a person with normal eye sight could see, was greater than 10 kms. Less than half of the sky was covered with clouds with a base height of 1,800 feet. The air temperatures were 27°C - 28°C and dew-point temperatures were 26°C. The air pressure was 1011 hpa (millibar). The relative humidity at 10.30 p.m. was 90%, at 11.00 p.m. it was 91%, at 11.30 p.m. it was 91% and at mid-night it was 91%. The speed of wind was very light. He concluded that "the weather on that day at the stated time was fine weather".
89. Static electricity can cause ignition. The ideal environment for static electricity to cause ignition is presence of materials such as textiles, temperature of 27°C - 28°C and humidity of 20% - 25%. In view of the evidence of Mr. Richard Adera, a weather expert that the relative humidity on the particular night averaged 90%, we find that it was not possible for static electricity to have caused the fire.

Hotness of the electric switch

90. As recorded in paragraph 49, we were told by Mr. Gibson Richard Chiwaya Mwanguma (I.W. 56) and Mrs. Mary Henry Sita (I.W. 58) that the headgirl of the school said that the switch was hot when she was switching it off. We sought to know from Mr. Richard Joshua Muiro (I.W. 70), the Technical Audit Manager from the Kenya Power & Lighting Company Limited what would cause an electric

switch to be “hot” and he said the switch could have been hot due to the following reasons:-

- a) The switch contacts being loose.
- b) There being an overload.
- c) The switch being of low rating.

91. For inductive circuits, including fluorescent lights, like the ones which were used in the ill-fated dormitory, the Institution of Electrical Engineers (I.E.E.) 1970 Regulations for Electrical Equipment of Buildings, 14th Edition states:

Every switch not specifically designed to break an inductive load to its full capacity shall, if used to control a discharge-lighting circuit, have a current of not less than twice the total steady current which it is required to carry or, if used to control filament lighting and discharge lighting, have a current rating of not less than the sum of the current flowing in filament lamps and twice the total steady current flowing in the discharge lamps.

92. Although the switch was reported to be hot, it was a two-way switch. Once the headgirl put off the lights, if there was an overload current, or if the contacts were loose, there was no current flowing in the circuit. In view of the foregoing, we find that the fact that the switch was hot could not have caused the fire.

Electrical installations in the dormitory

93. We heard evidence from the Headmistress, Mrs. Pricilla Mwasi (I.W. 1) and the Board of Governors Chairman, Prof. Juma Lugogo (I.W. 3) that the contract for building the dormitory was a labour contract. The main contractor was given the responsibility of hiring the electrical sub-contractor. The sub-contractor, Mr. Tsui Mkuzi Jacca (I.W. 64) who was engaged by the main contractor, Andrew Jacca (I.W. 63) had no professional training as an electrician. He was initially trained as a mechanic after Standard VII. He then worked with a construction company where he gained some practical experience as a wireman.

94. Mr. Mkuzi testified that he carried out the electrical installations in the dormitory without any electrical drawings from an electrical consultant engineer. This was confirmed by the Kwale District Works Officer, Mr. Jackson Kivisi Kafuna (I.W. 60), the Civil Engineer from the Coast Development Authority, Mr. Mburu John Wainaina (I.W. 61) and the proprietor of M/S Bangubangu Electrical Contractor, Mr. Ibrahim Ramadhani (I.W. 90). Mr. Mkuzi also testified that the main supply cable to the dormitory, a three-phase metal sheathed cable of 6mm² was initially installed by the Methodist Church Village Polytechnic trainees under the supervision of their instructor. At our request, he drew a line diagram (Inquiry Exhibit No. 24) of how the eight fluorescent lights, their two-way switches and the consumer's unit were wired through eight junction boxes. As recorded in paragraph 58, Mr. Mkuzi told the Commission that he asked the Headmistress if he could bring an engineer of his choice to carry out installation tests, since he was not qualified to do the same, but the Headmistress refused and said she would bring her own inspector. As a result, Mr. Mkuzi had no idea whether completion installation tests were carried out before the dormitory was supplied with electric power by the Kenya Power & Lighting Company Limited.

Material acquisition and site supervision

95. The Board of Governors Chairman, Prof. Juma Lugogo (I.W. 3) produced Inquiry Exhibit No. 11 being a Bill of Quantities from Nyange & Associates Quantity Surveyors which gave an estimate of the requirements for the proposed dormitory. However, in this Bill only quantities were specified but the ratings, sizes and quality of materials were not specified. As noted in paragraph 58, this was a labour contract. The Headmistress did the purchases. Since the Headmistress was not trained in electrical engineering, there is no guarantee that these items were of the right size, rating and quality. The headmistress in her evidence confirmed that there was no electrical consultant engineer and qualified site agent. The electrical installation works were not supervised.

Testing and inspection of electrical installation of the dormitory

96. According to section E of the Institution of Electrical Engineers (I.E.E.) Regulations, 14th Edition all new installations or major alterations to a building construction must be tested, and an inspection certificate should always accompany and be attached to the completion certificate. It is desirable for the testing and inspection to be carried out in the following sequence:

- ◆ Verification of polarity.
- ◆ Tests of effectiveness of earthing.
- ◆ Insulation resistance tests.
- ◆ Test of ring-circuit continuity.

97. Mr. Richard Joshua Muiru (I.W. 70) produced a report of the incident by Francis G. Githaiga, Senior Technician S/No. 0157 dated 25.03.1998 which was not signed by the author. In this report it was observed that the dormitory was supplied by a *4.0 millimetre square underground cable*; the customer's main fuse was 60A High Rupturing Capacity (HRC) fuse which did not operate after the fire, but the Kenya Power & Lighting Company Limited 60A HRC cartridge fuse operated, responding to the fault conditions created by the fire; and, the miniature circuit breakers in the consumers unit in the dormitory were completely burned out hence their ratings could not be established.

98. The other report from the Senior Operations & Maintenance Engineer, Coast Region dated 26.03.1998, which was compiled by Messrs. Laban Njenga, Technician I S/No. 12122, Duncan Lwambi Artisan Grade I, S/No. 9166 and G. Githaiga who inspected the installation in the burned dormitory, observed: the supply cable is a *16 millimetre square single-phase underground cable*; the Kenya Power & Lighting Company Limited 60A HRC fuse at the main single cut-out was found to have blown out after the fire.

99. Mr. Richard Joshua Muiru (I.W. 70) also testified that the electrical installations in the dormitory were tested and inspected by M/S Bangubangu Electrical Contractor on 30.09.1997 who issued an installation test certificate No. 001169 whose results were:

◆	Phase to Earth	120 Mega Ohms
◆	Between Phases	130 Mega Ohms
◆	<i>Neutral to Earth</i>	<i>110 Mega Ohms</i>
◆	Earth Continuity	1 Ohms
◆	Earth Lead Resistance	0 Ohms
◆	Earth Electrode Resistance	0 Ohms
◆	Earth Loop Impedance Test PME Ohms

Mr. Muiru also testified that the installation in the dormitory was tested and inspected by M/S Kenya Power & Lighting Company Limited on 18.10.1997 and the results were:

◆	Polarity throughout the installation is correct	Yes
◆	Method of earthing PME/Earth Electrode/Main	Yes
◆	Earth loop impedance before PME	1.00 Ohms
◆	Earth loop impedance after PME	0.08 Ohms
◆	Protection on the consumer's main switch cartridge fuse	60A
◆	'Circuit setting Amperes
◆	Earth continuity conductor resistance	0.05 Ohms
◆	Ph. E	120 Mega Ohms
◆	Ph. N	130 Mega Ohms
◆	<i>N. E</i>	<i>100 Mega Ohms</i>
◆	Between Phases

Size of supply cable

100. Analysis of the evidence in paragraphs 97 – 98 reveals that there is contradiction between the report by the Senior Technician dated 25th March, 1998 (see paragraph 97) and the report of the Senior Operations & Maintenance Engineer, Coast dated 26th March, 1998 (see paragraph 98) as to the size of the underground supply cable. The Senior Technician gave the size of the cable as 4.0mm² while the Senior Operations & Maintenance Engineer gave the size of the cable as 16mm². We inspected the supply cable and found it to be 16mm². The inference we draw from the contradictory measurements is that the inspectors referred to in paragraph 97 did not inspect the ill-fated dormitory. Otherwise how would they mistake a 16mm² cable for a

4mm² cable, unless they are saying the cable we saw was a newcomer?

Choice of protective fuses

101. Analysis of the same evidence in paragraphs 97 - 98 also reveals that although both the consumer's main fuse and that of the Kenya Power & Lighting Company Limited were rated at 60A HRC, only the Kenya Power & Lighting Company Limited fuse blew up to respond to the fire whereas the consumer's fuse never responded. This occurrence leads us to the conclusion that the fuse to protect the customer and his equipment was of a higher rating than that of the Kenya Power & Lighting Company Limited, which infers that the choosing of the protective fuses was not done by a competent person.

Disparities in installation tests & inspection results

Analysis of the evidence in paragraph 99 reveals that there were disparities in the installation tests and results of inspections allegedly carried out by M/S Bangubangu Electrical Contractor and Kenya Power & Lighting Company Limited inspectors for the same installations. The tabulated results show that the resistance between the neutral and earth conductors (N-E) obtained from the tests allegedly carried out by M/S Bangubangu Electrical Contractor and the Kenya Power & Lighting Company inspectors differed by 10 mega ohms (i.e. 10,000 ohms). This confirms that M/S Bangubangu Electrical Contractor did not actually carry out the required tests. It may be recalled here that the proprietor of M/S Bangubangu Electrical Contractor, Ibrahim Ramadhani (I.W. 90) said in evidence that he had entrusted the duty of carrying out the tests to Mr. Tsui Mkuzi Jacca (I.W. 64) but Mr. Mkuzi admitted before the Commission that he carried out no tests (see paragraph 58).

102. The proprietor of M/S Bangubangu Electrical Contractor, Ibrahim Ramadhani (I.W. 90) testified that Mr. Tsui Mkuzi (I.W. 64) was the one who did the electrical installations in the dormitory, despite the latter having no formal professional training in electrical engineering. However, I.W. 90 also admitted that he had worked with I. W. 64 in many projects whereby the agreement was that

because I.W. 90 had electrician's installation certificate Class B, he would issue the completion certificate.

103. Mr. Ibrahim Ramadhani (I.W. 90) was affirmative that Mr. Tsui Mkuzi Jacca (I.W. 64) actually carried out inspection tests and personally handed over the test results to I.W. 90 who used the same to issue a completion certificate. Further, I.W. 90 also told the Commission after he was questioned using Inquiry Exhibit No. 24 that he could not confirm whether the earthing protections system for the burned dormitory conformed with that of the Kenya Power & Lighting Company system. Arising from this evidence, we observe that although Inquiry Exhibit No. 24, which was drawn by Mr. Tsui Mkuzi Jacca (I.W. 64) while under cross-examination at the site, appears to be correct, we cannot be sure whether this drawing is identical with what was used to do the actual electrical installations in the ill-fated dormitory.

Conclusions on electrical fault theory

104. The electrical fault theory attracted a lot of attention, especially within and around Mazeras. Among those from Mazeras who testified before us was Mr. Elijah Juma Mwenga (I.W. 88), the immediate former Counselor for Kasemeni Location/Ward. He told us that although several theories had been advanced as to what may have caused the fire, the theory which in his view carried the greatest weight as the probable cause of the fire tragedy was the electrical fault theory. Asked why he thought the fire tragedy was due to electrical fault, he said such fault had previously occurred in his own residence at Mazeras but he was quick to switch off the power supply before serious damage resulted. According to him, an electric fire does not have to originate from a main switch. He observed that the fire spread extremely fast.

105. As stated in paragraph 25, the Bombolulu dormitory block was in two parts: the actual dormitory on the western side where the students slept and the rear (eastern) portion of the block comprising the Matron's room and a common ablution sub-block. It is the dormitory portion of the block which burnt down, causing the roof to cave-in in the process. The witnesses with technical knowledge of electricity who ruled out electrical fault as the cause of the fire tragedy basically based their conclusions on the following premises:-

- a) That there were no socket outlets in the dormitory.
- b) That the lights in the ablution sub-block and security lights outside the dormitory were “ON” even as the students were running out of the burning dormitory.
- c) That there were no malfunctioning appliances which could start a fire even if there was sparking from the junction boxes or fluorescent tubes.

106. As to paragraph 105 (a) relating to socket outlets, evidence adduced before us established that there were no socket outlets in the dormitory portion of the block; but socket outlets are not the only sources from which electric fires may originate. As to paragraph 105 (b), the general tenor of evidence adduced before us was to the effect that lights in the ablution sub-block and security lights outside the dormitory were “ON” even as the students were running out of the burning dormitory. Only one or two students said security lights were not “ON”. We accept the testimony of the majority of students that lights in the ablution sub-block and security lights outside the dormitory were “ON” when the students were running out of the burning dormitory. With regard to paragraph 105 (c), Mr. Richard Joshua Muiru (I.W. 70) who was the Technical Audit Manager with the Kenya Power & Lighting Company Limited told us that the electrical installation had been commissioned only on 18th October, 1997, so it was fairly new. He added :

“At the place where the fire is supposed to have started there was no electrical wiring or fittings. We gathered also from the rest of the building that the wiring was totally enclosed in the conduit and then we therefore reported that there was no possibility of escape of even sparks of the wiring and we did not notice any inflammable material where the wiring was located. That is why we noted that there was no ceiling and then we concluded that the cause of the fire was not electric.”

107. Mr. Muiru was mistaken in his assertion that there were no electrical wiring and fittings where the fire was supposed to have started in the dormitory. The point was vividly brought home to him as follows:-

“Commissioner:

Now, Mr. Muiru, when you say that there were no electrical wiring and fittings, are you aware that in the dormitory there were fluorescent tubes?

Muiru:

Yes, there were fluorescent tubes which were on top.

Commissioner:

Now, if these fluorescent tubes therefore were fittings, electrical fittings, am I right to say that....?

Muiru:

Yes, they are fittings.

Commissioner:

Yeah, and therefore were wires?

Muiru:

Yes.

Commissioner:

So, when you say there were no electrical wiring and fittings, it is because you didn't see them, because the place was burnt down?

Muiru:

No, Mr. Chairman I have stated in the report, quoted in the second paragraph saying according to where we were told the fire started.”

Mr. Muiru's last answer clearly veers into the realm of hearsay evidence.

108. We wish to make a general observation that Mr. Muiru adopted a very guarded and defensive approach in answering a number of questions.
109. Learned Assisting Counsel urged the Commission, "in the absence of evidence to the contrary", to find that the Bombolulu fire was not caused by an electrical fault.
110. We have given anxious consideration to the entire evidence adduced before us relating to the electrical fault theory as a possible cause of the Bombolulu fire tragedy. It is true that the school was supplied with electricity only in October, 1997. Therefore, the electrical installations may rightly be described as "fairly new". That does not mean that the work was professionally done to meet all the requirements of the Institution of Electrical Engineers (I.E.E.) Regulations for Electrical Equipment of Buildings. There were irregularities, omissions and poor workmanship in the manner the electrical installations were carried out and one cannot rule out the possibility of the fire tragedy having been started by an electrical fault. However, the evidence tendered before us, though suggestive of electrical fault as the cause of the fire tragedy, did not attain the standard of proof required to enable us to conclude that the electrical fault theory had been established.
111. We find that electrical fault was not established as the cause of the Bombolulu fire tragedy.

Arson

112. The arson theory as a possible cause of the Bombolulu fire was advanced by a number of witnesses in the course of the Inquiry proceedings. It became clear from some of the presentations that there was confusion in some people's minds as to what constitutes arson. We take an illustration of such confusion from the evidence of Mr. William Madafu Chikejo (I.W.65).

113. Mr. Madafu's perception of arson was a mixture of deliberate as well as accidental setting of fire to property. This type of confusion may, perhaps, not have been of much concern had it emerged from the testimony of a non-fireman or a fireman of no experience. Mr. Madafu was neither of these. He told us he was a fire fighter employed in the Mombasa Municipal Fire Brigade. It was he who led a crew of firemen to Bombolulu Girls Secondary School after receiving a report of the fire through 999 control at 12.45 a.m. on 26th March, 1998. Mr. Madafu was a holder of a Preliminary Certificate of Fire Engineers from the Institute of Fire Engineers in the United Kingdom. He had been in the service of the Mombasa Municipal Fire Brigade for 27 years. He, like many others, suspected both electrical fault and arson as possible causes of the fire tragedy but he leaned more heavily on the arson theory.

114. Our first task in this discourse must, therefore, be to define arson. The Chambers Twentieth Century (English) Dictionary defines arson as "the crime of feloniously burning houses, haystacks, ships, forests, or similar property". The same dictionary defines a felony as a grave crime. This concept finds endorsement under Kenyan law. Section 332 of the *Penal Code* (Cap.63), whose marginal note is "Arson", so far as relevant, states:

"332. Any person who willfully and unlawfully sets fire to -

(a) any building or structure whatever, whether completed or not...

is guilty of a felony and is liable to imprisonment for life."

Under our law, the accidental setting of fire to property would not, therefore, constitute the offence of arson. Mr. Madafu told us he was a resident of Mazeras. He thought intruders could have come to the school and commit arson. We proceed next to examine the evidence tendered before us.

115. Evidence was adduced before us by some of the survivors of the fire tragedy that they heard the noise of, or actually saw, something passing through one of the windows of the dormitory, followed by a breaking sound and then fire.

116. Miss Caroline Nyambura (I.W.49) told us that when she was asleep, she heard the breaking of glass. A louvre was broken and something was thrown inside the dormitory through the broken window. The object she saw through the window fell down and then she saw fire. She thought the object she saw passing through the window is what caused the fire.
117. Miss Grace Mbodze Nyae (I.W.48) said she heard a bottle falling near Riziki Juma's bed. She heard the sound of something like a small bottle falling, followed by screams. She told us that she later gave a statement to the Police in which she described the object in question as a petrol bomb because of the sound she heard from it, a loud sound like that made by something bursting. "Nilifikiria petrol bomb ilirushwa kwa nguvu na kusababisha moto." [I thought a petrol bomb was thrown with force and caused the fire].
118. Miss Esther Mgusi (I.W.44) related to us that at around 10.30 p.m. to 10.45 p.m. she heard something like a bottle or glass falling down in the centre of the dormitory towards the main door. It was not from a bed. The sound she heard was that of an object falling from a high level. Then suddenly she saw an explosion and fire. The sudden outbreak of fire occurred where she had heard the object falling. She said there was space of about 7" between the dormitory roof and the wall plate. The existence of the space was subsequently confirmed by the Investigating Officer, Inspector Jackson Kiema (I.W.89) who gave its size as 10".
119. Miss Rukia Mohamed Omar (I.W.28) said she heard something like a bottle or glass falling down in the back of the dormitory. The object which fell and broke came from the bed of Magdalene Kamene Maluki (I.W.41).
120. Miss Rose David (I.W.40) told us she heard a sound, then saw fire going up the roof. The sound she heard could have come from a Bunsen Burner "but not as loud as I heard".
121. Miss Faiza Mohamed (I.W.37), after narrating rumours that the fire was caused by a petrol bomb, described the resultant smell in Kiswahili as follows: "Harufu ilikuwa kama ya mpira ukiungua na petroli.... Madirisha mengine hayakuwa na vioo." [The smell was

like that of rubber burning with petrol... Some windows had no louvres].

122. Miss Lillian Mutua (I.W.47) said she heard an explosion and screams, then saw fire. She thought they had been invaded by robbers. The explosion, the like of which she had never heard before, woke her up. "Nilisikia sauti kama tairi ya gari inapasuka." [I heard a sound like that of a motor vehicle tyre burst].
123. Miss Betty Kitili (I.W.53) said she heard shouts of fire! She woke up and saw fire on Magdalene Kamene Maluki's bed but thought Magdalene was reading using a torch so she (Betty) decided to go back to sleep. However, before she "got deeply in (her) sleep" the noise was becoming louder and she realized it was real fire so she woke up and ran out through the main door. According to her, if a bomb was thrown into the dormitory, the thrower would have come from the village. She also told us that drunkards used to pass around the dormitory and that it was possible for someone to jump over the wire fence surrounding the dormitory.
124. None of those who testified about an object being thrown into the dormitory on the material night identified anybody as the thrower.
125. Mr. Anthony Kombo (I.W.76) told us he was the Government Analyst attached to the Government Chemist's Department, Mombasa. He was a holder of a Bachelor of Science Degree in Chemistry and had worked in the Government Chemist's Department for 15 years. His duties included analyzing samples and X-rays from the Police and the public.
126. On 27th March, 1998 the Police went to his Department and asked for his officers to accompany them to Bombolulu Girls Secondary School to collect samples for testing in his Department. He released two of his officers who eventually brought the aforesaid samples which he duly analyzed. He produced his Certificate of Analysis as Inquiry Exhibit No. 35. The Certificate of Analysis dated 31st March, 1998, inter alia states:

“Description of Sample”

Burnt wood, ashes, beakers, broken bottles and burnt metal.

Examination Required:

To screen for inflammable substance.

Analytical Report:

There were no inflammable substances detected in all the samples mentioned above.”

127. The attention of the witness was drawn to the fact that evidence before the Commission was that the heat generated during the inferno had been intense and probably burnt out any inflammables completely thereby rendering it impossible for his tests to make any trace of them. He conceded the point in the following terms:

“Commissioner:

...Bwana Kombo, you have written your report that there were no inflammable substances detected above?

Kombo:

Yes, yes, Madam.

Commissioner:

You answered Commissioner Sururu that any gas, any inflammable substance could not survive the intensity of fire. Now, did you expect to get any inflammable substances from these burnt things?

Kombo:

Yes, actually if they don't burn completely, if there were any remnants, we could have traced them. If they burn completely

then there is nothing like, in the case of canister, it is just gas, if it is butane gas which is inside, if it burns, it burns completely. Or even if it does not burn it might escape. You can't trace it!

Commissioner:

Which means we can say these things mainly have had inflammable substances but since the fire was so intense, you could not get anything out of there?

Kombo:

Yes, if the flames of a substance was there, it burnt out completely, you cannot trace what is there.

Commissioner:

So you can't say it was not possible for inflammable substances to be there, it's just that you didn't find any?

Kombo:

Yes, that is what I have reasoned, we did not detect any.

Counsel:

I just need clarification because the report changes from what he said unless we get clarification. Mr. Kombo, in your analysis of samples, you were in a position to detect kerosene and petrol even if the samples have been burnt?

Kombo:

If they did not burn completely, we might get traces of that substance.

Commissioner:

Those are the correct ones to detect?

Kombo:

Yes.

Commissioner:

But it would not be possible to detect gas?

Kombo:

Yes, gas is not possible.”

128. Mr. Kombo’s attention was also drawn to the fact that the samples were not representative. He disputed this at first but after debate on the issue he conceded that his officers could have picked more samples.

129. The end result is that the tests carried out by the Government Analyst on samples submitted to him were of no assistance to the Commission in determining the presence or otherwise of the inflammables subject matter of the Government Analysts’ Certificate of Analysis.

130. Mr. Kombo also produced Inquiry Exhibit No. 36, being a sketch showing where the samples were purportedly found. The sketch had no dimensions and he admitted not having drawn it himself. It was not even drawn at the scene! The sketch constitutes hearsay evidence and we disregard it completely.

131. At paragraphs 79 – 83 we examined the evidence of Mr. Kigo Kariuki (I.W. 69) and, inter alia, noted that the report he produced as Inquiry Exhibit No. 30 was intended for insurance purposes only. However, since a copy was availed to us and it attempted to address the arson theory, we examine that aspect of the report briefly. At page 25 the report, inter alia, says:

“7.1. The inception source would evidently appear to have been external, preferably a lighted brand or a Molotov Cocktail (paraffin tin lamp) thrown through the 3rd window counted from the main entrance on the wall facing the open field.

7.2. The Molotov Cocktail or firing medium may have landed at the approximate fire seat. It is however more likely that a Molotov Cocktail may have been used in a thermoplastic container, as opposed to a lighted brand.”

132. The report produced by Mr. Kariuki indicated that in the course of investigations, Mr. Kariuki and his colleagues questioned certain witnesses. We have already recorded at paragraph 116 that Miss Caroline Nyambura (I.W.49) talked of having heard the breaking of a louvre followed by the throwing of an object into the dormitory through the broken window. Miss Lillian Mutua (I.W.47) talked of having heard an explosion and she thought they had been invaded by robbers (paragraph 122). Miss Betty Kitili (I.W.53) thought if a bomb was thrown into the dormitory, the thrower would have come from the village (paragraph 123). The bomb theory repeated by Mr. Kariuki appears to have been popular among the Bombolulu student community but as we pointed out at paragraph 124, none of those who testified about an object being thrown into the dormitory identified anybody as the thrower. Mr. Kariuki who was not there would not have direct evidence on this subject either.
133. We note from the report produced by Mr. Kariuki that he and his colleagues submitted specimens to a laboratory at M/S Kenyatta University for forensic tests and that “The results excluded, mainly, the common accellerants of Kerosene and Petrol.” As noted by us at paragraphs 127 - 129, the intensity of the subject inferno rendered it impossible for traces of any inflammables to be found. The forensic tests alluded to by Mr. Kariuki are, therefore, also of no assistance to the Commission in determining the presence or otherwise of the inflammables subject matter of the report from M/S Kenyatta University Laboratory.
134. Mr. Raphael Mutuku Mutua (I.W. 79) told us he was an Inspector of Police attached to the Provincial Criminal Investigation Department, Mombasa. His duties included photographing scenes of crime and bomb disposal work. Bomb disposal work involved attending to bomb threats. Where bombs have exploded, he would be among those to assist investigating officers in collecting clues at the scene.

135. At around 3.00 a.m. on 26th March, 1998 he was picked from Mbaraki Police Lines, Mombasa and proceeded to Bombolulu Girls Secondary School. He arrived there at 4.00 a.m. and found the ill-fated dormitory having been burned down. The fire had basically been put off but it was still burning in a few places. He waited until daylight at 6.00 a.m. and then entered the burned dormitory. Some 22 bodies lay near the main door burned beyond recognition. The dormitory roof had burned down, except in the common ablution sub-block. He took photographs of the bodies and the dormitory generally. The photographs were produced by him in an album as Inquiry Exhibit No. 37. His police training included taking fingerprints at scenes of crime and he had a full kit of powder for such purpose but he did not find it necessary to engage in detection of fingerprints as "there were no signs of breaking, just fire", which he thought was due to an electrical fault. He said in cases of fire they would rely on ashes. Accordingly, he called the Government Analyst to send his personnel to collect samples which were supposed to indicate if there were fire accelerants. He collected some ashes and took them to the Government Analyst who rejected them as his officers had already collected their own samples.
136. Inspector Mutua's attention was drawn to the space between the dormitory roof and the wall plate and he was asked if it was possible for a bomb to be thrown through that space. He said it was not possible unless one stood on something to squeeze the bomb through. His examination of the scene did not reveal any indications of a bomb having exploded in the dormitory. In cases where a bomb has exploded, there would usually be an explosion and fragmentation. Property would be torn into pieces. The bomb would also leave fragments of itself. He observed none of these things in the dormitory, except the usual damage by fire.
137. In paragraphs 77 - 78 we made brief reference to the evidence of Mr. Henry Kyalo Mukima (I.W.68) who was among those who carried out investigations into the Bombolulu fire tragedy. At that stage we were examining the electrical fault theory. We now revert to his testimony in relation to the arson theory. Briefly, Mr. Mukima told us that it would not have been possible to introduce into the congested dormitory any burning substance without first opening

the window louvres, drawing the curtains on one side and finally pulling to one side the mosquito nets fastened to the trusses overhead. Even then the burning substance would have landed on a bed immediately next to the window so used. In that event the fire would have started there, not in the middle of the dormitory where we were told the fire had started. The chances of the arsonist being detected in such circumstances would be very high.

138. In the course of the Inquiry we made a number of visits to Bombolulu Girls Secondary School. During one of the visits, Commissioners attempted to throw some objects through some of the windows. By this time all the beds had been removed and, of course, there were no mosquito nets. Window louvres had been shattered during the fire so there were hardly any obstacles, except the horizontal window metal bars fixed during construction to act as burglar-proofs. Even then it was difficult for the experimental objects thrown in by Commissioners to reach the centre of the dormitory. It is to be recalled that under normal conditions the dormitory was congested with beds close to each other and mosquito nets hanging from the trusses overhead and *khangas* (pieces of ladies loin cloth) were usually tied around the beds. There was evidence before us that thieves had broken into the dormitory in December, 1997 and stole some items from there and broke some of the window louvres in the process. We were also told that the broken louvres had not been replaced. That notwithstanding, the congestion in the dormitory remained unaffected at the material time. It would, therefore, have been very difficult for an object thrown from outside to get over all the aforementioned obstacles and travel as far as the centre of the dormitory.

Reasons for suspicion of arson

139. As recorded at paragraph 123, Miss Betty Kitili (I.W.53) said that if a bomb was thrown into the dormitory, the thrower would have come from the village. This suspicion, in itself, suggests uneasy relationship between the Bombolulu students and some members of the neighbouring community. The following incidents lend credence to the suspicion.

140. Miss Barbra Adhiambo Owudo (I.W.39) told us that on Saturday 14th March, 1998, as the Bombolulu Girls Secondary School students were returning from a Drama Festival at the Mombasa Polytechnic, their vehicle was stoned at Mazeras. Miss Asha Kassim Mwatamu (I.W.34) told us that on Saturday 21st March, 1998, as the Bombolulu Girls Secondary School students were returning from a Science Congress at Matuga Secondary School, their vehicle was again stoned at Mazeras. The stoning incidents were also related by other witnesses, e.g. Miss Gladys Liten Mayeka (I.W. 24) and Miss Rose David (I.W.40). Some members of the Mazeras community, however, did not think there was any sector of the community which collectively hated the Bombolulu students. The Assistant Chief of Mazeras Sub-Location, Mr. Stephen Nyawa Mwachiti (I.W.84) in fact considered the reported incidents of stoning of the Bombolulu students at Mazeras as part of male juvenile delinquency which sometimes found expression in creating nuisance for girls.
141. Another former Bombolulu student, Miss Maua Mbeyu Juma (I.W.54) told us that on Sunday 15th March, 1998 she went to Mazeras to mend her shoes. As she returned to school some 3 queerly dressed young men asked her whether the Headmistress stayed in the school and she replied in the negative. They next sought to know how many watchmen there were in the school. Maua, a Form I, became suspicious and she told the young men she did not know. Then they asked for the school address and telephone number and Maua declined to disclose the information to them. Thereafter they sat within the school compound writing something in a book they had. They claimed they had an appointment with the Headmistress, which Maua later checked and found to be false. Maua had never seen the young men before but she did not think they were good people.
142. Miss Judith Sita Mbiza (I.W.38) told us that drunkards sometimes passed by the dormitory using a footpath along the fence surrounding the dormitory and also going through the school compound. We saw this footpath ourselves when we visited the school. The fence was made of chain-link wire. We took the liberty of pacing up the distances along the fence. From East to West it measured about 70 paces while from North to South it measured about 95 paces. On the western side of the fence a gap of about 5 paces was left, no doubt to

be secured with a gate later. The footpath alluded to by Judith ran in an East – West direction along the outside of the fence and continued westwards at the western end of the fence but with a branch going right through the centre of the school compound. There were gaps along the bottom of the fence wide enough for a human being to creep through into and out of the dormitory compound at will.

143. In paragraph 142 we have used the expression “at will” advisedly because although the school employed watchmen, Judith (I.W.38) told us that the late headgirl, Miss Rachel Umazi, who was her sister, had occasion to tell her that the Bombolulu watchmen sometimes told the students to sleep early so that they too could sleep. Among the survivors of the fire tragedy was Lydia Kuvuna Kumbu (I.W.25). She told us that after struggling out through the main door of the burning dormitory, she made for the school administration block and there she found the elderly watchman, Mr. Reuben Bwepwe Cholo (I.W.4) asleep! We questioned the Investigating Officer, Inspector Jackson Kiema (I.W.89) whether he found any clues of intrusion, such as footprints, by strangers into the dormitory or its compound in the material evening and he said he and his colleagues did not find any. He showed us a hole on the northern side of the fence which he had noticed and examined but found no clues of intrusion as the grass around there had not been disturbed and no footprints were visible. According to him it had rained recently there and footprints would have been readily detected but we heard other evidence, e.g. from the Headmaster (I.W.9) of the neighbouring Mazeras High School that it never rained at all around there on the night of 25th/26th March, 1998 while Mr. Richard Adera (I.W.74), the District Meteorologist, Coast told us that the weather at Mazeras was fine between 1.00 p.m. and 12.00 midnight on 25th March, 1998.

144. In October, 1996 the Bombolulu Girls Secondary School students marched to the office of the Coast Provincial Director of Education (PDE) to complain about insecurity in the school and other issues which adversely affected them at school. The Headmistress was not informed about the planned march to the PDE’s office. This was confirmed by the Headmistress (I.W.1), Miss Judith Sita Mbiza (I.W.38), Miss Barbra Adhiambo Owudo (I.W.39) and the Coast Provincial Director of Education (I.W.81). The purpose of the

march to the PDE was to complain about the failure by the school administration to attend to the students' grievances despite the students having lodged the same with the school authorities.

145. We heard evidence of internal tension between the students and the school administration, especially the Matron, Mrs. Margaret Mwaka Bora (I.W.2). Miss Angelina Wawuda Mvoyi (I.W.32), Miss Monica Muthuri Gaki (I.W.43) and Miss Grace Mbodze Nyae (I.W.48) boldly expressed their dislike of the Matron.
146. At paragraph 55 we recorded the evidence of the Headmaster of Mazeras (Boys) High School, Mr. Milton Martin Luchu (I.W.9) in the context of electric power surges at his school next to Bombolulu Girls Secondary School a couple of hours or so before the Bombolulu fire tragedy occurred on the night of 25th/26th March, 1998. We would now wish to add that Mr. Luchu also told us that on 9th February, 1998 the office of the Deputy Headmaster at Mazeras High School and a classroom adjacent to it were burned and an attempt made to burn the school laboratory. Mr. Luchu also told us that after the mass burial of the Bombolulu fire victims, there was a fire in his house at Mazeras High school which was still under police investigations.
147. In the course of the Inquiry proceedings, we were informed that two watchmen previously employed by the school had been dismissed on account of disciplinary offences. These were Mr. Mathew Shina Dena (I.W.17) and Mr. Mathew Douglas Mgunya Mwanzara (I.W.18). The question before us was whether they would have had any motive or temptation to engage in acts of arson against the school? No evidence was adduced before the Commission to connect them with the burning of the dormitory.
148. The question of land rights also came up for consideration in the context of possible motives for the commission of arson. Mr. Lawrence Bora Herbert (I.W.20), Mrs. Rachel Umazi Mambo (I.W.83), Mr. Stephen Nyawa Mwachiti (I.W. 84), all residents of Mazeras, testified that the land on which they and many other Mazeras residents lived did not belong to them but to the Methodist Church. People who lived there were "Squatters". According to Mr. Mwachiti there were about 4,000 people living on the land

belonging to the Church. About 100 of the people residing there did not have permission to live there, as they were non-Methodist. Mr. Mwachiti is the Assistant Chief of Mazeras Sub-Location and was at the time of the Inquiry Acting Chief of Kasemeni Location within which Mazeras falls. He told us: "Kuna miji ndani ya ardhi ya shule. Tuliwajulisha kwamba waondoke lakini hawajaondoka." [There are homesteads within the land set aside for the school. We told the homestead owners to vacate but they have not done so.] Mr. Robert Mwenda William (I.W. 82) told us that most people who were occupying land where the Bombolulu school was situated were compensated but some were not. Mr. Morris More Mwenda (I.W.87) said: "If you are not Methodist, you have no business being there." We were told that several of the residents had long association with the land there from the days of their forefathers. They associated burials with ownership and they would not normally abandon graves. Mrs. Mambo told us: "Hapa nilipo nikiambiwa niondoke, niende wapi na wazazi wetu walizaliwa hapo?" [At this age, if I am asked to leave, where shall I go and our parents were born there?] She also said: "Tulisikia tutakuja tupimiwe kila mtu awe,na title deed, lakini bado." [We were told the land would be demarcated and each person given a title deed, but this has not yet happened.] It appeared the residents' hopes of getting titles to the land they occupied were high. However, Rev. Pius Ndung'u Kagwi (I.W.57) said: "The practice in all Church sponsored schools is that land is set aside for development and if any more land is needed also the Church can be requested and can add into it. But the practice that we have currently is that the title deed will remain with the Church."

149. No evidence was adduced before us of animosity towards the school on the part of the people who used to occupy the land before it was set aside for the school. Therefore we had no reason to suspect that any of them might have been linked with the arson theory. The question of title deeds, however, has implications for peace in the area and we address it further in Chapter VI.

150. We heard evidence to the effect that the Bombolulu students had expressed grievances which they considered frustrating. Recent trends in schools indicate that frustration may lead to strong reactions and protests from students. Some of the protests take a violent form.

Is it possible that the Bombolulu fire may have been caused by the students out of what some people have described as “pathological fire setting” motives, i.e. the use of fire more deliberately to express anger or revenge against, or despondency arising from, a system they considered insensitive to their grievances? Factors militating against such possibility would include the fact that the students’ own property was in the dormitory. Therefore, setting the dormitory on fire would also be injurious to the students’ own interests. More importantly, the timing of the fire at bed time coincided with the students’ presence in the dormitory. It would require a student or students with high suicidal inclinations to engage in such a self-destructive act. In our view it was unlikely for any of the students to engage in such wanton act.

151. Learned Assisting Counsel submitted that the totality of the evidence adduced had not established that the fire was caused by arson.

Conclusions on arson theory

152. We have agonised over the various circumstances narrated to us that might have culminated in someone, either an outsider or insider, committing arson against the school. There were strong indications that the Bombolulu fire tragedy may have been caused by an act of arson. However, no concrete evidence was tendered before us to confirm the applicability of the arson theory.

153. We find that arson was not established as the cause of the Bombolulu fire tragedy.

Accident

154. The accident theory arose during the Inquiry proceedings in diverse ways. One of its proponents was Mr. Elijah Juma Mwenga (I.W.88). He told us he was a resident of Mazeras and had served as a Councilor for Kasemeni Location/Ward in 1992 – 1997. Mazeras is a Sub-Location within Kasemeni Location. He was among those who visited the scene of the fire tragedy soon after its occurrence on the night of 25th/26th March, 1998. Many theories were advanced as to what might have caused the fire. One was the electrical fault

theory which we discussed earlier in this Report. Mr. Juma subscribed to that theory as being a highly probable cause of the fire but he also saw accident as an alternative cause. He summarized the accident theory in Kiswahili thus:

Yawzekana mtoto mmjoa aliwasha taa, ikashikisha neti moto na neti ikashikisha moto vifaa vya lab vilivyokuwako ndani ya bwani. Lakini watoto hawawezi kusema kwa sababu anaweza kuingia taabuni. [It is possible one child/student lit a lamp, the lamp set a net on fire and the burning net in turn set fire to the laboratory equipment which was in the dormitory. But the children will not admit doing so for fear of reprisals.]

155. Miss Rukia Mohamed Omar (I.W.28) testified that she heard something like a glass falling down and breaking somewhere in the middle of the dormitory. The sound of breaking glass came from the bed of Magdalene Kamene Maluki (I.W.41). Rukia heard her fellow students shout fire! She got scared and rushed to the window and saw fire on Magdalene's bed. The fire was on the lower decker. Rukia made for the main door, which was open on one side, and ran out of the dormitory. She saw only one watchman, Samuel Alex Mangale (I.W.5) helping her fellow students to get out of the dormitory. She did not sense any strong smell. There was plenty of smoke.

156. Miss Asha Kassim Mwatamu (I.W.34) told us that she and 10 other Bombolulu students attended a Science Congress at Matus Girls Secondary School on Saturday 21st March, 1998. They carried various items of laboratory equipment/apparatus and chemicals. The equipment included a Bunsen Burner containing gas in its canister. The students used some of the gas but some of it remained. The chemicals carried was ethanol in a bottle. The quantity of ethanol was about half a glass. About half of the ethanol was used and a quarter a glass of it remained. The Bunsen Burner contained left-over gas plus the bottle containing about quarter a glass of unused ethanol were among the laboratory equipment which eventually found their way back to Bombolulu Secondary School in the evening of Saturday 21st March, 1998. The Bunsen Burner with gas and the ethanol plus other scientific equipment kept in the dormitory upon the students' return.

Congress. The Bunsen Burner and the ethanol were kept by Gladys Liten Mayeka (I.W.24) on the top decker of the double-decker bed where she slept. The Bunsen Burner and the ethanol were in the dormitory on the night of the Bombolulu fire.

157. Miss Gladys Liten Mayeka (I.W.24) also went to the Matuga Science Congress on Saturday 21st March, 1998. She confirmed that a Bunsen Burner containing gas and a bottle of ethanol were among the science equipment and chemicals she and her colleagues from Bombolulu carried to the Congress. The Bunsen Burner was not full but it certainly had gas. The quantity of ethanol was about half a glass. According to her neither the gas nor the ethanol was used at the Congress. Gladys said that when they returned to Bombolulu in the evening, she took the Bunsen Burner and ethanol plus other science equipment in a bag to the dormitory and placed the equipment on the second bed from the wall near the Matron's room. On Tuesday 24th March, 1998 she fell ill and went home. She left the science equipment and chemicals including the Bunsen Burner and ethanol in the dormitory. As she was not at school on the night of the fire, she would not know where the science equipment was that night.

158. Mr. Peter Mwanyalo Mwachia (I.W.13) told us he was the Laboratory Technician at Bombolulu Girls Secondary School since March, 1997. He was a Form IV and a holder of a Science Laboratory Technology Certificate from Mombasa Technical Institute. He confirmed having gone with some Bombolulu Girls Secondary School students to the Matuga Science Congress on Saturday 21st March, 1998 and that the equipment/apparatus and chemicals carried to the Congress included a Bunsen Burner containing gas and a reagent bottle containing ethanol. Mr. Mwachia confirmed that both the gas and ethanol are inflammable. He and the students got back to Bombolulu at around 9.30 p.m. on Saturday 21st March, 1998. The driver of the vehicle that had transported them was in a hurry to leave. As Mr. Mwachia did not live in the school, he left the girls with the science equipment and proceeded home in the vehicle. He later learnt that the science equipment/apparatus, including the gas and ethanol, was not returned to the laboratory but instead taken to the dormitory where it stayed until the fateful

159. We recorded earlier in this Report that Inquiry Witness No. 68, Mr. Henry Kyalo Mukima was among those who carried out investigations into the fire tragedy (paragraphs 77, 78 and 137). In the course of his investigations he collected from the burned dormitory the various items constituting Inquiry Exhibit No. 28. These are:-

- a) 2 Lanterns.
- b) 1 Paraffin Tin Lamp (Koroboi/Molotov Cocktail).
- c) 2 MatchBoxes.
- d) Remains of portable Gas Burner.
- e) Part of Glass Louvre (twisted).

These items showed signs of damage by heat but they were not completely destroyed. In view of the intensity of the heat generated during the inferno, it would not be possible to say whether the lanterns and the paraffin tin lamp had any paraffin in them. Indeed, samples of materials collected by other investigatory agencies from the scene and sent for forensic tests for kerosene and petrol did not produce results either confirming or ruling out the presence of such fire accelerants in the dormitory before the inferno (paragraphs 125 - 129 and 133). With regard to the remains of portable gas burner found in the dormitory, we know from the evidence of Asha Kassim Mwatamu (I.W.23), Gladys Liten Mayeka (I.W.24) and Peter Mwanyalo Mwachia (I.W.13) that a Bunsen Burner containing gas had been placed in the dormitory on 21st March, 1998 and that it was there on the night of the fire tragedy (paragraph 154 - 156).

160. The presence of lanterns, paraffin tin lamp and matchboxes in the dormitory contradicted the evidence of Bombolulu students who testified before and told us that students never kept such items in the dormitory. In this regard it is instructive to recall what we recorded at paragraph 123 that Miss Betty Kitili (I.W.53) testified that when she saw fire on Magdalene's bed on the fateful night, she (Betty) thought Magdalene, a Form IV, was reading using a torch. We were told that there were examinations to be sat next day. Form IV students would, of course, be in the process of preparing for their final school examinations at the end of the year. The temptation to use the lanterns, paraffin tin lamp and matchboxes would, therefore, be high.

161. In the course of his investigations, Inspector Jackson Kiema (I.W.89) also collected various items from the burned dormitory. He produced a collection of items as Inquiry Exhibit No. 43. These included remains of a gas burner. It may be recalled that one of the items produced as Inquiry Exhibit No. 28 by Mr. Henry Kyalo Mukima (I.W.68) were remains of a portable gas burner. The Bombolulu students who attended a Science Congress at Matuga Girls Secondary School on 21st March, 1998 had carried with them a portable gas burner which they placed in the ill-fated dormitory upon their return from the Congress. There was no evidence of any other gas burner having been in the dormitory on the fateful night.
162. We find that the remains of a portable gas burner produced under Inquiry Exhibit No. 28 and the remains of a gas burner produced under Inquiry Exhibit No. 43 were components of the same portable gas burner which the Bombolulu students had stored in their dormitory on 21st March, 1998 where it remained until its destruction by the inferno of the night of 25th/26th March, 1998.
163. Inspector Jackson Kiema (I.W.89) also received from the same dormitory 3 iron boxes and 2 lanterns during his investigations. He produced these items as Inquiry Exhibit No. 44 and said he collected the 3 iron boxes around the centre of the dormitory between the second window and the fifth window on the right hand (southern side) "and when doing this we concentrated our efforts of collecting exhibits around the area which we pin-pointed the fire to have started, you honour". He collected the 2 hurricane (lantern) lamps around the same area. Somewhere towards the Matron's room, the Inspector collected the remains of the Bunsen Burner from the upper decker of the second bed from the rear left (northern side) of the dormitory. One of the iron boxes, which was closed, had remains of charcoal inside it.
164. Commissioners sought to know from various Bombolulu students who came to testify if some of the students smoked and almost invariably the answer was that they were not aware of any smokers among the student community. However, Miss Caroline Nyambura (I.W.49), a Form 1, told us that sometimes they (students) found cigarette filters on or under beds in the dormitory. The presence of

cigarette filters cannot be explained on any reasonable hypothesis other than that there were some smokers among the Bombolulu student community.

165. There were several fire accelerants in the dormitory: mosquito nets, paraffin tin lamps, clothes, books, ethanol amounting to about 100 ml and a Bunsen Burner with its canister containing about 190 gm of butane gas. Miss Faiza Mohamed Mwachome (I.W.37) testified that "wakati wa moto kulikuwa na upepo mwingi". [During the fire there was a lot of wind.] A meteorologist, Mr. Richard Adera (I.W.74), however, told the Commission that the wind was blowing from South - South West at less than 10 km/hr and that its speed was very light (paragraph 88). We accept Mr. Adera's evidence that the speed of the wind was light. That notwithstanding, the presence of the various materials enumerated above, combined with the opening of the dormitory doors when the fire broke out, would have accelerated the speed of the fire in the dormitory irrespective of the cause of the fire.

166. Learned Assisting Counsel drew our attention to the evidence of Mr. Henry Kyalo Mukima (I.W.68) to the effect that the form of energy likely to have caused the fire was a naked flame from either a struck matchstick or an already lit lantern or paraffin tin lamp. Counsel also noted that the science equipment/apparatus in the dormitory at the material time, which included a gas burner and ethanol, had left remains after the fire away from the place where the students said they first saw the fire. Accordingly, Counsel urged us to find that the fire did not originate from the science equipment but that all the said equipment could have done was to accelerate the fire. Counsel noted that the students denied that the fire was caused by accident.

Conclusions on accident theory

167. The circumstances enumerated above do make the accident theory attractive as a possible cause of the fire. Certainly they created a conducive atmosphere or opportunity for applicability of the theory. While opportunity may provide a good aid towards proving the theory, it cannot on its own provide the necessary proof. The possibility of the fire having been caused by accident is definitely

there but there is no tangible evidence to enable us to say with confidence that the fire was caused by accident.

168. We find that accident was not established as the cause of the Bombolulu fire tragedy.

Spontaneous combustion

169. This occurs when materials are tightly packed in a room and the room is poorly ventilated. The materials would in the circumstances generate heat that may cause spontaneous combustion/burning. Although the dormitory was congested, there was evidence that it had sufficient ventilation. In the dormitory part of the block alone, there were 6 large glass louvre windows on each side. Although the window sizes were not indicated in the sketch plan drawn and produced by Inspector Jackson Kiema (I.W.89) as Inquiry Exhibit No. 47 (a), we visited the ill-fated dormitory a number of times during the Inquiry proceedings and saw the windows for ourselves. We also received evidence from Miss Esther Mgusi (I.W.44) that there was a space of 7" between the dormitory roof and wall plate while Inspector Jackson Kiema (I.W.89) actually measured the space and found it to be 10" (paragraph 118).

170. We find that spontaneous combustion was not proved to be the cause of the Bombolulu fire tragedy.

CHAPTER V

OTHER MATTERS PERTAINING TO THE FIRE TRAGEDY

171. Our Term of Reference (b) directed us:

“To inquire generally or in particular into any other matter pertaining to the above”.

The mandate contained in this Term of Reference is wide and would have required a longer period to exhaustively deal with. We have in the limited time set aside for the Inquiry examined the following which in our view contributed to, or aggravated in one way or another, the tragedy that culminated in the death of 26 young girls.

Infrastructure

172. In paragraph 24 we have given the history of the school which indicated that whereas the sponsoring Church had a master plan to put up a school as good as the Alliance Girls High School, Kikuyu, these plans were not implemented primarily because of two factors. Firstly, lack of financial resources inhibited the implementation of the grand plans. Secondly, due to pressure from the sponsors for the boarders to move from buildings owned by the Church, as well as the reports of Public Health Inspectors that condemned these old facilities, the Board of Governors was forced to put up boarding facilities for the girls in a hurry. The Board requested M/S Gitutho Associates Consulting Architects to make design plans for the facilities (Inquiry Exhibit No. 6). Unfortunately these plans were not used when constructing the facilities, again due to lack of adequate funds to pay for the professional fees demanded by the firm. The Board of Governors requested and obtained alternative plans from the Ministry of Public Works. Those were not submitted to the Commission in spite of promises to submit them made by the Headmistress (I.W. 1) and the Chairman of the Board of Governors (I.W.3). We were, therefore, not able to ascertain whether the dormitory was put up in accordance with the plans.

173. Construction work was started in 1986. However, the initial Contractor died before the work was completed. The Board of

Governors then formed a Committee to oversee the construction work and the Committee advertised tenders for the construction of the remaining work. Some 12 Contractors responded. After short-listing, 4 Contractors were interviewed and Mr. Andrew Jacca (I.W.63) was awarded the tender on a labour contract basis.

174. Evidence adduced by Mr. Andrew Jacca indicated that the procedures for labour contracts were not followed. The client (the school) did not appoint a site agent/clerk of works, sub-contractors or consultants (architect, civil/structural engineer, quantity surveyor, etc) to supervise the project. We were informed that the acquisition of materials was done by the Headmistress who was not a qualified professional, hence the specifications and quality of materials could not be counterchecked.
175. We were also informed that the responsibility for appointing sub-contractors was left solely to the main contractor.
176. The Board of Governors requested the District Works Officer, Kwale to supervise the work. Mr. Jackson Kiarie Wafuna (I.W.60) informed the Commission that the Board of Governors failed to provide transport requested by the Ministry of Public Works, Kwale. The supervision of the work was thus left to infrequent visits by a Civil Engineer from the Coast Development Authority (CDA) Eng. Wainaina Mburu (I.W.61).
177. Due to the above omissions, the Institute of Electrical Engineers (IEE) Regulations for Electrical Equipment of Buildings were compromised and the Local Government (Adoptive By-Laws) (Buildings) Order 1968 and (Grade II Buildings) Order 1968 were not followed.
178. We visited the school several times in the course of the Inquiry proceedings and observed that, notwithstanding the above shortcomings, the building was constructed properly and was still upright in spite of the intense heat generated by the fire as indicated at paragraphs 127 - 129 and 133.

Hampered movement of the girls

179. The movement of the girls was greatly hampered because of the serious overcrowding in the dormitory. As shown in paragraph 26, the capacity of the dormitory was 100 students. On the material day, there were 75 double decker beds and the number of boarders was listed as 146. We were further informed that most of the beds had mosquito nets.
180. The lack of sufficient space for free movement and the presence of the nets contributed in no small measure in increasing the number of casualties. Indeed, some girls, as Nibora Hamisi (I.W.46) informed us, were caught by the falling burning nets as they were attempting to run out of the main/front door.

The doors.

181. Both the front and rear doors were double-leaf wooden doors, opening inwards.
182. All the 22 girls who died in the dormitory died near the front door. Those whom Providence allowed to run out of this door told the Commission that they had to struggle to get out because only one side of the front door was opened by a girl who was amongst the first to get out. Later on, Caroline Kidagaya (I.W.33) opened the other leaf of the door and bolted out. By this time, however, the fire was raging and there were a lot of toxic fumes that must have overwhelmed those who succumbed and died near the door.
183. Examination of the evidence of all the girls who appeared before us leaves one question unanswered: "Who opened the front door?" Inspector Jackson Kiema (I.W.89) informed us that it was Miss Kidagaya that opened the door, but the evidence given by her as indicated by the following exchange between her and Assisting Counsel was to the effect that she found one leaf already open and she opened the other one and got out:

“Counsel:

Which door did you run to?

Catherine:

The front door.

Counsel:

Was the door locked?

Catherine:

One part of the door was locked.

Counsel:

Do you know who opened the door?

Catherine:

I opened the door.

Counsel:

Which door?

Catherine:

The one that was not open, one part was open, the one which was not open.”

184. Mwanaiki Salim (I.W.35) also denied to have opened the door. The Government may wish to follow this up as it might very well be that the one (girl) who opened the door could shed light on how the fire started. Bwepwe (I.W.4) who claimed to have been the person who kicked the double-leaf front door from outside and broke the first leaf open did not impress us as a truthful witness on this point. His demeanour while testifying before us depicted him as a good

actor but not necessarily a person whose truthfulness we could be sure about. Therefore, the identity of the person who opened the first leaf of the front door was not established before us.

185. We are concerned that many boarding schools in the country have the doors of their dormitories in the same way as was the case at Bombolulu Girls Secondary School, i.e. opening inwards. We cannot emphasize strongly enough the urgent need to have all these corrected and for the relevant government authorities to ensure that in all future projects, main doors of school buildings or, for that matter, doors of any public buildings, open outwards to avert similar or even bigger tragedies from happening.

Security fencing

186. During our visit to the school we observed that unlike the plot of Mazeras (Boys) High School just across the road, the general perimeter of the school plot was not fenced. There was, however, a chain-link fence around the dormitory area measuring about 70 by 95 paces. We noted with disbelief that even this modest attempt to protect the girls was faulty in that there was no gate. Due to lack of perimeter fencing, there were paths traversing the compound. Judith Sita Mbiza (I.W.38) who was a prefect and also a sister to the late headgirl, Rachel Umazi, explained that there were at least two paths. The first traversed the compound "in front of the Kitchen extending to classrooms and staff room", another one was behind the dormitory but this one passed outside the dormitory fence. It was, however, close enough to the dormitory and drunkards passing nearby would disturb the girls with their singing. We alluded to these shortcomings in paragraph 142.
187. As intimated in paragraph 142, an examination of the fence around the dormitory showed that it was not secured. There were many gaps through which a grown up person could crawl in and out of the dormitory enclosure. This was corroborated by Inspector Kiema (I.W.89) while being questioned at the scene in the following terms:

"Commissioner:

Did you say this is not the only hole you found along the perimeter?

Kiema:

Yes, your honour, but it is among the biggest.”

188. The above facts give us grave concern with regard to the security of the girls in particular as other evidence given to us showed that there was some animosity towards the girls in Mazeras. On two occasions girls were stoned as they were returning from functions away from school. During the first incident on 14th March, 1998, the girls were returning to school from a Drama Festival. A week later on 21st March, 1998, which was only 4 days before the fateful night, another group of girls coming from a Science Congress in Matuga were also stoned (paragraphs 139 - 140). We were greatly shocked to hear from Mr. Stephen Nyawa Mwachiti (I.W.84), Assistant Chief of Mazeras Sub-Location, who was at the material time the Acting Chief of Kasemeni Location under which Mazeras falls, that stone throwing “ni jambo la kawaida” (it is an ordinary happening)!

189. We are convinced that the inadequate fencing and the employment of ineffective watchmen constituted an open and dangerous invitation for anyone who wished to harm the girls. We make appropriate recommendations in Chapter VI.

Teachers houses

190. There were no teachers' houses at the school. The Chairman of the Board of Governors, Professor Juma Lugogo (I.W.3) informed us that this was due to lack of funds but that the project was on the next priority list of their development plans after the dormitories.

191. The Headmistress, all the teachers, the watchmen and the girls that gave evidence informed us that all the teachers left the school compound soon after the afternoon classes at 5.00 p.m. This meant that thereafter the security and life of the girls was left in the hands of the Matron and the Watchmen who were unsuitable to be given such responsibilities as we have shown in paragraphs 198 and 199 below.

Recruitment of non-teaching staff

192. The recruitment and supervision of non-teaching support staff is the responsibility of Boards of Governors. Candidates must meet specific requirements as to qualifications, good conduct and experience. Duties and responsibilities for specific jobs should be clearly spelt out by the school administration.

The matron

193. She was 46 years old, married and had grown-up children. She had been with the school since it was established as a mixed school in 1975. She separated with her husband for 12 years, but reconciled just recently.

194. According to her own evidence, she did not have any professional training as a housekeeper or a nurse, which should be prerequisites for such a position. She, however, had a short in-service training as a cook at Shanzu Teachers Training College when she was appointed to supervise the cooks.

The Matron lived with the girls in a cubicle attached to the ill-ventilated dormitory. She was the only member of staff who lived in the dormitory. Both she and the girls looked to the school watchmen for protection at night.

One of the reasons adduced before us was to the effect that she was not qualified for her duties and remained at the school most of the time. However, as reported by a number of students because, Grace Muthuri Gakii (I.W.43), she was harsh. More specifically, however, she engendered widespread fear among the students. Grace Muthuri Gakii (I.W.43) narrated to us some samples of the nocturnal activities of the Matron the reputation of *mwanga*. We were particularly interested in the part of the Report dealing with the activities of the Matron.

In view of the qualifications and reputation, we find it surprising that the school management retained her in such a position.

The night watchmen

198. There were two night watchmen employed by the school. Mr. Reuben Bwepwe Cholo (I.W.4) was aged 57 years old and had been with the school from the time it was started as a mixed school close to the Church in the main part of Mazeras village. He was the brother-in-law of the Matron, (I.W.2). The second watchman was Mr. Samuel Alex Mangale (I.W.5), aged 27 years old. He was employed as a temporary watchman in 1996.

199. In our assessment, both were unsuitable for, indeed unworthy of, the trust bestowed on them to guard young girls. The elderly Bwepwe lied under oath that they were the ones who broke the front door and made it possible for the girls to struggle out of the dormitory through the said door. While there was evidence before us that at a later stage they played a part in helping some of the victims, we doubted the bravado stories of how they claimed to have heroically rescued the girls when we noted that none of them had any sign of having been burned even a little by the raging fire.

200. Some of the students who testified before us said that neither of the watchmen was near the dormitory at the crucial time on the fateful night. As noted at paragraph 184, one of the watchmen Reuben Bwepwe Cholo (I.W.4) claimed to be the person who kept the closed double-leaf main door from outside resulting in one leaf it breaking open but we heard evidence from Lydia Kuvuna (I.W.25) that after struggling through the main door of the dormitory, she went towards the school administration block (I.W.49) added that not only was Bwepwe asleep as they headed for the burning dormitory and headed for the main door of the School but also that he was unaware of the fire to the extent that they were going to a Disco! We do not believe Bwepwe's claim to have been the person who broke the door open. Had either of them been near, they would have heard the commotion and screams of the girls early enough to have rushed to the door. This would no doubt have saved a number of the girls who perished around that door of the dormitory.

Laxity in the administration of the school

201. Evidence before us pointed to an administrative system and environment that did not adequately provide for security and safety of the girls at Bombolulu Girls Secondary School. The Matron (I.W.2), indicated that the dormitory locking system provided for free or easy access in and out of the dormitory without drawing attention. Miss Faiza Mohamed Mwachome (I.W.37) informed us that girls would leave the dormitory any time after 2.00 a.m. and go out to the classrooms to study without the knowledge of the Matron. As pointed out in paragraph 186, there was no perimeter fence. Who knows where those girls actually used to go! Laxity in the school administration gave the girls sundry opportunities to misbehave. For instance, the Matron (I.W.2) said she witnessed a group of girls performing drama inside a classroom in which they dressed up in fancy clothes, heavy make-up and wigs. The theme of the play was "Kupokonyana wavulana" [snatching each other's boyfriends]. The Matron peeped through the window and what she saw was indescribable.
202. Miss Barbra Adhiambo Owudo (I.W.39) informed us that although there were specific days for parents to visit their children, parents could go there any day. Some girls had friends who also visited them any time. This omission on the part of the school administration could have facilitated easy entry to the school by any villains who may have wanted to harm the girls. Indeed Maua Mbeyu Juma (I.W.54) informed us that on 14th May, 1998, during broad daylight, she met three queerly dressed young men on her way to Mazeras village to repair her shoes. The young men asked her questions about the school, whether the Headmistress stayed in the school, whether the school had watchmen or a Matron and even the address and telephone number of the school. She thought these young men "could come back at night to steal or do bad things" to her. As a security measure she took to migrating from bed to bed.
203. Miss Mercy Mnengwa Wakesho (I.W.11) who was the Bombolulu Deputy Headmistress, Mr. Frederick Odhiambo Okoth (I.W.12) and Mr. Charles Muhoro Murigo (I.W.19), both of whom were teachers at Bombolulu, informed us that there were no regular staff meetings except at the beginning and end of school terms.

These witnesses and the Matron (I.W. 2) also informed us that the Headmistress did not usually act on problems, reports or issues referred to her pertaining to the security of the girls or general management problems of the school or dormitory. A stage reached when the girls had to resort to marching to the office of the Coast Provincial Director of Education to seek redress.

204. From the evidence adduced before us, we found the teachers demoralized and lacking in initiative. Although some stayed not too far from the school, they did not concern themselves with what went on at the school after their obligatory duties after 5.00 p.m. Thus there was no orderly supervision of activities after normal school hours. For example, when the students returned from the Science Congress on 21st March, 1998, the Laboratory Assistant did not ensure that the equipment was promptly returned to the laboratory, instead he attempted to shift the blame to the Science Prefect. The following exchange between him and Assisting Counsel illustrates the point:

“Counsel:

Did you collect your equipment?

Mwachia (Laboratory Assistant)

No, I did not collect the equipment.

Counsel:

But you yourself did not supervise them (students) to make sure the equipment were kept in the classroom, or were you tired?

Mwachia:

Yeah, I was tired I can say. We also had a Laboratory Prefect, so she is normally in charge of that”.

205. The Chemistry teacher, Mr. Charles Muhoro Murigo (I.W.19), exhibited even worse irresponsibility. He had a Chemistry class on Monday after the Congress and he had the following to say about the equipment:

“Commissioner:

You are a Chemistry teacher, did you have a Chemistry lesson on that day (Monday 23rd March, 1998)?

Murigo:

Yeah.

Commissioner:

You had, did you find out whether the equipment had been brought back by the students...?

Murigo:

No, they did not.

Commissioner:

Did you find out whether the students had returned the equipment to the laboratory?”

Murigo:

No.”

206. The existence of ethanol and butane gas in the dormitory on the fateful night had disastrous effects in that they are likely to have acted as accelerants for the fire.
207. It is an accepted practice in boarding schools to inspect the suitcases of the students periodically. This exercise is carried out to prevent the students from bringing in or harbouring dangerous weapons, drugs or prohibited clothing.
208. Evidence adduced before us indicated that this exercise was not carried out at Bombolulu Girls Secondary School. The following dialogue between a Commissioner and the Matron graphically sums up the pathetic situation:

“Commissioner:

Mlikuwa muna mpango gani wa hawa wasichana wa kufanya inspection, mlikuwa muna mpango wa kufanya inspection au ni wakati wowote au inspetion ghafla au namna gani, ili kugundua vitu kama hivi visivyotakikana? [What arrangements did you have for inspections to ascertain if the girls had any undesirable or prohibited items? Did you have inspections when you felt like or did you conduct impromptu inspections?]

Mwaka(Matron)

Hiyo ilikuwa hakuna. [There were no such inspections.]

Commissioner:

...unajua watoto wakikaa pamoja ni lazima washitakiane, kitu chake kimeibiwa. Namna gani mlikuwa hamna mpango wa kutafuta hivi? [...you are aware that when students stay together, it is common for them to complain about theft of their things. How is it that you did not have plans for solving this?]

Mwaka:

Ilikuwa kukitokea wizi kama huo, ndio tulikuwa tunafanya hiyo inspection lakini si kila wakati tulifanya inspection. Watoto nilikuwa nawaona walikuwa wanakuja na vitu vyovyote wanavyotaka.” [It was when theft took place that we carried out an inspection. We did not do so regularly. I used to see the children bringing anything they liked.]

Moreover, there was no check-list of the things allowed to be brought by the girls to school.

209. Drug abuse in educational institutions has been reported in a number of instances nationally. There have been incidents of students themselves being involved in drug trafficking while in other instances people outside institutions have infiltrated such institutions selling drugs to students. Retired Mazeras Assistant Chief, Robert Mwenda William (I.W.82) talked of many school boy dropouts in

Mazeras who had become a real problem to their families because they were engaged in drug and alcohol abuse. "In this state", he said, "they can do anything."

210. As already recorded at paragraph 162, nearly all students who appeared before us denied that cigarette smoking was taking place at the school. Circumstantial evidence that there was smoking at the school was provided by Caroline Nyambura (I.W.49) who stated "but sometimes we could find the filters of cigarettes sometimes on the bed, sometimes under the bed, but I don't know who was smoking". In view of the looming problem of drug abuse in the country, especially among the youth, we were very concerned about the apparent lack of thorough inspection of the dormitory especially after the students returned to school. With the ease of access to the dormitory and the evidence of cigarette smoking referred to above, one cannot be too sure about the presence or otherwise of drug abuse at the school.

School inspection by staff of Ministry of Education

211. Evidence given before us by the Coast Provincial Director of Education, Mrs. Khadija Karim (I.W.81) and the Kwale District Education Officer, Mr. Ahmed Sheikh Badawy (I.W.59), indicated that inspection of the school was not carried out regularly and when carried out it was casual and not thorough. When the Coast Provincial Director of Education was asked by Counsel: "So was Bombolulu Girls Secondary School properly inspected as per your records? Was inspection done on the school?" She parried the question and tried to shift the focus to the Headmistress. She stated: "I will say that inspections have been done, first of all the Headmistress is supposed to be Inspector number one according to the virtues of our duties. She is supposed to inspect the school every day". Pressed to say how many times Bombolulu was visited in 1997, she again was vague and stated: "What I am trying to tell you is that the school has been visited but we would have loved to visit them as often as possible". Mr Badawy, the Kwale District Education Officer, was equally vague on the issue of inspection of schools in Kwale. When asked by a Commissioner to state the minimum number of visits made per school per year, he replied: "Sometimes we can see all the schools". Although he must or at least

ought to have known that the question of inspection of the school would arise, he neither brought a copy of any recent report of inspection carried out at Bombolulu nor remembered any contents of any such report about the school. The following brief exchange between him and a Commissioner illustrates the point:-

“Commissioner:

..... of course after the inspection, there would be some recommendations made by the Inspector?

Badawy:

You mean after the fire disaster?

Commissioner:

No, the first infection (sic) of the school, the usual school infection (sic), inspection, sorry.

Badawy:

I said I cannot remember what was written down, that one I said it. I know inspection has been carried out.”

212. Mr. Badawy failed to send a copy of the report to the Commissioners in spite of having promised to do so.
213. The two officers blamed lack of transport as the main cause of their inability to carry out inspections in the district. We were not convinced that this should have been the case as far as Bombolulu was concerned seeing that it is not far out from the Mombasa - Nairobi highway at Mazeras (paragraph 27).
214. The infrequent inspections at the school no doubt contributed to the unsatisfactory learning and living environment of the girls and the teachers. The inspectors would no doubt have acted as the appropriate conduit to receive reports of the frustrations of the teachers and the students, thus diffusing the situation that ended up in

the students marching to the office of the Coast Provincial Director of Education.

215. We had reason to believe that the situation in Kwale was common in many districts, especially those that have poor infrastructure and financial resources. We are fully convinced that regular inspections of schools would improve the quality of education in the country. In any case the *Education Act* (Cap. 211) makes it a mandatory requirement for schools to be inspected. Section 18 of the Act, inter alia, provides:

“18. (1) The Minister shall appoint officers with authority to enter and inspect any school....

(4) An officer inspecting a school under subsection (1) shall have special regard to the maintenance of educational standards and compliance with any regulations made under section 19.”

Section 19 of the Act, inter alia, provides:

“19. The Minister may make regulations with respect to the conduct and management of schools and such regulations may-

- (a) prescribe standards with regard to the numbers and qualifications of staff...;
- (b) prescribe minimum standards for the health and safety of pupils and for a satisfactory environment for education”.

We shall make appropriate recommendations in Chapter VI.

Fear of Supernatural Phenomena

216. Fear of supernatural phenomena at Bombolulu Girls Secondary School received prominent press coverage during the sittings of this Commission of Inquiry. Under the provisions of section 60 (1) (o) of the *Evidence Act*, we take judicial notice of the fact that the Bombolulu experience was not an isolated case in this regard. Incidents of disturbances associated with supernatural phenomena have been reported in the country from time to time. We cite the

following excerpts from some of the reported incidents for illustration:

- ◆ The withdrawal by parents of pupils from Kikanga Primary School in Matinyani Location, Kabati Division, Kitui District in 1996 following complaints that the pupils were being possessed and strangled by *majini* (demons). [See Sunday Standard of 7th June, 1998].
- ◆ The incident at Muvuti Secondary School in Machakos District on Tuesday 2nd June, 1998 where girls and boys reported that they were disturbed by jinn (demons) and the school was closed the next day for about a week. Muvuti Secondary School is co-educational. The students complained of hearing screams and their beds being shaken by unknown forces. The girls complained that figures, which could not be seen, sexually assaulted them. Male students complained of being strangled at night while others said they woke up “feeling tired as if they had been digging the whole night”. A crowd of students found at the gate said: “Before going home, we all demanded that an exorcist visits the school to eject the demons before we can return to our dormitories.” The school was opened after a cleansing ceremony was conducted by various church denominations. [See East African Standard of Wednesday 3rd June, 1998].
- ◆ The Sunday Standard of 7th June, 1998 also carried a story whereby 100 girls at Mwakisha Mixed Secondary School in Tausa Division, Taita-Taveta District deserted, claiming evil spirits had been raping them at night last previous March. The local school inspector, however, said the girls may have been gripped by mass hysteria which could lead to emotional outbursts and phantom visions.
- ◆ The Sunday Standard of 7th June, 1998 also carried a story that as the “demons” invaded Mvuti Primary School this past two weeks, a similar incident was reported in Moshi, Tanzania. The cases are so similar that they almost seem contrived.

- ◆ There is one other newspaper article from the Sunday Nation of 7th June, 1998 we consider relevant to the subject under discussion. The occasion was the Rift Valley Secondary Schools Heads Association Conference at Moi Girls High School in Eldoret on the theme: *Challenges of Secondary School Management in the Third Millennium*. The school heads reported, inter alia, that there were still complaints of devil worship, demons and rampant indiscipline in secondary schools and asked the Government to release the Report of the Presidential Commission of Inquiry into the Cult of Devil Worship in Kenya. The secondary school heads added that indiscipline in most of the schools was a time bomb and the lives of head-teachers or teachers staying or residing in school compounds were at great risk. The secondary school-heads urged the Government to release the Devil Worship Report early as they believed it would assist in finding a quick solution to the aforesaid problems, thus creating a good atmosphere for learning. The newspaper article quoted the Director of Education as having replied that the Ministry of Education and Human Resources Development did not have control over the release of the Devil Worship Report. He also told the head-teachers that they should consider consulting senior students and all teachers before imposing school rules.

217. The prominence given by the media and the near fear interest shown by the general public in the matter during the Inquiry convinced us that it is a subject that needs an urgent in-depth study in order to shade light as to why these phenomena still play a pivotal role in the life of many people in Kenya. Time allocated to the Inquiry was not sufficient to do justice to the complex subject. We have, therefore, confined ourselves to the analysis of the evidence adduced and how it might have contributed to the painful tragedy. We have also as far as possible made reference to authorities on religion who have linked this matter to the African traditional beliefs, life and history. However, before we can analyze the evidence, we give below some explanations or definitions of some local terminologies that were mentioned in the evidence:-

Kayas: These are the most sacred shrines of Mijikenda. They are located in the forests in the Coast Province. They are holy places

where the Mijikenda religious leaders go to offer sacrifices, pray for rains or for removal or healing of a particular disease or epidemic or hunger that affect the communities.

Vifudu: Are a kind of healing powers that are inherited and passed from one generation to another in one family. Each Mijikenda community has one clan that is custodian of *Vifudu* for the community.

Mizimu: They are places mainly under designated trees, bushes, caves, etc., where witchdoctors go to invoke evil spirits like jinn to harm those they have been requested to harm by their equally evil clients. They should not be confused with *Kayas* that are holy places.

Mazingaombwe: These are the evil spirits or medicines that are dispatched from *Mizimu* to intended victims.

218. Amongst the supernatural phenomena that instilled fear in the girls at the Bomboluou Girls Secondary School is the information that the ill-fated dormitory was built on land on which a *Vifudu* shrine had existed. The fear was unfounded as it was based on a misconception that *Vifudu* were evil spirits that can cause fire. We have already shown that *Vifudu* are not evil spirits but in fact a positive power of doing good, namely healing. When Mr. Stephen Nyawa Mwachiti (I.W.84) was asked to comment whether it was *Vifudu* that could have caused the fire, he replied "Kwa wenyeji wa pwani, si *Vifudu* kwa maana mtu anaposhikwa na matatizo ya *Vifudu*, si moto." (For Coastal people it is not *Vifudu* because when someone has problems associated with *Vifudu*, it is not fire). In addition to the above misconception about the evil powers of *Vifudu*, Mr. Mwachiti and Mr. Robert Mwenda William (I.W.82), informed the Commission that the *Vifudu* had been removed from the site before the school was built. It would appear that the information was not properly or convincingly passed on to the girls at the school. Several girls told us that they were afraid because they heard weird voices outside the dormitories. Miss Phoebe Mshambala (I.W.21) informed the Commission that some girls reported hearing cries of small babies outside the dormitory. When asked whether these cries could not have been coming from the babies of the families that lived near the

school, she was emphatic that they were not voices from the babies of the neighbours.

219. One girl, Miss Caroline Nyambura (I.W.49) talked of hearing the voices of cats and barking of dogs in the dormitory. She narrated these experiences as follows:

“We used to hear some strange things, noises. Sometimes in the dormitory we could hear a cat, sometimes a dog barking inside the dormitory. Then we could hear women shoes, high heels walking around the dormitory and even beds shaking.”

Miss Lydia Kuvuna Kumbu (I.W.25) told us of hearing of some unusual noises of beds shaking at night. She was sure these noises were not caused by earthquakes or earth-tremors. Reference to *Mazingaombwe* was made by Mr. Frederick Odhiambo Okoth (I.W.12), a teacher at Bombolulu Girls Secondary School, who told us that there was general talk around Mazeras ascribing the fire to *Mazingaombwe*. He had no clear idea what the term meant. Although none of the Bombolulu students who testified before us referred to the phenomenon in their evidence, no doubt the stories that the fire could have been caused by *Mazingaombwe* are likely to have affected the Bombolulu student community somehow. In connection, it is instructive to observe that not even one student attempted to put off the fire in its incipient stages! A number of students who testified before us said several girls had basins of water in the dormitory but not a single one was seen to attempt to put off the fire!

220. The phenomenon that instilled the greatest sense of helplessness in the girls revolved around the story of an apparition that would appear in the dormitory as a woman who would be naked at first, then her body would be covered in black lady's clothes as she entered the dormitory. She would then change into a man dressed in white. The apparition would reach the centre and then disappear. One student who appeared before us stated that they had been informed about it by friends. Others, Miss Mima Omar (I.W.2) and Miss Monica Muthuri Gakii (I.W.3) also testified to the following:

had not seen the mysterious figure herself, Dorothy Wangui, Grace Mbodze Nyae (I.W.48) and Janet Shindo reported seeing the images of this naked woman. We were not able to verify these stories from Dorothy and Janet as they were not called to give evidence.

221. Most of the students who spoke of this naked woman hinted that the Matron was suspected to be the apparition. Grade Mbodze Nyae (I.W.48) was brave enough and actually named the Matron as a "night runner" (*mwanga*) disturbing the girls in the dormitory. When asked by Counsel why she thought it was the Matron, she replied: "Kwa vile kila mtu hapa shuleni analalamika ni yeye, wanafunzi wote; sasa alinifuata hata nikamuona ndio nikajua ni yeye" (because all the people at the school complain she is the one, all students; she followed me and that is how I verified she was the one).

222. The stories about the existence of these supernatural phenomena undoubtedly had a profound and traumatic effect on the girls that no doubt contributed one way or the other to the tragic events of 25th March, 1998 at Bombolulu Girls Secondary School. While most of the girls who alluded to the story of the apparition said that they did not believe in "such things", apparently because they were Christians, it was evident, nevertheless, that they were scared of it. Many migrated from their beds to share beds with their friends as a security measure. Monica (I.W.43) was one such migrant. She stated: "I used to stay awake but sometimes when things were getting worse, I used to escape from my bed. I once took refuge at Maimuna's bed". Miss Gladys Mayeka (I.W.24) said that several beds were empty because many girls were sharing beds. This no doubt caused the girls to knock each other about as they were attempting to run out of the dormitory when the fire broke out.

part from the normal fear of ghosts by human beings, many are afraid of ghosts, spirits and other supernatural phenomena. One of the things that must have caused the greatest anguish such as to make the girls want to seek refuge in her's company was the story that this apparition used to suck the souls of the girls. Grace Mbodze Nyae (I.W.48) said the following in her evidence:

“Counsel”

Na wewe, Matron alikufanya chochote kibaya?

Grace:

Pia mimi alininyonya matiti siku nyingine, ...” [She also sucked my breasts another day].

Asked whether she positively identified the Matron as the sucker of her breasts on the material occasion, she said she did not wake up while the breast sucking was taking place. She told us that at the time she retired to sleep she had her night dress on but by the time she woke up she was naked, her breasts had been sucked and she felt very tired. When she narrated this experience to her colleagues, the story rang bells of familiarity and accusing fingers pointed in the direction of the Matron. Thereafter Grace started exercising greater vigilance and one night as Grace was in bed but awake she caught the Matron sitting at the corner of her bed. Grace challenged the Matron to define her mission at her bed at that time and the Matron just went away dumb-founded! The evidence of Grace suggested that there might have been more than the breast sucking. When she was asked to define what a night runner was, she said: “A person who follows people when they are sleeping and do something bad to them”. This “something bad” must have been so bad that when asked to say what it was she snapped: “ I don’t want to tell”. According to African etiquette, girls are normally shy to state that they were sexually harassed and upon it becoming necessary to narrate such experience they would not narrate it straight but would resort to language from which the actual experience may be inferred.

224. Another indication that there was a strong possibility that the girls may have been sexually harassed was given by a girl who ran out of the dormitory when she heard the commotion in the dormitory because she thought people were coming to rape them. We take cognisance of the fact that stories of sexual harassment in schools have been covered by the press from time to time. The matter is a subject of appropriate recommendations in Chapter VI.

225. We would now like to turn briefly to factors that made people have fear of supernatural phenomena. The majority of the people in Africa still live in the rural areas and as such are still guided by the beliefs enshrined in their traditions or, what are sometimes called, African traditional religions. In spite of the great efforts to convert Africans to the Christian and Islamic faiths in the area, it is evident that lots of the people are still influenced by those traditions. Professor John S. Mbiti, a Professor of Theology and Comparative Religion, states in his book *Introduction to African Religion* (2nd Edition): "Since African religion belongs to the people, when Africans migrate in large numbers from one part of the continent to another, or from Africa to other continents, they take religion with them. They can only know how to live within their religious context. Even if they are converted to another religion like Christianity or Islam, they do not completely abandon their traditional religion immediately" (p 14). "When Africans are converted to other religions, they often mix their traditional religion with the one to which they are converted" (p.15). A good example of this was provided in the letter alluded to at paragraph 12 sent to us by Mr. Mwero, a resident of Mazeras, in which he stated that a number of Mazeras people were hypocrites who held the Bible high during the day but at night resorted to charms (*hirizi*). On this theme, Professor Mbiti explains: "In this way they think and feel that they are not losing something valuable, but are gaining something valuable from both religions". At the root of all this is security. Just as we have seen that the girls sought refuge in each other's beds to feel secure, so do Africans go back to their roots when they feel they are not secure in the religions they have converted to. The success of the emerging Gospel and Evangelism Churches in attracting large crowds from Africans in Kenya can also be explained in this context. "To the Africans, religion is a way of life and can be lived each moment. The old Mission Christianity is aloof" and, as Professor Mbiti explains, "it is a set of rules to be observed, promises to be expressed in the world..... It is Christianity which is locked up six days a week meeting only two hours on Sunday."

226. It is important to record that the reports of ghostly appearances at Bombolulu did spread around the Mazeras community, resulting in prayers being held to cool the nerves of the affected students. Rev. Ronald Lwembe Nzai (I.W.6), a Minister of the Methodist Church at

Mazeras, told us that when the reports reached him, he went to conduct a service at the school and prayed for the disempowerment of the demonic forces. We also heard evidence that notwithstanding the reported demonic experiences and the fear they generated around, the general view of the Mazeras community was that the school, which was closed after the fire tragedy, should be re-opened.

227. Mrs. Rachel Umazi Mambo (I.W.83) said the Mazeras people loved the school and it should be rebuilt right there. We sought comments from witnesses on suggestions that the traumatic experiences resulting from the fire tragedy might render the atmosphere at Bombolulu not conducive to proper academic pursuit and that, therefore, the school should be relocated elsewhere. Rev. Pius Ndung'u Kagwi (I.W.57), who was among the parents whose daughters were burned beyond recognition in the inferno resulting in their burial in a mass grave at the school, was very clear in his mind that the school should be rebuilt on the same site as a tribute to the departed girls. The Mazeras Assistant Chief, Stephen Nyawa Mwachiti (I.W.84) told us that Mazeras people considered the closure of the school a big blow. He said the general view of the people was that the school should remain there but they were concerned about the security of the students even after rehabilitation of the school. He envisaged that the initial period after rehabilitation of the school would be riddled with fear but thought the fear would disappear eventually. The Assistant Chief suggested, as another witness had done, that there should be a cleansing exercise after the school's rehabilitation. Mazeras, like several other parts of Kenya, hosted a mixture of religious persuasions: Christians, Muslims and Traditionalists. We received representations that the cleansing exercise should incorporate all these religious persuasions. The Area Member of Parliament, Hon. Simeon Mwero Mkalla (I.W.84) re-echoed the need to have the school re-opened at the same site "but not as it is". Opportunity should be taken to build a modern school. He saw no reason for objection to the proposal for a cleansing exercise and the inclusion of all religious persuasions in such cleansing exercise.

228. With regard to the proposal to put up a modern school at Bombolulu, it may be recalled from paragraph 24 that Mr. Morris More Mwenda (I.W.87) told the Commission that the vision of the

founders of the school was "to start a Girls High School similar to the Alliance Girls High School, Kikuyu". Building a modern school would, therefore, realize the founders' original vision and the fire tragedy has in fact revived that unrealized original hope and posed a big challenge. So we end up with a mixed grill of fears and hopes.

229. We would now like to turn briefly to the impact the fear of supernatural phenomena has had in general at the Coast. It has hindered the development of education because some people are afraid they will be bewitched. It has even hindered general development because a number of those who are educated fear to go back to their areas of origin to put up development projects. The memorandum from Mr. El-Maawy alluded to at paragraph 11 acknowledged the fear of supernatural phenomena in the following terms:

"We still believe in ghosts, witchcraft and wizards. Some of us cannot build a good house for fear that we will be bewitched. Yet we have degrees from universities. We still live in conflict and fears, weaknesses."

But the excerpts cited at paragraph 216 from newspaper reports on the existence of the fear of supernatural phenomena in other parts of the country give the subject a national dimension.

230. What then is to be done to avoid or at least minimize the negative effects of the existence of supernatural phenomena in the country? We make appropriate recommendations on the subject in Chapter VI.

CHAPTER VI

RECOMMENDED REMEDIAL & PREVENTIVE MEASURES

231. Our last Term of Reference (c) required us:

“To make such recommendations on the matter as may appear to the Commission to be necessary and in particular such recommendations as will assist to prevent similar accidents in institutions of learning”.

Arising from the evidence gathered during the Inquiry proceedings, the Commission makes the recommendations in the ensuing paragraphs.

Construction guidelines & standards

232. During the Inquiry proceedings the Commission formed the impression that either there were no construction guidelines and standards for public institutions of learning or, if they existed, they were not common knowledge, or were being ignored.

Recommendation 1:

a It is recommended that if no construction guidelines and standards exist for public institutions of learning, the Ministry of Education & Human Resources Development, in liaison with the Ministry of Public Works & Housing, should without delay formulate such guidelines and standards.

OR

b It is recommended that in the case of construction guidelines and standards already existing for public institutions of learning, the Ministry of Education & Human Resources Development, in liaison with the Ministry of Public Works & Housing, should ensure that the said guidelines and standards are duly complied with.

Waiver of 2% of contract sum for advice to public institutions of learning

233. The Commission was told that public institutions of learning requiring professional advice from the Ministry of Public Works & Housing were required to pay 2% of the contract sum to the Ministry before such advice could be given.

Recommendation 2:

It is recommended that all public institutions of learning be provided with professional advice from the Ministry of Public Works & Housing without the pre-requisite that the said institutions must pay 2% of the contract sum to the Ministry.

Approval of building plans

234. The Ministry of Public Works & Housing has the responsibility for rendering professional construction advice to all public institutions.

Recommendation 3:

It is recommended that the Ministry of Public Works & Housing should take responsibility for drawing up building plans for public institutions of learning and for ensuring their approval by the concerned authorities.

Tendering procedure

235. The Ministry of Public Works & Housing has the responsibility for rendering professional construction advice to all public institutions.

Recommendation 4:

It is recommended that the Ministry of Public Works & Housing should prepare tender documents for public institutions of learning and ensure due compliance with tendering procedures up to the

award of tenders, which should be guided by professional considerations only.

Engagement of clerks of works

236. The Bombolulu experience revealed that no professionally qualified person took responsibility for the purchase of materials and supervision of the dormitory construction.

Recommendation 5:

It is recommended that the Ministry of Public Works & Housing should take responsibility for engagement of professionally qualified clerks of works to supervise the construction of public institutions of learning.

Testing & inspection of projects

237. The Bombolulu experience left doubts in Commissioners' minds as to whether any testing and inspection of the Bombolulu dormitory project was done or whether any certificates of completion were issued to Bombolulu Girls Secondary School during the handing over of the project.

Recommendation 6:

It is recommended that upon completion of a building project, the Ministry of Public Works, the main contractor and sub-contractor should ensure that testing and inspection of the building project is actually done and certificates of completion issued to the client/public institution of learning during the handing over of the project.

Testing and inspection of electrical services

238. The Bombolulu experience revealed that whereas M/S Bangubangu Electrical Contractor appeared in the records of Kenya Power & Lighting Company Limited as the firm which carried out electrical installations in the ill-fated dormitory and did the testing and inspection of its electrical installations, evidence adduced before the Commission was that one Tsui Mkuzi Jacca, who had no

professional qualifications in the electrical field, actually carried out the electrical installations and did no testing or inspection of the installations.

Recommendation 7:

It is recommended that in the case of installation services, their testing and inspection MUST be done by the electrical sub-contractor in the presence of the project electrical engineer who MUST verify the test results and append his/her signature on the completion certificate and that this procedure MUST apply to all other services.

Independent tests

239. Evidence adduced before the Commission by Mr. Richard Joshua Muiro (I.W.70) of Kenya Power & Lighting Company Limited was that M/S Bangubangu Electrical Contractor tested and inspected the electrical installations in the ill-fated dormitory on 30th September, 1997 and issued an installation certificate whose results, inter alia, showed:

◆ *Neutral to Earth* *110 Mega Ohms*

The same Mr. Muiro told the Commission that the installations in the same dormitory were also tested and inspected on 18th October, 1997 by M/S Kenya Power & Lighting Company Limited and the results, inter alia, showed:

◆ *Neutral to Earth* *100 Mega Ohms*

The discrepancy in the results of the two tests and inspections allegedly carried out are electrically significant and are of concern as we were not told if the company took any remedial action on the discrepancy.

Recommendation 8:

The Kenya Power & Lighting Company Limited MUST do independent tests and inspections on electrical projects and if their test results do not tally with those of the electrical sub-contractor,

then remedial action MUST be taken according to the requirements of the Electrical Power Act, 1997 and the Institution of Electrical Engineers (IEE) 1970 Regulations for Electrical Equipment of Buildings (14th Edition) or the Kenya Bureau of Standards, whichever is applicable.

Size of supply cable

240. The Commission also received evidence that a report of 25th March, 1998 by a Senior Technician in Kenya Power & Lighting Company Limited observed that the ill-fated dormitory was supplied by a 4mm² underground cable while a report of 26th March, 1998 from the Senior Operations & Maintenance Engineer, Coast Region observed that the same dormitory was supplied by a 16mm² single-phase underground cable. The cable found on site when the Commissioners went there was of 16mm² size. The contradictory measurements given of the same cable raised doubts in Commissioners' minds as to whether the Kenya Power & Lighting Company Limited inspectors actually did any inspection of electrical installations in the ill-fated dormitory.

Recommendation 9

It is recommended that the Kenya Power & Lighting Company Limited should tighten loopholes in its system for testing and inspecting electrical installations before supplying customers with electrical power.

Qualifications for tradesmen

241. The revelation made during the Inquiry proceedings that unqualified people were undertaking dangerous trades, like electrical installations, in the construction industry caused grave concern to the Commission.

Recommendation 10:

It is recommended that –

- a All tradesmen working in construction industry MUST have minimum academic training of Standard VIII or its equivalent and minimum professional training of the level of Trade Test Grade III or its equivalent.*
- b All supervisors of tradesmen MUST have minimum academic training of Form IV or its equivalent and minimum professional training of a Diploma or its equivalent from the National Polytechnics.*
- c All contractors and sub-contractors MUST have minimum academic training of Form IV, minimum professional training of Higher National Diploma, minimum approved and relevant working/practical experience of 3 years.*
- d Electrical sub-contractors MUST have minimum electricians' Licence Class D from the Ministry of Energy.*
- e Licensed electricians found commissioning electrical installation works in which they were not PERSONALLY involved and which they never tested and inspected MUST immediately have their licences withdrawn by the Ministry of Energy and their names struck off the register.*
- f The Ministry of Energy MUST tighten loopholes in its system of interviewing and awarding electricians' licences as it is evident that on the ground there are people holding the highest electricians' licences and yet they do not have any credible academic and professional qualifications.*

Enforcement of professional standards

242. The Commission noted that various undertakings within the building industry were dangerous and required a high degree of professionalism to ensure the safety of consumers.

Recommendation 11:

It is recommended that –

- a The law on professional negligence and codes of professional ethics be rigorously enforced against non-conformists.*
- b The media be encouraged to educate Kenyans on the dangers of sub-standard work and to sensitize the public on the virtues of professionalism*

Management of the school after 5.00 p.m

243. The Bombolulu experience exposed weaknesses in the management of educational institutions which must be remedied without delay. The Headmistress and all her teachers never lived in the school. Only the Matron who, in the view of the Commission, was not qualified for the job was left to take charge of the girls at night. The night watchmen were not required to report to anyone. There were no laid down procedures for checking that preps, dining for the girls and extra-curricular activities were undertaken in an orderly fashion. No regular inspections were carried out at the school. The students could, therefore, bring in virtually anything they liked. Such omissions had adverse implications for the security, health, educational standards and discipline of the students.

Recommendation 12:

It is recommended that –

- a Public boarding schools must have houses to enable at least the head teachers to live within the school compound.*
- b School inspections, both internal and external, must be conducted regularly in accordance with the requirements of the law.*
- c School authorities must assume full responsibility for closely monitoring students' activities, especially those undertaken outside the formal school curriculum, with a view of ensuring a healthy and moral context for such activities.*

- d There should be minimum qualifications for school matrons which should preferably include Form IV level of education and training in housekeeping and/or nursing.*

Poor leadership of the school

244. The Commission was informed that there were no staff meetings except at the beginning and end of school terms or when reviewing examination results. Teachers were not encouraged to propose items of agenda for staff meetings. Only the Headmistress drew up agenda for staff meetings. The Headmistress did not usually act on problems, reports or issues pertaining to the general security of the girls or the general management of the school or dormitory referred to her by teachers or the Matron. The girls had to resort to marching to the office of the Coast Provincial Director of Education to seek redress on such important matters as insecurity at the school, etc. Aspects of insecurity included lack of a fence and an effective system for monitoring of visitors to the school. The Headmistress did not draw up general rules for guiding the school. She also succumbed to pressure to admit unacceptable numbers of boarders, leading to congestion which must have had an important bearing on the high number of casualties during the fire.

Recommendation 13:

It is recommended that –

- a School administrative and management system should provide for a clear chain of command, adequate information sharing and promotion of the concept of collective responsibility among staff and students.*
- b Complaints by students should be attended to, investigated and acted upon promptly.*
- c Public boarding schools, especially for girls, should be provided with adequate security which should include an effective system for controlling the inflow of visitors.*

Attitude of the teachers

245. Evidence adduced before the Commission showed that the teachers lacked initiative and tended to pass the buck to the Headmistress on any issue or problem, e.g. the convening of staff meetings, the security of the boarders, general administration matters, etc. The teachers did not seem to be concerned with what was happening at the school and the boarders once they had completed their obligatory duties at 5.00 p.m. Although there were no teachers houses at the school compound, most of the teachers did not live far away from the school, yet none of them went back to check what was happening at the school even at 6.00 p.m. when the girls had their meals. They did not exhibit team spirit. For example, when prayers to cleanse the school were arranged after the girls marched to the office of the Coast Provincial Director of Education, not all the teachers were informed by the convenor of the prayers although it was evident that this was an important event for the school.

Recommendation 14:

It is recommended that all teachers should develop a corporate approach to the management of their schools.

The Board of Governors

246. The Inquiry proceedings also revealed weaknesses on the part of the Board. For instance, the Board succumbed to the sponsor's pressure to move the girls to incomplete facilities. The Board should have sought assistance from other authorities to restrain the sponsor. The Board should have had at least one teacher's house before moving the boarders to the new premises and should have had better security arrangements for the school. It transpired during the Inquiry proceedings that more than half of the subordinate staff at Bombolulu were from the same family. The Matron was unsuitable for the job. The Board's employment policy for subordinate staff was, therefore, weak to the extent that it permitted nepotism.

Recommendation 15:

It is recommended that all activities of Boards of Governors should be guided by principles of professionalism.

Sponsors

247. The sponsors showed some signs of insensitivity to the dangers that would surround the girls when they demanded that the girls be evacuated from the Church buildings that served as their dormitories. The action was incomprehensive to the Commission since the Church buildings were to have remained as at the time of the Inquiry. There was poor co-ordination between the various hierarchies of the sponsors regarding the management and welfare of the school. While represented at the Board level, some of the members of that policy making body e.g. Mr. Morris More Mwenda (I.W.87), were not aware of the plight of the school.

Recommendation 16:

It is recommended that school sponsors need to be actively involved in the affairs of their schools in order to ensure that they do well academically, physically and morally.

Management at district level

248. The District Education Officer, Kwale told us that due to pressure for more educational facilities in the district, he allowed the opening of schools that did not meet the minimum building requirements as per regulations. His office failed to inspect the school regularly. It should be noted that there are only 24 secondary schools in the district. It was, therefore, possible for one inspector to organize at least one inspection per term. It should also be noted that the District Education Officer failed to submit copies of previous inspection reports to the Commission despite his undertaking to do so. The District Education Officer lacked professional approach to his duties.

Recommendation 17:

It is recommended that professionalism should be practised at all levels of the education sector.

Management at provincial level

249. The same weaknesses shown at district level were evident at the provincial level. We reiterate recommendation 17.

Fear of Supernatural Phenomena

250. It became evident during the Inquiry proceedings that fear was instilled in some if not most of the girls about the existence of some supernatural phenomena such as ghosts, night runners and evil spirits at the school. Some girls resorted to sharing beds and the students marched to the office of the Coast Provincial Director of Education because of insecurity founded on various factors including the above. The foregoing may be tracked to a number of factors. One such factor is the general fear/respect Africans have for the dead and shrines. There was general belief that the school was built near a shrine and graves. Another factor is the general fear of mystic powers. We were told that Mazeras, like other parts of Kenya, hosted a mixture of religious persuasions: Christians, Muslims and Traditionalists. Some members of the community still laboured under the fear of witchcraft. These fears pose a forest of dilemmas for religions. The dilemmas include the multiplicity of traditional beliefs, the splintering of Churches into sects, etc. and the children are caught up in these dilemmas. It appeared from the Inquiry proceedings that the fear of supernatural phenomenon gripped Bombolulu to the extent of making the students feel helpless.

251. The subject of witchcraft has been treated with ambivalence in our society. A good illustration of the ambivalence may be taken from the *Witchcraft Act* (Cap. 67). Firstly, although witchcraft has been made a criminal offence carrying up to a maximum term of ten years imprisonment, it has not been statutorily defined. Section 2 of the Act bears a marginal note "Person pretending to exercise witchcraft". The focus of the section is one who "holds himself out as a witch-doctor able to cause fear, annoyance or injury to another

in mind... Or who pretends to exercise any kind of supernatural power, witchcraft , socery or enchantment calculated to cause such fear, annoyance or injury.” Section 3 has as its target a person “professing a knowledge of so-called witchcraft or the use of charms, who advises any person applying to him how to bewitch or injure persons, animals or property, or who supplies any person with any article purporting to be a means of witchcraft” as an offender. Under section 5 a person “in possession of a charm or other articles usually used in the exercise of witchcraft, socery or enchantment for the purpose of causing fear, annoyance or injury to another in mind, person or property, and who fails to show reasonable cause why he should retain any such charm or other articles in his possession” also commits an offence. If the subject, though undefined, has attracted legal sanctions, at least its negative effects have to be acknowledged to set the stage for addressing them in an informed manner.

Recommendation 18:

It is recommended that –

- a Being Africans, we should understand African Traditional Religion as part of our heritage and thereafter teach our Christian or Islamic beliefs to give a good basis for not being controlled by the fear of supernatural phenomena. The Ministry of Education & Human Resources development should provide a forum for all religions and people to discuss how best to resolve the dilemmas as they affect the formation of morals and character.*
- b There is urgent need to ensure that school children are aware of the cultural values of their areas so that they do not fear the harmless shrines. Counseling facilities should be provided in all secondary schools so that emotional needs of students are handled early enough to avoid the generation of fear.*
- c There is need to develop an education system that encourages the development of the good practices and the eradication of evil practices. This will require the posting of broad-minded teachers, chaplains and imams in schools, churches and mosques.*

- d An in-depth study of the negative effects of supernatural phenomena be undertaken with a view to eradicating or at least minimizing them.*

Reconstruction of the school

252. Many witnesses expressed the wish that the school be reconstructed at the same compound. Some suggested, like His Excellency the President, that the reconstructed school should have a "new face" and be of such calibre as befit the memory of the departed girls. Other witnesses suggested that the setting of the new school be carefully considered to shield the girls from the mass grave because of the fear generated by stories of shrines. We received representations that a memorial for the departed girls be built at the mass grave and that the memorial should be surrounded by a wall and a meditation hall be built for anyone who wishes to have private and quiet prayer for the departed. It was suggested that the Board should get appropriate professional advice for the above and that in order to prevent the security risks that were evident at the old school, an appropriate secured fence should be put up before reconstruction starts. We also received proposals that in order to allay the aforesaid fears, a cleansing ceremony involving all religious persuasions be conducted at the school.

Recommendation 19:

It is recommended that -

- a A model school be built at Bombolulu in memory of the girls who perished in the fire tragedy.*
- b A monument be built at the mass grave of the girls who perished in the fire.*
- c A cleansing ceremony involving all religious persuasions be conducted.*

Land

253. At paragraphs 148 and 149 we addressed the issue of title deeds which the Mazeras people residing on the land belonging to the Methodist Church of Kenya had been made to expect.

Recommendation 20:

It is recommended that –

- a The Methodist Church in Kenya considers regularising the occupation of those who have been residing on its land at Mazeras by getting them issued with title deeds as already intimated to them.*
- b That the Methodist Church in Kenya considers having the land set aside for Bombolulu Girls Secondary School allocated to the school. This would, among other things, facilitate the taking out by the school of appropriate insurance cover for the property*

Management of fires

254. Evidence adduced before the Commission established that the external doors of the ill-fated dormitory opened inwards, against the flow of outgoing traffic. This must have hampered the girls' escape from the burning dormitory and contributed significantly to the number of fire casualties.

Recommendation 21:

It is recommended that exit doors of buildings in institutions of learning should open outwards.

255. There was no fire-fighting equipment in the dormitory. According to Fireman, William Madafu Chikejo (I.W.65), there should have been at least 2 fire extinguishers there. Worse still, the Bombolulu girls had not been sensitized on emergency measures to be taken in the case of fire, e.g. through fire drills, displaying of fire notices, etc.

Recommendation 22:

It is recommended that -

- a It be made compulsory for students and staff in institutions of learning to be coached on measures to take in the case of fire, and other, emergencies.*
- b There should be provision of adequate supply of basic fire fighting resources.*

256. The ill-fated dormitory was congested by at least 50 students over and above its intended human holding capacity. Section 126 of the *Public Health Act* (Cap. 242), inter alia, provides:

“126. The Ministermay make rules and may confer powers and impose duties in connection with the carrying out and enforcement thereof on local authorities, owners and others as to -

- a The inspection of ... dwellings, buildings... so as not to endanger the health of inmates or the public health;
- b The construction of buildings, the provision of proper lighting and ventilation and prevention of overcrowding”.

Section 126A of the Act, inter alia, provides:

“126A. (1) Every municipal council and urban and area council may, and shall if so required by the Minister for the time being responsible for local government with the agreement of the Minister, make by-laws for all or any of the following matters -

- c for requiring and regulating adequate provision for the escape of the occupants of any building in the event of an outbreak of fire;

- d for preventing the occupation of a new or altered building until a certificate of the fitness thereof for occupation or habilitation has been issued by such local authority”.

Had the above legal provisions been complied with, the fire tragedy may have been averted or at least its effects minimized.

Recommendation 23:

It is recommended that if the necessary by-laws have not been enacted, they should be enacted without delay; and if enacted, they should be rigorously enforced.

Fire service legislation

257. Inquiry Witness No. 69, Kigo Kariuki lamented before us that there was no Fire Service Act in Kenya with country-wide application, as was the case in the United Kingdom. There are 2 Kenyan statutes in this regard. One is the *Fire Inquiry Act* (Cap.103) but its scope is limited to providing “for the holding of inquiries in cases of fire”. It is a two page act and shallow. The other one is the *Grass Fires Act* (Cap. 327). Its scope is limited to providing “for the control of grass fires”. Town dwellers would, naturally, have hardly any use for it. *The Local Government Act* (Cap. 265) empowers local authorities to make By-Laws to set up fire brigades. Such By-Laws, even where made, can only have application within the jurisdiction of the local authority concerned. And how many local authorities have enacted such By-Laws? We found merit in the proposal to have a Fire Service Act of general application so that fire matters of country-wide concern could be legislated upon nationally.

Recommendation 24:

It is recommended that a Fire Service Act be enacted in Kenya to address issues of fire management nationally and in a co-ordinated fashion.

Overview of fire prevention measures

258. Our attention was drawn to an article entitled “Arson - The Problem that Won't Go Away” written by one Stewart Kidd, Ffire E

in the Fire Engineers Journal of March, 1998. It made a useful analysis of the menace brought about by fires and how the problem might be minimized. The article recorded that the US practice is to appoint fire marshalls, who are law enforcement officials at state level who have jurisdiction which gives them authority over local fire brigades and police forces. The approach seems to have some benefits and is worthy of serious study. Among measures identified in the article as practical ways in which arson can be managed by individual companies and organizations are:

- ◆ proper assessment of risk;
- ◆ good physical security measures against external arsonists (i.e. situational fire prevention);
- ◆ proper screening of personnel to prevent internal arson;
- ◆ good internal controls including housekeeping and proper investigation of all fires;
- ◆ physical design of buildings to minimize risk and impact of arson;
- ◆ good levels of fire safety-detection, sprinklers and staff training.

The article, inter alia, observed:

“Of course, while these measures are within the control of individual property owners, on national basis, only the state can provide the framework for a truly effective arson reduction programme.” The article gave a summary of national measures for improving ways in which fires may be investigated and offenders prosecuted. The measures proposed include:

- ◆ a set of national standards for fire investigation;
- ◆ provision of adequate training for specialist fire officers together with “police powers” to make arrests, take statements and undertake investigations;

- ◆ national co-ordination of data on offenders and incidents (including formal link with private and commercial data bases);
- ◆ adequate resources for forensic science support;
- ◆ a national prosecution policy with proper education and training for Public Prosecution Service;
- ◆ resources for mental health services and counseling;
- ◆ minimum standards of fire protection and physical security to be included in the Building Regulations;
- ◆ collation of data from all sources (including insurers and loss adjusters);
- ◆ realistic tariff of penalties based on the seriousness of the consequences of the act.

259. In his memorandum to the Commission dated 26th April, 1998 (paragraph 11), Dr. Mulindi posed the question: After Bombolulu disaster, what next? He suggested Kenya lacked a policy on safety and added: "There must be accident and data and identification of dangers as a guiding tool for injury prevention. In fact we need... to establish a National Centre for Accidents and Injury Prevention and Control."

260. In both the articles cited at paragraph 258 and Dr. Mulindi's memorandum cited at paragraph 259, the theme of a data collection and collation mechanism recurs. In 1997 Kenya passed the National Crime Research Centre Act. One of its major concerns is the establishment of a crime data collection and collation centre. The Act has not yet been brought into force. A data collection and collation centre would serve this country in very good stead with regard to fire prevention as well.

Recommendation 24 A:

It is recommended that the National Crime Research Centre Act, 1997 be brought into force without delay.

Sexual insecurity

261. In the course of this Report we have touched on different aspects of the problem of inadequate arrangements for the security of Bombolulu Girls Secondary School students. We wish to round up the discussion on insecurity in the context of sexual harrasment. It will be recalled from the evidence of Miss Grace Mbodze Nyae (I.W.48) that after relating to the Commission the story of intrusion upon her privacy through the sucking of her breasts, etc. and identifying the Matron as a night runner, we sought to know what she (Grace) meant by a night runner. Her reply was: "A person who follows people when they are sleeping and do something bad to them." When we further sought to know what Grace meant by "doing something bad to them", she snapped : "I don't want to tell." That something must have been really bad! We think the intrusion upon Grace's privacy constituted at least an indecent assault, which is a criminal offence under section 144 (1) of the *Penal Code* (Cap. 63) attracting imprisonment of up to 5 years, with or without corporal punishment. Sub-section (3) is probably closer to the situation narrated to us. The sub-section, inter alia, provides:

"144. (3) Whoever, intending to insult the modesty of any woman or girl... intrudes upon the privacy of the woman or girl, is guilty of a misdemeanour and is liable to imprisonment for one year."

Sexual offences are, however, not readily reported or prosecuted because of the bad publicity usually attendant upon them once they become public knowledge. This may encourage sexual offenders, be they rapists, those involved in indecent assaults, lesbians, homosexuals, etc.

Recommendation 25:

It is recommended that –

- a The law against sexual offenders should be rigorously enforced.*
- b If the Police Force has not done so already, it should without delay establish a division where girls and women complaining of sexual offences having been committed against them may be attended to by fellow lady police officers.*
- c A family court division should be established, inter alia, for adjudicating upon sexual offence complaints without the glare of publicity.*

Enforcement of standards nationally

262. While the Kwale District Education Officer, Mr. Ahmed Sheikh Badawy (I.W.59) was giving evidence before us, he remarked that as a result of high demand for education and in view of inadequacy of resources, his Ministry was forced from time to time to allow public schools to start operating before they had fully complied with all requisite requirements, otherwise very few such schools might be able to operate. While we appreciate the problem of inadequacy of resources, we are, nevertheless, of the considered view that every effort should be made to offer high quality education nationally. The provision of requisite resources, including facilities, is a vital component of the process of offering high quality education.

Recommendation 26:

It is recommended that in spite of the legitimate clamour for educational facilities in the country, which has resulted in their proliferation, due to the realization of the importance of education, the Ministry of Education & Human Resources Development must ensure that the provision of quality education, including the provision of appropriate and adequate facilities, is not compromised.

Tribute and commendation

263. It became evident during the Inquiry proceedings that a lot of Mazeras residents were concerned by the occurrence of the Bombolulu Girls Secondary School fire tragedy judging by their prompt response to the girls "SOS" calls. Among them were the Mazeras (Boys) High School staff and students led by their Headmaster, Mr. Milton Martin Luchu (I.W.9). We wish to register our appreciation to them and other people who responded to the tragedy by helping in whatever ways falling within their means.
264. Finally, we wish to pay special tribute to: the late Bombolulu Girls Secondary School headgirl, Miss Rachel Umazi and Mazeras High School community for the high sense of responsibility and concern for their colleagues' welfare demonstrated by them on the night of the fire. It was Rachel Umazi who, on discovering that the electric switch in the dormitory "ilikuwa moto sana" (the electric switch was very hot), decided to switch the lights "OFF" immediately, despite protestations from her colleagues, in order to facilitate its cooling down. Her motive must have been to save an ugly situation developing from the apparent overheating of the switch. More fundamental, however, is what she did soon after the fire started. Mr. Gibson Richard Chiwaya Mwanguma (I.W.56) told us:

"Yeye alijisaidia mwenyewe lakini alipotoka mara ya kwanza alifikiria akakumbuka kuna wenzake bado ndani. Lakini alipokuwa akitoka mara kwa mara alikuwa akikanyagwa na wenzake na kuanguka chini, kwa vile walikuwa wote wawania kutoka". [She helped herself to get out but when she got out the first time she remembered that her colleagues were still inside. As she kept going in and out (to assist others) she was trampled upon by the other students who were also struggling to get out and she fell down.]

Rachel did not die on the spot. She died in hospital on 30th March, 1998. Quite clearly, she sustained her fatal injuries in the course of her attempts to save the lives of her colleagues. This exemplary conduct is worthy of the highest praise.

Recommendation 27:

It is recommended that -

- a The Government considers conferring an appropriate Honour & Award on the late Rachel Umazi Sita posthumously in recognition of her rare qualities.*
- b The Government considers conferring on Mazeras High School an appropriate Honour & Award in recognition of the school's alertness, courage and demonstrated concern for its neighbours' plight.*

JUDICIAL COMMISSION OF INQUIRY
The Commissions of Inquiry Act
Cap. 102, Laws of Kenya

RULES AND PROCEDURE

(Para. 5)

This Commission of Inquiry has been convened pursuant to its appointment to inquire into the circumstances surrounding and leading to the fire tragedy which occurred at Bombolulu Girls High School, Coast Province on the night of 25th/26th March, 1998 as stated in Gazette Notice No. 1760 published on 17th April, 1998 and Gazette Notice No. 1761 published on 17th April, 1998.

The Commissioners make the following Rules for the conduct and management of the proceedings of the Inquiry under section 9 of the Commissions of Inquiry Act:-

1. The Attorney General appears *amicus curiae*.
2. Subject to section 9 of the Act, the Commission of Inquiry shall sit daily at 9.00 a.m. from Monday to Friday.
3. The Commissioners may direct that the public shall not be admitted to all or to any specified part of the proceedings of the Inquiry and subject to any such direction, the Inquiry shall be held in public, but the Commissioners may exclude any person or class of persons from all or any part of the proceedings of the Inquiry if satisfied that it is desirable so to do for the preservation of order, for the due conduct of the Inquiry, or for the protection of the person, property or reputation of any witness in the Inquiry or any person referred to in the course of the proceedings, and may, if satisfied that it is desirable for any of the purposes aforesaid so to do, order that no person shall publish the name, address or photograph of any such witness or person or any evidence or information whereby he would be likely to be identified.
4. Without the leave of the Commissioners no evidence shall be adduced in public to the Inquiry concerning or relating to any matter pre-judicial to the security of the State or Head of State.
5. Any person who is in any way implicated or concerned in any matter under inquiry shall be entitled to be represented by an Advocate.
6. Any other person who desires to be so represented may, by leave of the Commission, be so represented.

7. The Advocate assisting the Inquiry will present evidence relating to the Inquiry referred to in the Terms of Reference of the Inquiry.
8. The Advocate assisting the Inquiry will warn the witness that after examination-in-chief, he may also be cross-examined by him or by any person affected by his evidence.
9. The Commissioners may summon any person or persons to testify on oath and may call for the production of books, plans and documents that the Commissioners may require.
10. The Commissioners may call for any further evidence on any point relating to any matter before them and may recall any witness for further examination.
11. Evidence shall be adduced by the question and answer method
12. Any person who contravenes any order or direction made under Rules 3, 9 and 10 shall, without prejudice to section 121 of the Penal Code, be guilty of an offence and liable to a fine not exceeding five thousand shillings.

Dated at Mombasa on this 29th day of April, 1998.

Bishop Lawi Imathiu (Rtd.)
CHAIRMAN, COMMISSION OF INQUIRY

JUDICIAL COMMISSION OF INQUIRY
The Commissions of Inquiry Act
Cap. 102, Laws of Kenya

RULES AND PROCEDURE

(Para. 5)

AMENDMENT

Rule 2 of the Rules and Procedure made on 29th April, 1998 which states

"Subject to section 9 of the Act the Commission of Inquiry shall sit daily at 9.00 a.m. from Monday to Friday."

is hereby amended to read as follows:-

" 2. Subject to section 9 of the Act the Commission of Inquiry shall sit daily at 9.00 a.m. from Monday to Friday.

Provided that the Commission may also sit on Saturdays at such times as it may deem appropriate."

Dated at Mombasa on this 8th day of May, 1998.

Bishop Lawi Imathiu (Rtd.)
CHAIRMAN, COMMISSION OF INQUIRY

IN THE MATTER OF COMMISSION OF INQUIRY INTO A FIRE TRAGEDY AT
BOMBOLULU GIRLS HIGH SCHOOL
ON THE NIGHT OF 25TH/26TH MARCH, 1998

ATTORNEY-GENERAL'S OPENING ADDRESS AT THE OFFICIAL
INAUGURATION OF THE COMMISSION AT THE TOWN HALL, MOMBASA,
ON WEDNESDAY, 29TH APRIL, 1998 (Para. 7)

Ladies and Gentlemen,

May it please you, dear Bishop and your fellow Commissioners, I want to take this opportunity, first of all to congratulate you and your Commissioners on your appointment to this Commission of Inquiry to inquire into a matter of public nature or interest, namely the Bombolulu Tragedy.

I share the confidence reposed in you, Chairman and in each and every Commissioner or Secretary and the Assisting Counsel which has been reposed in you by His Excellency the President. I know that each one of you was appointed because of the special skills and expertise that you have and possess, which will be at the disposal of the Commission as it discharges its work under the mandate given to you.

I know also that you have a strong team of the Secretary, who is an old hand in working with Commissions of this nature in the past, and in fact for a long time was my Solicitor-General in the Attorney-General's Office. I also know that you have competent Assisting Counsel, the Lady Muthoni Kimani is the second most senior person in the Litigation Department of my Chambers.

The other Assisting Counsel, is one of the top Corporation Secretaries of this country and the Corporation Secretary for Kenya Ports Authority. Therefore, in this team, Mr. Chairman and Commissioners, you do indeed have competent people who will help you to discharge your functions.

I also wish to take this opportunity to formerly inform you that, His Excellency the President has appointed three additional members, in addition to those who were gazetted, and these three additional members are:- Mohamed Said Demu, Samuel Chityeke Tuku and Japhet Gideon Kiti. He has appointed them, the instruments of appointment have already been signed and they will be gazetted shortly.

The Chairman and Commissioners, I appear before you as *amicus curiae*, in other words, I appear before you as your friend and on behalf of the Republic in this Commission of Inquiry, under the Commissions of Inquiry Act, Chapter 102 of the Laws of Kenya.

On the night of 25th/26th March 1998, mighty flames of death and destruction descended on the girls of Bombolulu Girls High School who were peacefully enjoying their sleep in

the school dormitory. The deaths, the personal injuries, the pain and suffering and the destruction of property visited on the girls and their school by those flames are too ghastly for me to recite. Suffice it to state that, not only the girls, their parents, their teachers, their relatives and friends, the school Sponsor – the Methodist Church of Kenya - and Kenyans as a whole mourned in deep personal and emotional way the passing away of the girls in their prime. We were all deeply saddened and concerned with this tragedy.

His Excellency the President has duly considered the matter and formed the opinion that the inquiry into the tragedy would be in the public interest. He has accordingly issued this commission to you dear Bishop and your fellow Commissioners. By giving you this commission, H. E. the President has reposed great confidence in yourselves. I personally share that confidence. Having said that, it now pleases me to discharge my duty.

My first duty this morning is to formerly present to you the legal instruments establishing the Commission, namely Gazette Notice 1760 dated 17th April, 1998 and Gazette Notice 1761 of 17th April, 1998 and the signed instruments which I hereby lay on the table. I am also laying on the table the amendments to the Gazette Notices appointing the three additional members of the Commission and also mentioning that this Commission will be held not at the Mombasa Law Courts as was originally stated, but in this beautiful Town Hall of Mombasa.

Mr. Chairman, fellow Commissioners, you will note that the terms of reference are:-

- (a) To inquire into the circumstances surrounding and leading to the fire tragedy which occurred at Bombolulu Girls High School on the night of 25th/26th March 1998;
- (b) To inquire generally or in particular into any other matter pertaining to the above;
- (c) To make such recommendations on the matter as may appear to the Commission to be necessary and in particular such recommendations as will assist to prevent similar accidents in institutions of learning in future; and
- (d) In accordance with the provisions of Section 7 (1) of the Commissions of Inquiry Act, to report thereon as soon as reasonably practicable but not later than 30th April, 1998.

I note, Mr. Chairman and fellow Commissioners, that 30th April 1998 is the date by which you should have submitted your report and it means therefore that for the next 24 hours there is no sleep for you! It is obviously impossible to submit an in-depth and comprehensive report on every aspect of the matters you have been directed to investigate under the terms of your commission within the next 24 hours. I am glad to inform you that H. E. the President is very much aware of this problem. The premium as far as H. E. the President is concerned, is on producing an excellent report. The President

has, therefore, directed me to discuss with you the reasonable time within which you can expeditiously submit the comprehensive report. This I will do. I will then convey the views on the matter to the President so that the real date for completion is set.

But in the meantime, do not stop tomorrow. Continue until you hear from us. Your task is to assemble all relevant evidence from witnesses of the tragedy and experts on the issues of the subject matter of the inquiry. You are then to subject that evidence to meticulous scrutiny with a view to drawing therefrom, conclusions of fact and thereafter, make your recommendations.

You will be at liberty to summon whosoever you wish to testify before you to enable you to discharge your duty to arrive at the truth. The rules of natural justice demand that, whoever may be adversely affected by evidence adduced before the Commission, should be given an opportunity to testify before the Commission and call evidence on his own behalf. All witnesses may be examined or cross-examined by the Counsel as appropriate.

In this regard, I take pleasure in noting the presence of the Provincial Commissioner and of his Provincial Heads of Departments, all of whom are very keen in the discharge of your mandate. I did not want to say that the Attorney-General has now directed you to co-operate with the Commission under the powers conferred upon me by the Constitution because I know that you will co-operate with the Commission and that, whatever evidence that you may have in your possession will be handed over to the Commission; that you will assist the Commission in tracing the witnesses and making them available to come and give evidence and even those witnesses who may not be able to come because of poverty or lack of means, I know and I have that assurance from you that you will make the means of transport available for them to come and give evidence before the Commission.

The Chairman, fellow Commissioners, we have already this morning been assured by the Provincial Commissioner speaking on his own behalf and on behalf of the Provincial Heads and in particular the Provincial Police Officer, the Provincial Criminal Investigations Officer and the Lady Criminal Investigations Officer in that area have assured that they will extend total co-operation with you. I also expect total co-operation from the Ministry of Education who are directly concerned with the tragedy that happened and who are more than anxious to ensure that we do not have similar tragedies in educational institutions in future.

Cognizance ought to be taken that, it is H. E. the President's wish that the inquiry be undertaken with all due diligence and speed and/or for a report to be made without undue delay.

It is, therefore, my wish that you proceed as much as possible from day to day until you finish your onerous task. The Government and the people of Kenya await to know the outcome of your inquiry. The press will no doubt be covering this inquiry. I would like to appeal to them to report the proceedings of the inquiry accurately, objectively and responsibly; and to avoid sensationalizing the issues which are a subject matter of the inquiry.

My appeal also goes to the people of Kenya to avoid loose talk and await the outcome of the inquiry. It is absolutely important that for the Commission to be able to discharge its duties, there should be no pressure on the Commission from any quarter, be it private or public.

Lastly, let me take this opportunity to call on all members of the public, students, teachers of Bombolulu Girls High School, any Public Servants, any Professionals or any experts who have information not only on the incident itself, but how they feel such incidents can be avoided in future to assist the Commission by coming forward and placing their views before it. To you, my dear Bishop and Honourable Commissioners, I would emphasize that you should feel free to express your findings in your report without fear or favour, in the sole knowledge that the mission that you are undertaking from now has the full backing and support of the Government and is in the interest of the people of Kenya.

The loss of even one Kenyan through any accident which means through a person's action or in-action, is a matter of grave concern to the Government and the nation. Whatever recommendations you make on how such accidents can be avoided in future will be of interest and relevance to all institutions of learning and in particular Boarding institutions. Such incidents must be avoided as the youths are an invaluable asset in the continuation and the future of the nation.

My dear Bishop, Commissioners and Counsel assisting, I fear that I have already eaten into the precious little time that you have. I must now withdraw from this conference room and leave the Counsel assisting to do their duty as directed by members of the Commission. However, I must emphasize that, as *amicus curiae*, I will be at your disposal at any time should you require my assistance in the discharge of your terms of reference.

I would like also to take this opportunity to thank the Mayor of Mombasa and his Council for having made available this beautiful Chamber – the Town Hall for you to work in. I know it will provide a very good enabling environment for you to discharge your duties properly. I also know that if you have any difficulty, his office is ten steps behind you here. You can call on him and he will solve that particular difficulty.

As I said earlier, I am here as *amicus curiae*, and I can assure you that I will be available at your disposal at any time for 24 hours per day, just like the Provincial Commissioner assured you that he will be available 24 hours per day in case you require any assistance in the discharge of your terms of reference. I wish you success in this endeavour and I know, and have confidence, that we shall expect nothing but an excellent report from these great men who constitute the Commission of Inquiry into the Bombolulu tragedy.

THANK YOU.

JUDICIAL COMMISSION OF INQUIRY INTO
BOMBOLULU GIRLS HIGH SCHOOL FIRE TRAGEDY
OF 25TH/26TH MARCH, 1998

CHAIRMAN'S ADDRESS
AT THE OPENING SESSION OF
THE INQUIRY

(Para. 8)

The Honourable Attorney-General Amos Wako, the Provincial Commissioner and his provincial heads, the Mayor of the city of Mombasa, I know it is not a city yet but I hope it would be some time to come. My fellow Commissioners, before making any remarks, I would like to formally introduce the members of the Commission to you and I call upon our Secretary, Mr. Kubo to introduce my fellow Commissioners.

[The Secretary to the Commission introduced the Commissioners as: Bishop Lawi Imathiu (Chairman), Mrs. Priscilla Mrabu, Mrs. Zainab Haji, Mr. Samuel arap Ng'eny, Dr. Shahnaaz Kassam Sharif, Mr. Mohamed Hatimy (Capt.), Mr. Mohamed Sururu, Mr. Stevens Marangi Mbogho, Mr. Benjamin Patrick Kubo as Secretary and Commissioner, Miss Muthoni Kimani as Assisting Counsel and Mr. George Dulu also as Assisting Counsel.]

The Secretary also informed the meeting that Commissioner Dr. Eddah Gachukia was out of the country while the three additional Commissioners – Mr. Mohamed Said Demu, Mr. Samuel Chityeke Tuku and Mr. Japhet Gideon Kiti – were yet to join in the Inquiry proceedings.]

We, the Commissioners, the Secretary to the Commission and Counsel assisting the Commission thank H.E. the President for appointing us to undertake this Inquiry into the circumstances surrounding and leading to the Fire Tragedy which occurred at the Bombolulu Girls High School in Kwale District, Coast Province in which some students were reported to have perished while others were reported as injured. We formally join ranks with the families, relatives and friends of the victims and assure them that we share their grief.

Our Terms of Reference require us, among other things, to execute the Inquiry with all due diligence and speed and to make our Report without undue delay. We shall do our best to discharge our mandate accordingly.

The Hon. Attorney-General, as *amicus curiae* (friend of the Court/ Commission), has ably articulated the purpose of the Inquiry we are about to undertake and the role to be played by members of the public. We thank him for taking a personal interest in the Inquiry and for offering to render every possible assistance.

Our appointment and the governing Terms of Reference are given in Gazette Notice No. 1760 and Gazette No. 1761 published on 17th April, 1998. The subject matter of the Inquiry is no doubt grave and is bound to be sensitive. We are determined to get to the bottom of the tragedy and, therefore, call upon all members of the public who have relevant evidence or information in their possession or within their knowledge to avail such evidence or information to the Commission expeditiously.

For the avoidance of doubt, the Commission has formulated the Rules and Procedure to guide the proceedings of the Inquiry. They are as will be stated by our Secretary. I call upon him to read or inform you of our Rules and Procedure.

[The Secretary to the Commission read out the Commission's Rules and Procedure dated 29th April, 1998. These are at Appendix "A.1". The Rules were subsequently amended on 8th May, 1998. The amendment is at Appendix "A.2".]

And before we conclude this opening session, the Commissioners would like to know if the Counsel assisting the Commission wish to say anything.

[Miss Muthoni Kimani, Assisting Counsel applied for an adjournment before calling witnesses.]

The adjournment is granted and we shall pop in again tomorrow at 9.00 o'clock and the Commission will now visit the Bombolulu Girls High School site.

Bishop Lawi Imathiu (Rtd.)
CHAIRMAN, COMMISSION OF INQUIRY

Town Hall
Treasury Square
Mombasa
Wednesday, 29th April, 1998.

REPUBLIC OF KENYA

In the matter of Judicial Commission of Inquiry established by His Excellency the President under the Commissions of Inquiry Act, Cap 102 of the Laws of Kenya to inquire into Bombolulu Girls High School Fire Tragedy, as set out in the Commission's Terms of Reference under Gazette Notice No. 1761 published on 17th April, 1998.

WITNESS SUMMONS

(Para. 10)

TO:
.....
.....
.....

WHEAREAS His Excellency the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya has appointed a Commission of Inquiry to inquire into the Bombolulu Girls High School Fire Tragedy of 25th/26th March, 1998 and WHEREAS your personal attendance is required as a witness to give evidence;

Now THEREFORE you are hereby commanded to attend the Inquiry at Town Hall, Treasury Square, Mombasa at 8.30 a.m. on the as a witness in the said Inquiry and to remain in attendance until released by the Commission.

GIVEN under my hand for and on behalf of the Commission of Inquiry this

..... day of 1998.

Bishop Lawi Imathiu (Rtd.)
CHAIRMAN, COMMISSION OF INQUIRY

Please acknowledge this Witness Summons by signing hereunder.

Dated the

Signature of Witness.....

Date of Service.....

JUDICIAL COMMISSION OF INQUIRY INTO
BOMBOLULU GIRLS HIGH SCHOOL FIRE TRAGEDY
OF 25TH/26TH MARCH, 1998

LIST OF INQUIRY WITNESSES (Para. 10)

1. Priscillah Mwasi (Mrs.), Headmistress, Bombolulu Girls Secondary School.
2. Margaret Mwaka Bora, Matron, Bombolulu Girls Secondary School.
3. Professor Juma Lugogo, Chairman, Bombolulu Girls Secondary School Board of Governors.
4. Reuben Bwepwe Cholo, Watchman, Bombolulu Girls Secondary School.
5. Samuel Alex Mangale, Watchman, Bombolulu Girls Secondary School.
6. Rev. Ronald Lwembe Nzai, Minister, Mazeras Methodist Church.
7. Mwero Dzuha Mwaivu, Cook, Bombolulu Girls Secondary School.
8. Jacob Katana Baya, Watchman, Bombolulu Girls Secondary School.
9. Milton Martin Luchu, Headmaster, Mazeras (Boys) High School.
10. Elly Nyundo Mkuta, Firewood Vendor, Mazeras.
11. Mercy Mlegghwa Wakesho (Miss), Deputy Headmistress, Bombolulu Girls Secondary School.
12. Frederick Odhiambo Okoth, Teacher, Bombolulu Girls Secondary School.
13. Peter Mwanyalo Mwachia, Laboratory Technician, Bombolulu Girls Secondary School.
14. Mulongo Mwavadu (Mrs), Neighbour, Bombolulu Girls Secondary School.
15. Mariam Vyoda Mwatembo (Miss), Neighbour, Bombolulu Girls Secondary School.
16. Jacob Modi Mangisi, Cook, Bombolulu Girls Secondary School.
17. Mathew Shina Dena, Former Watchman, Bombolulu Girls Secondary School.
18. Douglas Mgunya Mwanzara, Former Watchman, Bombolulu Girls Secondary School.

19. Charles Muhoro Murigo, Teacher, Bombolulu Girls Secondary School.
20. Lawrence Bora Herbert, Member, Bombolulu Girls Secondary School Board of Governors.
21. Phoebe Mshambala (Miss), Former Student, Bombolulu Girls Secondary School.
22. Donna Monica Oyoo (Miss), Former Student, Bombolulu Girls Secondary School.
23. Barani Kea (Miss), Former Student, Bombolulu Girls Secondary School.
24. Gladys Liten Mayeka (Miss), Former Student, Bombolulu Girls Secondary School.
25. Lydia Kuvuna Kumbu (Miss), Former Student, Bombolulu Girls Secondary School.
26. Mima Omar (Miss), Former Student, Bombolulu Girls Secondary School.
27. Neema Bakari (Miss), Former Student, Bombolulu Girls Secondary School.
28. Rukia Mohamed Omar (Miss), Former Student, Bombolulu Girls Secondary School.
29. Nelly Chombo Sheti (Miss), Former Student, Bombolulu Girls Secondary School.
30. Fatuma Subira (Miss), Former Student, Bombolulu Girls Secondary School.
31. Maimuna Athman Maimuna (Miss), Former Student, Bombolulu Girls Secondary School.
32. Angelina Wawuda Mvoyi (Miss), Former Student, Bombolulu Girls Secondary School.
33. Catherine Laiti Kidagaya (Miss), Former Student, Bombolulu Girls Secondary School.
34. Asha Kassim Mwatamu (Miss), Former Student, Bombolulu Girls Secondary School.
35. Mwanaiki Salim (Miss), Former Student, Bombolulu Girls Secondary School.
36. Mesaid Beja (Miss), Former Student, Bombolulu Girls Secondary School.
37. Faiza Mohamed Mwachome (Miss), Former Student, Bombolulu Girls Secondary School.
38. Judith Sita Mbiza (Miss), Former Student, Bombolulu Girls Secondary School.
39. Barbra Adhiambo Owudo (Miss), Former Student, Bombolulu Girls Secondary School.

40. Rose David (Miss), Former Student, Bombolulu Girls Secondary School.
41. Magdalene Maluki Kamene (Miss), Former Student, Bombolulu Girls Secondary School.
42. Victoria Onamo Lukaya (Miss), Former Student, Bombolulu Girls Secondary School.
43. Monica Muthui Gakii (Miss), Former Student, Bombolulu Girls Secondary School.
44. Esther Mgusi (Miss), Former Student, Bombolulu Girls Secondary School.
45. Shamimu Ali Chiponda (Miss), Former Student, Bombolulu Girls Secondary School.
46. Nibora Hamisi (Miss), Former Student, Bombolulu Girls Secondary School.
47. Lilian Mutua (Miss), Former Student, Bombolulu Girls Secondary School.
48. Grace Mbodze Nyae (Miss), Former Student, Bombolulu Girls Secondary School.
49. Caroline Nyambura (Miss), Former Student, Bombolulu Girls Secondary School.
50. Alice Mbeyu Boso (Miss), Former Student, Bombolulu Girls Secondary School.
51. Maria Mangale (Miss), Former Student, Bombolulu Girls Secondary School.
52. Loise Mkavita (Miss), Former Student, Bombolulu Girls Secondary School.
53. Betty Kitili (Miss), Former Student, Bombolulu Girls Secondary School.
54. Maua Mbeyu Juma (Miss), Former Student, Bombolulu Girls Secondary School.
55. Mwendu Kanyaru (Miss), Former Student, Bombolulu Girls Secondary School.
56. Gibson Richard Chiewa Mwanguma, Crane Driver, Kenya Ports Authority.
57. Rev. Pius Ndung'u Kagwi, Religious Education Secretary, Methodist Church, Mombasa.
58. Mary Henry Sita (Mrs.), Mazeras Resident and Mother of late Bombolulu, Headgirl, Rachel Umazi.
59. Ahmed Sheikh Badawy, District Education Officer , Kwale.
60. Jackson Kivisi Wafuna, District Works Officer, Kwale.
61. Mburu John Wainaina, Civil Engineer, Coast Development Authority.

62. Abednego Elikunda Munene, District Public Health Officer, Kwale.
63. Andrew Jacca, Mason who constructed Bombolulu Girls Secondary School Dormitory.
64. Tsui Mkuzi Jacca, Sub-Contractor who carried out electrical installations in Bombolulu Girls Secondary School Dormitory.
65. William Madafu Chikejo, Fireman, Mombasa Municipal Fire Brigade.
66. Richard Gicina Wacira, Electrical Superintendent, Ministry of Public Works, Coast.
67. Dr. Kishor Narsinch Mandaliya, Pathologist who did post-mortem examinations on the remains of the 22 unidentifiable bodies charred in the fire tragedy.
68. Henry Kyalo Mukima, Fire Officer III, Ministry of Public Works, Mombasa.
69. Kigo Kariuki, Risk Surveyor, Safety Surveyors Ltd.
70. Richard Joshua Muiru, Technical Audit Manager, Kenya Power & Lighting Co. Ltd.
71. Peter Rai Mwamkono, Headboy, Mazeras High School.
72. Michael Sifuna, Student, Mazeras High School.
73. Nassir Rashid Mbwana, Student, Mazeras High School.
74. Richard Adera, District Meteorologist, Coast.
75. Sarah Mwikali Kilatya, Former Student, Bombolulu Girls Secondary School.
76. Anthony Kombo, Government Analyst, Mombasa.
77. Mebuba Mohamed Ali, Police Constable, Mariakani Police Station.
78. Golo Duba, Inspector of Police, Mariakani Police Station.
79. Raphael Mutuku Mutua, Inspector of Police, Provincial CID Scenes of Crime, Mombasa.
80. Ali Mwinyi Hamisi Chidzuga, Chief Inspector of Police, Provincial CID, Mombasa.
81. Khadija Karim (Mrs.), Provincial Director of Education, Coast.
82. Robert Mwenda William, Retired Assistant Chief, Mazeras.
83. Rachel Umazi Mambo, Mazeras Resident and Grandmother of late Bombolulu

Headgirl, Rachel Umazi.

84. Stephen Nyawa Mwachiti, Assistant Chief, Mazeras Sub-Location (and Ag. Chief, Kasemeni Location at the material time).
85. Albert John Katana, Councillor, Kasemeni Ward.
86. Hon. Simeon Mwero Mkalla, Member of Parliament, Kinango Constituency.
87. Morris More Mwenda, Mazeras Resident and Methodist Church Trustee.
88. Elija Juma Mwenga, Former Councilor, Kasemeni Ward.
89. Jackson Kiema, Inspector of Police, Kwale Police Station (Investigating Officer).
90. Ibrahim Ramadhani, Proprietor of M/S Bangubangu Electrical Contractor.

**JUDICIAL COMMISSION OF INQUIRY INTO
BOMBOLULU GIRLS HIGH SCHOOL FIRE TRAGEDY
OF 25TH/26TH MARCH, 1998**

LIST OF INQUIRY EXHIBITS

(Para. 10)

<i>Inquiry Exhibit No.</i>	<i>Description</i>
1	Letter of 18th June, 1993 by the Minister for Education appointing Professor J. A. Lugogo member of Bombolulu Girls Secondary School Board of Governors.
2	Minutes of Bombolulu Girls Secondary School Board of Governors meeting held on 10th July, 1993 at which Professor Lugogo was elected Chairman of the Board.
3	Sanitary Inspection Report of 16th January, 1995 on Bombolulu Girls Secondary School by the Public Health Technician at Mazeras Dispensary.
4	Minutes of Bombolulu Girls Secondary School Annual Board of Governors and Parents-Teachers Association meeting held on 2 nd October, 1993.
5	Minutes of Bombolulu Girls Secondary School Board of Governors meeting held on 19th February, 1994.
6	Letter of 9th August, 1995 from Githutho Associates, Consulting Architects forwarding sketches for boarding facilities for Bombolulu Girls Secondary School.
7	Minutes of Bombolulu Girls Secondary School Board of Governors meeting held on 17th July, 1995.
8	Minutes of Bombolulu Girls Secondary School Projects Committee meeting held on 6th November, 1995.
9	Minutes of Bombolulu Girls Secondary School Projects Committee meeting held on 18th November, 1995.
10	Letter of 2 nd September, 1993 from Bombolulu Girls Secondary School Headmistress to Dr. Rita Lugogo of Coast Development Authority asking for sponsorship of the construction of a dormitory or other priority projects at Bombolulu Girls Secondary School.

<i>Inquiry Exhibit No.</i>	<i>Description</i>
11	Bill of Quantities by Nyange & Associates, Quantity Surveyors for proposed Dormitory (completion) at Bombolulu Girls Secondary School, Mazeras.
12	Letter of 12th January, 1996 from District Works Officer/Kwale to Bombolulu Girls Secondary School Board of Governors Chairman asking the Chairman to arrange transport to enable the District Works Officer to carry out supervision of the construction of the Dormitory at the School.
13	Letter of 25th September, 1990 from Secretary, Bombolulu Girls Secondary School Board of Governors appointing Mrs. Mwaka Bora as a Cook at Bombolulu Girls Secondary School.
14	Letter of 5th August, 1989 from Headmistress, Bombolulu Girls Secondary School appointing Mama Mwaka Bora as Caretaker of Girls in the Boarding Section.
15	Letter of 19th November, 1996 from Headmistress, Bombolulu Girls Secondary School to an unspecified person appointing that person Acting Kitchen Supervisor. (Letter produced by Inquiry Witness No. 2 - Margaret Mwaka Bora - as evidence of her appointment as Acting Kitchen Supervisor.)
16	Letter of 25th September, 1990 from Secretary, Bombolulu Girls Secondary School Board of Governors appointing Mr. Reuben Bwepwe as a Watchman at Bombolulu Girls Secondary School.
17	Letter of 19th February, 1998 from Bombolulu Girls Secondary School Headteacher to Mr. Mgunya Mwanzara terminating his employment with the School for indiscipline.
18	Report by Kwale District Education Officer on his visit to, and findings at, the scene of the fire tragedy on 26th March, 1998.
19	Report of 14th April, 1993 by Kwale District Architect on his inspection of the failed floor of a dormitory under construction at Bombolulu Girls Secondary School and his advice on remedial measures to be taken.
20	Certificate of Registration of Mazeras Jua Kali Association dated 16th June, 1995.

<i>Inquiry Exhibit No.</i>	<i>Description</i>
21	Minutes of Mazeras Jua Kali Association general meeting held on 26th February, 1996.
22	Contract/Agreement of 24th November, 1995 between Bombolulu Girls Secondary School Board of Governors and Andrew David Jacca for the latter to build a Hostel at Bombolulu Girls Secondary School.
23	Testimonial of 22 nd May, 1996 by Bombolulu Girls Secondary School Headmistress to the effect that Mr. Andrew Jacca was awarded a contract to build a Girls Dormitory at the School and that he did the job to the satisfaction of the School's Projects Committee and Board of Governors.
24	Sketch of electrical installations in the Bombolulu Girls Secondary School Dormitory drawn by Tsui Mkuzi Jacca, Electrical Sub-Contractor, at the scene of the fire tragedy during his cross-examination on 28th May, 1998.
25	Report of 26th March, 1998 by Mombasa Municipal Fire Brigade Fireman, William Madafu following his visit to, and findings at, the scene of the fire tragedy.
26	Electrical Report of 1 st April, 1998 by the Coast Provincial Works Officer on the Bombolulu Girls Secondary School fire tragedy.
27	Report of 26th March, 1998 by Dr. Kishor Narsinch Mandaliya, Provincial Pathologist, Coast who carried out post-mortem examinations on the remains of the 22 unidentifiable bodies charred in the fire tragedy.
28	<ul style="list-style-type: none"> a) 2 Lanterns. b) 1 Paraffin Tin Lamp (Koroboi/Molotov Cocktail). c) 2 Match Boxes. d) Remains of portable Gas Burner. e) Part of Glass Louvre (twisted).
29	Fire Report of 15th May, 1998 by Fire Prevention Officer F.O III/Mombasa.
30	Fire Investigation Report upon M/S Bombolulu Girls Secondary School compiled by Safety Surveyors Ltd for Alico (K) Ltd.

<i>Inquiry Exhibit No.</i>	<i>Description</i>
31	Cement Screed and Burned Plastic Glasses taken for forensic tests.
32	Fire Report of 31 st March, 1998 by Technical Audit Manager, Kenya Power & Lighting Co. Ltd on Bombolulu Girls Secondary School fire incident.
33	Electrical installation records lodged with Kenya Power & Lighting Co. Ltd. showing M/s Bangubangu Electrical Contractor as the person who carried out the installations.
34	Weather Report for the night of 25th/26th March, 1998 by the District Meteorologist, Coast.
35	Report of 31 st March, 1998 by the Government Analyst, Mombasa on the following exhibits sent to him by Bombolulu Girls Secondary School "To screen for inflammable substances": Burnt Wood, Ashes, Beakers, Broken Bottles and Burnt Metal.
36	Sketch of the Bombolulu Dormitory indicating where samples were collected by personnel from the Government Chemist's Department, Mombasa (produced by Inquiry Witness No. 74).
37	Album containing photographs depicting different aspects of the scene of the fire tragedy.
38	Report of 3 rd April, 1998 by Kwale District Education Officer on the Bombolulu Girls Secondary School Fire Disaster.
39	<p>Bundle, produced by the Coast Provincial Director of Education, of minutes of meetings convened to discuss various issues arising from the Bombolulu Girls Secondary School fire tragedy as under:-</p> <ol style="list-style-type: none"> a) Minutes of meeting of Kwale leaders held at the School on 28th March, 1998 to discuss burial arrangements. b) Minutes of meeting of Burial Committee held at the School on 30th March, 1998. c) Minutes of Executive Board meeting held at Coast Development Authority Office on 2nd April, 1998. d) Minutes of Executive BOG meeting held on 4th April, 1998. e) Minutes of Parents and Executive BOG members meeting held at the School on 6th April, 1998. f) Minutes of Executive BOG meeting held at Mariakani on 11th April, 1998.

	<i>Description</i>
	g) Minutes of Executive Board meeting held at Coast Development Authority Office on 18th April, 1998. h) Minutes of Executive Board meeting held at the Provincial Education Office on 21 st April, 1998. i) Minutes of Executive BOG meeting held at the Coast Development Authority Office on 28th April, 1998.
40	Schedule, produced by Bombolulu Girls Secondary School Board of Governors Chairman, of “Meetings held by Bombolulu BOG since the Tragedy” , accompanied by other documents as follows:- a) Letter of 15th May, 1998 from Professor Lugogo as Bombolulu Girls Secondary School BOG Chairman to the Bombolulu Commission of Inquiry Chairman complaining about aspersions cast on the Board during the Inquiry proceedings to the effect that the Board never met since the tragedy and also complaining about aspersions cast on the Board Chairman to the effect that he secretly received money contributed by the public towards the Bombolulu Secondary School Fire Disaster Fund. b) Bombolulu Commission of Inquiry Chairman’s reply of 15th May, 1998 advising Professor Lugogo to appear before the Commission to make representations on the subject matter of his complaint. c) Professor Lugogo’s letter of 10th June, 1998 confirming his wish to appear before the Commission to make his representations and produce Minutes of “various meetings held by the BOG” and to produce a “statement of account as pertaining the issue that the Chairman was receiving the donated funds secretly”. d) Press cutting from <i>The Daily Nation</i> of 14th May, 1998 entitled “Blazed School Board Comes Under Fire”. e) Minutes as in Inquiry Exhibit No. 39. f) Minutes of the Board meeting held at the Coast Development Authority Office on 23 rd May, 1998. g) Minutes of Harambee Committee meeting held at the Coast Development Authority Office on 29th May, 1998.
41	Bundle of Press articles on various activities arising from the Bombolulu fire tragedy.
42	National Bank of Kenya, Nkurumah Road Branch, Mombasa Statement showing the Bombolulu Girls Secondary Disaster Account as having a credit balance of Kshs.2,191, 577.10 as at 30th May, 1998.

<i>Inquiry Exhibit No.</i>	<i>Description</i>
43	a) Big Door Latch. b) Mortice-Lock. c) Small Door Latch. d) Medium Door Latch. e) Part of Padlock. f) Remains of Gas Burner.
44	a) 3 Iron Boxes. b) 2 Lantern Lamps.
45	Pieces of Broken Glass and Louvres
46	Immersion Heater.
47	a) Sketch Plan of the Bombolulu Dormitory. b) Medical Reports on Rachel Umazi, Mwanaiasha Diyo, Mwanahamisi Mwasabuni and Betty Kitonga.
48	School Leaving Certificate of 8th November, 1954 for Ibrahim Ramadhani.
49	Stima Newsletter for First Quarter 1971.
50	Electrical Licence Class "B" of 6th March, 1980 for Ibrahim Ramadhani.
51	Certificate of Registration Class "B" of 17th December, 1997 for M/S Bangubangu Electrical Contractor.
52	Letter of 19th January, 1978 from Mackenzie (Kenya) Limited appointing Ibrahim Ramadhani a Boiler Service Engineer.

JUDICIAL COMMISSION OF INQUIRY INTO
BOMBOLULU GIRLS HIGH SCHOOL FIRE TRAGEDY
OF 25TH/26TH MARCH, 1998

CHAIRMAN'S CLOSING ADDRESS
AT THE CONCLUSION OF THE PUBLIC INQUIRY (Para. 16)

As the public Inquiry comes to a close, we, the Commissioners, wish to thank the two Assisting Counsel and Investigators for assembling Inquiry Witnesses and bringing them to testify before us on the subject matter of the Inquiry.

We also wish to thank the various Government Ministries/ Departments and Parastatal Organizations for logistical support rendered to the Commission. In particular, we thank the Coast Provincial Commissioner, Mr. Limo for ensuring that relevant public bodies in the Province accorded us necessary co-operation. We also wish to single out for special commendation His Worship the Mayor of Mombasa and his Council for availing to the Commission, at short notice, four offices and the Council Chamber at Town Hall for purposes of the Inquiry proceedings.

We recognise the important role played by the Secretariat in putting together the necessary administrative machinery which made these proceedings possible. We thank the Secretariat and also thank the Kenya Broadcasting Corporation crew which undertook verbatim recording of the Inquiry proceedings.

At the official opening of the Inquiry on 29th April, 1998, we made a public appeal to all persons with relevant information on the fire tragedy to bring forth such information. We thank all those who responded to the appeal and availed themselves to testify before the Commission.

The media regularly informed Kenyans on how the Inquiry was progressing. We thank them for a job well done.

Shortly hereafter we shall be retreating to consider the evidence tendered before us and duly make our Report in accordance with our Terms of Reference.

We now rise, as I declare this Inquiry formally closed.

Bishop Lawi Imathiu (Rtd.)
CHAIRMAN, COMMISSION OF INQUIRY

Town Hall
Treasury Square
Mombasa
Monday, 29th June, 1998.

