KENYA NATIONAL ASSEMBLY

NINTH PARLIAMENT-FOURTH SESSION (2005)

REPORT OF THE

SELECT COMMITTEE INVESTIGATING CIRCUMSTANCES LEADING TO THE DEATH OF THE LATE DR. THE HON. ROBERT JOHN OUKO, EGH, MP

(Volume I)

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Not for public circulation but kept in the Library of the Kenya National Assembly.

SELECT COMMITTEE INVESTIGATING THE CIRCUMSTANCES LEADING, TO THE DEATH OF THE LATE DR. THE HON. ROBERT J. OUKO, EGH, MP

PREFACE

Hon. Speaker,

1. On behalf of Members of the Select Committee investigating the circumstances leading to the death of the late Dr. the Hon. Robert John Ouko, EGH, MP. , I am gratified to present our report, through you, to the House.

2. The Select Committee was established by a resolution of the House adopted on Wednesday, March 26 , 2003.

3. The Select Committee drew its terms of reference from the resolution which stated as follows;

> *'**THAT**, noting with grave concern that, the murder of the late Hon. (Dr.) Robert Ouko in 1990 has never been resolved; being aware that, the Judicial Inquiry into the death was disbanded before concluding its proceedings; this*

House resolves to establish a Select Committee to investigate and report on the circumstances leading to the death of the late Minister and that, the following be appointed Members of the Committee:-

(i) The Hon. Paul Muite, M.P

(ii) The Hon. (Dr.) Oburu Oginga, M.P

(iii) The Hon. (Prof.) Kivutha Kibwana, M.P

(iv) The Hon. (Prof.) Christine Mango, M.P

(v) The Hon. Mirugi Kariuki, M.P

(vi) The Hon. (Dr.) Abdulahi Ali, M.P

(vii) The Hon. Èric Gor Sungu, M.P

(viii) The Hon. Njoki S. Ndung'u, M.P

(ix) The Hon. Otieno Kajwang', M.P

(x) The Hon. George Khaniri, M.P

(xi) The Hon. Henry Obwocha, M.P

(xii) The Hon. Joe Khamisi, M.P

(xiii) The Hon. Soita Shitanda, M.P

(xiv) The Hon. Samuel Moroto, M.P

(xv) The Hon. Samuel Leshore, M.P

and further that, the Committee shall submit its report and findings within nine months upon its establishment and that, the Committee be conferred with powers to summon witnesses to give evidence or produce any paper, book, record or document in the possession or under the control of that person pursuant to section 14(1) and (2) of the National Assembly (Powers and Privileges) Act, Cap. 6, Laws of Kenya'.

4. The Select Committee commenced work at their first sitting on April 07, 2003 at which the Hon. Eric Gor Sungu, M.P was elected Chairperson. The ultimate sitting of the Committee was held on March 15, 2005, which marked the one hundred and forty-first (141) sitting. In that period the Select Committee summoned and heard evidence from seventy (70) witnesses, some of whom appeared more than once.

5. Membership of the Committee kept changing owing to a number of reasons, including appointments to "Cabinet" positions and resignations. The Hons. Prof. Kivutha Kibwana, George Khaniri, Henry Obwocha and Soita Shitanda, were appointed Assistant

Ministers while the Hons. Paul Muite, Mirugi Kariuki, Dr. Abdulahi Ali, Njoki S. Ndung'u, and Otieno Kajwang' resigned from the Committee. On May 6, 2004, the House appointed the following Members to replace them:-

(i) The Hon. Boniface Mganga, M.P

(ii) The Hon. Kiema Kilonzo, M.P

(iii) The Hon. Raphael B. Wanjala, M.P

(iv) The Hon. Amina Abdalla, M.P

(v) The Hon. Peter Munya, M.P

6. The Hon. Boniface Mganga ceased to be a Member upon appointment as Assistant Minister.

7. The Membership of the Committee as at the time of writing this report was, thus, as follows:-

(i) The Hon. Eric Gor Sungu, M.P - **Chairperson**

(ii) Dr. the Hon. Oburu Oginga, M.P

(iii) Prof. the Hon. Christine Mango, M.P

(iv) The Hon. Joseph M. Khamisi, M.P

(v) The Hon. Samuel C. Moroto, M.P

(vi) The Hon. Samuel P. Leshore, M.P

(vii) The Hon. Raphael B. R. Wanjala, M.P

(viii) The Hon. Amina Abdalla, M.P

(ix) The Hon. Kiema Kilonzo, M.P

(x) The Hon. Peter Munya, M.P

8. Owing to the immense work load the Committee was not able to complete its work within the time span of nine months in line with the terms of the resolution of March 26, 2003. On April 16, 2004, the House renewed the mandate of the Committee in order to enable it accomplish its task.

9. The Committee has had a Secretariat comprising: -

(i) Staff of the Kenya National Assembly.

(ii) Office of the Attorney General.

(iii) Department of the Kenya Police.

Notwithstanding service provisions in place, the Committee has noted and deliberated at length on the able service they have

received throughout their two years of continuous sitting from the staff of the National Assembly, and taking into consideration the fact that, part of the Secretariat, i.e. the officers from Kenya Police and Office of the Attorney General have received/been paid a token sum for their service to the Committee;

Hence the Committee recommends that, the staff of the National Assembly about whom the Committee deliberated and resolved at the eighteenth sitting held on October 18, 2003, be paid an appreciation of service rendered at rates adopted at the eighteenth sitting. Further, that, the payment be at a daily rate to a maximum of one hundred and fifty (150) days being equal to the maximum number of sittings of the Committee.

10. The following Members of the Select Committee have agreed to this Report. The agreement to the report is authenticated as follows: -

Name	**signature**
The Hon. Eric Gor Sungu, M.P	.....
Dr. the Hon. Oburu Oginga, M.P	.....
Prof. the Hon. Christine Mango, M.P	.....
The Hon. Joseph M. Khamisi, M.P	.....
The Hon. Samuel C. Moroto, M.P	.....
The Hon. Samuel P. Leshore, M.P	.....
The Hon. Raphael B. R. Wanjala, M.P	.....
The Hon. Amina Abdalla, M.P	.....
The Hon. Kiema Kilonzo, M.P	.....
The Hon. Peter Munya, M.P	.....

Hon. Speaker,

11. I wish to record our gratitude to the House, for having entrusted us with the execution of the onerous and important national duty of contributing to the efforts made by others in attempting to unravel the grisly circumstances surrounding the death of our dear late colleague Dr. the Hon. Robert J. Ouko, EGH, MP. We shall eternally be grateful for this trust. It is now my duty and pleasure to commend this report to the House for adoption.

HON. ERIC GOR SUNGUH, MP.
CHAIRMAN **MARCH 15, 2005**

ACKNOWLEDGEMENT

12. In the nearly two years of continuous work the Committee has interacted and received support from various institutions and persons. While, we, appreciate the support given to us, we regret that, it is not humanly possible to mention all who gave such support. However, we wish to sincerely acknowledge their faithful support and contribution towards the execution of the mandate entrusted to us. Without them we would have found it harder to accomplish our task.

13. Pursuant to our traditions we would like to name a few of them. These include: -

i) the Office of the Speaker of the National Assembly for the procedural and management guidance that we have received all through;

ii) our colleague - Members of this House for their resilient, enthusiastic support and encouragement for our work;

iii) the Office of the Clerk of the National Assembly for the able staff that have administered the work of the Committee and the overall facilitation;

iv) the Office of the Honorable Attorney General for the legal support accorded by the secondment of an Assisting Counsel;

v) the Office of the President, Provincial Administration and National Security for the secondment of Investigators from the Kenya Police Force (CID) and the general continuous security cover and administrative facilitation; **The Committee wishes to posthumously acknowledge the services of Mr. Apollo Jakaiti, Senior Assistant Commissioner of Police (SACP) who was in-Charge of forensics until his demise on Thursday, May 06, 2004, and Mr. Joseph Okoth Moi, Superintendent of Police who also died on December 31, 2003 while attached to the Committee.**

vi) the Ministry of Foreign Affairs and International Co-operations for the facilitation and delivery of summons to foreign-based witnesses and the hosting of sittings in the Kenya High Commission, London, United Kingdom;

vii) the office of the Chief Justice for the availability of interpreters;

viii) the Ministry of Local Government for their facilitation of our sittings in the City of Kisumu;

ix) Her Majesty's Government of the United Kingdom for the support and facilitation during our sittings in London by provisions of security by the Metropolitan Police and the service of the New Scotland Yard;

x) all the Witnesses;

xi) the Media; and finally but not least,

xii) the people of Kenya.

MODUS OPERANDI

14. The Select Committee executed its Mandate and Terms of Reference in keeping with the existing procedure and modalities of operations of the National Assembly. The procedure and the modalities were derived from the provisions of the Constitution, the Statutes, the Standing Orders and the Conventions, Practices and Rulings of the Chair.

Procedure and Practice

15. Committees are creatures of the House and must operate at all times in keeping with the prevailing procedure and practice of the House; and subject to any variation that the House may grant upon request. The procedure and practice is in the main provided for in the provisions of the Constitution, the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya and the Standing Orders. The relevant Standing Order, No.160, states:

(1) Save as and to the extent to which the Chairman may in his discretion otherwise direct for the purpose of facilitating full consideration and discussion of the matter referred to the Committee, the procedure in a select committee shall be as nearly as possible the same as that in Committee of the whole House:

Provided that, any question arising in a select committee shall be decided by vote and the resolution on any such vote shall constitute the decision of the select committee on that question.

(2) The Minutes of a select committee shall be kept in the same form as the Votes and Proceedings of a Committee of the whole House:

Provided that, where a vote on a question is not unanimous the names of the Members voting for and against the question or declining to vote respectively shall be recorded in the minutes.

(3) A select committee may continue its deliberations although the House is adjourned or Parliament is prorogued.

(4) A select committee shall have power to receive evidence.

(5) The deliberations of a select committee shall be confined to the matter referred to it by the House and any extension or limitation thereof directed by the House, and in the case of a select committee on a Bill, to the Bill committed to it and relevant amendments.

16. In addition to provisions of Standing Order No. 160, all Committees are precluded by Standing Order No. 161 from divulging their evidence and work to the public prior to presentation of their reports to Parliament. However, this Committee was on July 31, 2003 exempted from provisions of Standing Order No. 161 by a resolution of the House.

17. Arising from the resolution of the House granting leave to the Select Committee to sit, hear and receive evidence in public, the Committee found that, it had to contend with new situations.

Consequently, the Select Committee, after lengthy deliberations and consultations formulated rules to:

(i) Adduce and present evidence including the role of both the Assisting Counsel and Counsels to witnesses;

(ii) Regulate the audio-visual and print coverage of their proceedings;

(iii) The two sets of Rules are in Appendix One.

Powers and Privileges

18. As stated in the resolution of March 26, 2003, the House conferred on the Select Committee the powers in section 14(1) and (2), of the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya. However, it is to be generally understood that, the Select Committee, Secretariat and the duly summoned Witnesses enjoyed the exercise and protection of all privileges, powers and immunities in Cap 6.

Modalities of Operation

19. The Select Committee gathered evidence generally from the public and from certain persons who by reason of proximity or relation to the late Minister, were deemed to have relevant information. The Select Committee used two approaches in this regard:-

General Invitation

20. Upon resolution of the Select Committee, the Secretariat publicized a general notice on the mandate and terms of reference and an invitation for any person having any information/material, paper and document to volunteer such evidence. The persons (witnesses) appearing in this regard gave such information on their own volition. Though once before the Committee, they were treated as witnesses.

Summoned witnesses

21. Where in the course of the voluntary evidence in (20) above or on the basis of the previous investigations or information available to the Select Committee, certain persons were deemed to have information in whatever form that would assist in the investigation; then, the Select Committee authorized the issuance of summonses for their appearance. The evidence of such persons was on oath. The issuance of summonses, evidence and rights of such witnesses were governed by sections 14, 15, 16, 17 18 and 20 of the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya. The complete text of Cap 6 is in ***Appendix Two***.

Record of Evidence

22. All evidence, facts and figures received were oral and written. None of the witnesses was coerced in any way. The appearance of witnesses was secured by summonses. The verbatim report (the

Hansard) of all oral evidence received and of the papers and documents presented are in the National Assembly Library.

Appointment and role of Counsel

23. Committees of the National Assembly by practice hire experts to assist in handling technical and legal issues. The National Assembly has done this in the past, e.g. in the Select Committee on the murder of the late Hon. Josiah M. Kariuki in 1975; for the Departmental Committees. Indeed, both the Public Accounts and Public Investments Committees do rely on and use experts mainly from the Office of the National Audit, the Treasury, Accounting and Audit firms *et cetera*.

24. Experience borne out of previous use of experts in proceedings of Select Committees indicate that, their role has been limited to backyard information gathering, analysis, interpretation and formulation of an appropriate line of questioning the witnesses. The examination of the witnesses has been by Hon. Members, though on specific issues say, of law, then the Counsel would come in. This approach has applied to all Counsels including those of the witnesses who would advice their clientele off record. The merit in using this approach appear to have been borne out of the desire to avoid face to face legal exchanges between counsels (who are also not allowed to examine witnesses).

25. Experience borne so far indicate that, incidents of contradicting evidence are dealt with by the Select Committee recalling

witnesses for re-examination. The re-examination is done on the basis of the verbatim record of evidence taken during sittings.

Privilege

26. All proceedings and work of the Select Committee were carried out under privilege pursuant to provisions of the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya.

WORKING DOCUMENTS

27. In execution of its Mandate, the Select Committee used information from previous investigations, inquiries and records assembled by other competent bodies including the Kenya Police Force, the New Scotland Yard and the Judiciary. Among these were: -

(i) **Documents presented by the Attorney General on October 03, 2003:**

(a) Koru Police Murder File No. 629/162/91;

(b) Troon's Initial Report;

(c) Troon's Main Report;

(d) Committal Bundles Volume One and Two of the Anguka Trial; and

(e) A set of forensic photographs.

(ii) **Documents presented by the Kenya Police Force on June 24, 2003:**

(a) The initial statements into the disappearance and subsequent death of the late Dr. the Hon. Robert J. Ouko as taken by Mr. C. J. Okoko, Deputy Commissioner of Police (DCP);

(b) The second investigation into the disappearance of the late Dr. the Hon. Robert J. Ouko as investigated by the New Scotland Yard team headed by Det. Supt, John Troon. (The Troon Report);

(c) The records of the proceedings of the Judicial Commission of Inquiry into the disappearance of the late Dr. the Hon. Robert J. Ouko (the Gicheru Commission) whose work was cut short and therefore no report is available;

(d) The last investigation into the disappearance and subsequent death of the late Dr. the Hon. Robert J. Ouko by C. W. Ongoro, Deputy Commissioner of Police (DCP) (the Ongoro Report);

(e) The Witness Statements used in the above investigations and inquiry as recorded by the Kenya Police Force; and

(f) The Witness Statements, subsequently recorded by the Police Investigators attached to the R. J. Ouko Select Committee.

(iii) **Documents, Records, Memoranda and Affidavits presented by duly summoned witnesses and other persons in response to publicized requests by the Select Committee.**

(iv) **Oral evidence presented by duly summoned witnesses.**

GENERAL INTRODUCTORY BACKGROUND

Life History of the late Dr. the Hon. Robert J. Ouko, EGH, MP

28. The late Dr. Robert John Ouko, Minister for Foreign Affairs and International Co-operation, was a self-made personality. He had a humble start in life as a school teacher, rising to become a high ranking civil servant, a seasoned diplomat and prominent politician.

29. Dr. Ouko was a Cabinet Minister for twenty (20) years continuously since the days of the first East African Community.

30. President Moi described him as *"the best Foreign Minister Kenya has had"* in a statement issued on February 16, when he announced the shocking news about the Minister's death.

31. President Moi said in his statement to the nation that, he had personally lost a loyal and dedicated friend, a brilliant leader, an articulate and courageous spokesman of his country, as well as a loyal servant of the people.

32. Dr. Ouko, who died at the age of 58, had been the Foreign Minister twice, first from 1979 to 1983 and from 1988 to the time of his death.

33. Dr. Ouko was born on March 31, 1932, in Nyahera Sub-location, Central Kisumu Location in Kisumu District.

34. After his primary and secondary education, he trained as a teacher at Siriba Teachers Training College, Maseno. Dr. Ouko joined the Haile Selassie University in Addis Ababa, Ethiopia, in 1958 and obtained a Bachelor of Arts degree with distinction in 1962. He later proceeded to Makerere University, Kampala, Uganda, for a post graduate course in diplomacy. He joined government service in July, 1962 as an Assistant Secretary.

35. After intensive in-service training in diplomacy, he was promoted to the post of Senior Assistant Secretary and subsequently appointed as the first Permanent Secretary for External Affairs in December, 1963.

36. He served in that capacity until December, 1964 when he was transferred to the Ministry of Works, Communication and Power. From May, 1966, he was the Permanent Secretary in the Ministry of Works until he was appointed to his first ministerial post in July, 1969.

37. Having been the first Kenyan to receive extensive training in diplomacy, the late Dr. Ouko was instrumental in laying the foundation of the country's future foreign policy in early days of independence. The foreign policy which was then in its formative stage, crystallized in the mid-70's and solidified during the period when the late Dr. Ouko was Minister for Foreign Affairs.

38. In 1981, while still Minister for Foreign Affairs, Dr. Ouko was the Chairperson of the OAU Ministerial Committee which laid the basis for the successful OAU Summit in Nairobi.

39. President Moi was elected Chairperson of the continental body, a position he held for the unprecedented period of two consecutive years.

40. During that period, Dr. Ouko had a very challenging role of shuttle diplomacy at a time when the OAU was sharply divided over a number of unresolved issues.

41. Dr. Ouko also represented Kenya on many successful missions to international meetings, including the United Nations General Assembly, the OAU, the Commonwealth and the Non-Aligned Movement. Through his speeches, he articulated the foreign policy of the Government of Kenya and extended a hand of friendship to all nations.

42. Dr. Ouko's first Cabinet appointment was as Minister for Finance and Administration in the first East African Community in July, 1969.

43. He was subsequently appointed Minister for Common Market and Economic Affairs in the East African Community in November, 1970, still with Cabinet status in the Kenya Government.

44. After the collapse of the East African Community on June 30, 1977, Dr. Ouko was appointed Minister for Community Affairs in the Kenya Government. In this capacity, he provided vital guidance during the prolonged and intricate discussions on the sharing of assets among member states and winding up the affairs of the defunct EAC. As the Minister for Planning and National Development, from August, 1985 to June, 1987, he played a leading role in the preparation of Session Paper No. 1 of 1986 on Economic Development for Renewed Growth.

45. The Sessional Paper has been one of the key policy instruments that guide Kenya's economic development through the 90's and beyond.

46. He also served as Minister for Economic Planning and Community Affairs (1978-1979), Minister for Labour (1983-1985) and Minister for Industry (1987-1988).

47. He was the leader of Kenya's delegations to Lome, I, II and III where he played a key role in the negotiations. He also led Kenya's delegations to the preliminary discussions leading to the formation of the Preferential Trade Area (PTA).

48. He was nominated as a Member of Parliament in June, 1977. He contested and won the Kisumu Rural Constituency during the 1979 general election.

49. He retained the seat in 1983 general election. In the 1988 general election he shifted base and contested the Kisumu Town Constituency and won.

50. He was the recipient of many awards in recognition of his outstanding performance. In 1971, he was awarded the degree of Doctor of Law (*honoris causa*) by the Pacific Lutheran University, United States of America.

51. In early 1972, he was awarded a Ford Foundation Fellowship to deliver a keynote lecture at a Seminar of the United Nations Conference on Trade and Development "UNCTAD" held in Bangkok, Thailand.

52. In September, 1984, he was awarded the Gold Mercury International Award in Lome, Togo, for his contribution to regional co-operation and establishment of economic relations between Africa and the European Economic Community.

53. Dr. Ouko was founder president of the African Association for Public Administration Management. He also served as Chairperson of the Lusaka-based Multinational Programme and Operational Centre for the Economic Commission for Africa out of which evolved the PTA Agreement. He was also the national Chairperson of the Kenya Institute of Management.

54. As a scholar, Dr. Ouko wrote several authoritative publications, especially in the field of public administration and personnel management.

55. In the course of his long career in national and international politics, he made many friends among them world leaders who mourned him in lengthy messages of condolence.

56. Dr. Robert John Ouko is survived by his widow, Christabel and seven children.

Quest of Parliament to resolve political murders

57. Kenya has had an elected working Parliament since independence on December 12, 1963. In the last forty-one years, there have been eight distinct Parliaments. The current Parliament comprising two hundred and ten elected constituency Members, twelve Nominated and two Ex- Officio Members; (224), is the Ninth.

58. The span of forty-one years is not a long period in the history of a nation. Yet, the Parliament of Kenya has had to contend with no

fewer than four mysterious deaths of serving Members. On these occurrences, parliamentarians have risen to the occasion and sought to make their zeal at resolving such mysteries. The process which Parliament has used in seeking to resolve the mysterious deaths of its own, has ranged from questions to Ministers on the floor of the House to the establishment of Select Committees. Among the mysterious deaths have been those of:-

i) Hon. Pio Gama Pinto in 1965;

ii) Hon. Thomas Joseph Mboya on July 05, 1969;

iii) Hon. Josiah Mwangi Kariuki, on March 03, 1975;

iv) Hon. Robert John Ouko on February 13, 1990;

v) Hon. Anthony Wambua Ndilinge, on August 02, 2001;(This is a subject of investigation by a separate *Ad hoc* Committee)

Pio Gama Pinto - 1965

59. Pio Gama Pinto, a Specially Elected Member of the first Parliament, 1963 to 1969, of Asian origin, was reportedly killed by a lone gunman in the Parklands Area, City of Nairobi. Frantic police investigations zeroed in on Mr. Kisilu Munyao who was expeditiously arraigned in court and sentenced to life imprisonment. Mr. Kisilu was released under the Presidential Prerogative of Mercy on December 12, 2003. At the time of his death, his colleague Members went no further than raise a number of questions demanding explanations on the circumstances of his murder. The resultant ugly scenes of mass protests were short lived.

Thomas Joseph Mboya - 1969

60. The death of Thomas Joseph Mboya who was a Member of Parliament for Kamukunji Constituency, City of Nairobi and an accomplished trade unionist, at the hands of an assassin on July 05, 1969 resulted in prolonged bitter ugly mass action in many parts of the country. At the time of his death there was little doubt that, Hon. Mboya was an accomplished nationalist and an internationally recognized leader. He had served continuously as a Legislator since election at the first elections of Africans to the Legislative Council (LEGCO) in March, 1957. Hon. Mboya had then served in the Colonial Legislature and subsequently in the independent Parliament and as a Minister since independence. On this occasion, Members of Parliament reacted through motions, questions and public rallies condemning the perceived murderers. Mboya's perceived killer, Mr. Nahashon Njenga Njoroge was arrested, arraigned in court on a charge of murder, eventually convicted and hanged. But those behind it were never found.

Josiah Mwangi Kariuki - 1975

61. The death of Josiah Mwangi Kariuki occurred in perhaps one of the most mysterious circumstances. It came at the time when Hon. Kariuki was at the peak of his political career. At that time he was serving his third straight stint as Member of Parliament for Nyandarua North Constituency. He had then a near frenzy following and support across the country, mainly due to his overt, concern and generous donations to the cause of the disadvantaged. This had distinguished him as a reformer and put

him on a collision course with the leadership of the day. Thus, his mysterious murder elicited spontaneous outrage and mass action directed at the Government of the day. On that occasion, Parliament took a step further than it had previously done and established an *ad hoc* Select Committee, chaired by the Hon. Elijah W. Mwangale to investigate the circumstances of his disappearance and murder.

62. The Select Committee on J.M. Kariuki broke new ground in the use of Committees to contribute to efforts by the Legislatue to deal with an otherwise administrative occurrence. As a result Parliament had to devise structures and processes to enable the Select Committee to operate. For instance, the J. M. Kariuki Select Committee was provided with the services of an Assisting Counsel and Police Investigators. At the end of their proceedings, they recommended further investigations on the following individuals:-

(i) Mr. Ben Gethi, Commandant of General Service Unit (GSU);
(ii) Mr. Patrick Shaw, Police Reservist;
(iii) Mr. Pius Kibathi Thuo; and
(iv) Mr. Peter Kimani.

It is worth noting that some of the names were expunged from the report before it was laid before the House.

Dr. the Hon. Robert J. Ouko, EGH, MP - 1990

63. The death of Dr. the Hon. R. J. Ouko, EGH, MP intrigued both Kenyans and the international community. An attempt by the Seventh Parliament to establish a Select Committee to investigate his death was defeated when the motion was negatived. Suffice to say, the R.J. Ouko Select Committee is poised to develop on the work and experiences of the J.M. Kariuki Select Committee, especially in affirming the quest for Parliament in contributing to good governance. Further, sight should not be lost of the fact that, the work of these two Committees have made irreversible structural and policy changes in the procedure and operations of the House.

INVESTIGATIONS INTO THE DEATH OF THE LATE DR. THE HON. ROBERT JOHN OUKO, EGH, MP.

Initial investigations by the Kenya Police

64. On February 13, 1990 at 2.00 p.m. Mr. George Okoth Ondu (bodyguard to the late Dr. Ouko) reported to the District Commissioner (DC), Kisumu and District Special Branch Officer (DSBO), Kisumu that he had expected Dr. Ouko but he had not appeared. Mr. Ondu was kept waiting at the Special Branch offices until the end of the day when he was released to go home and told to return the following day.

65. In the evening of February 14, 1990, Mr. Solomon George Ochieng', an officer with the Special Branch was instructed to

accompany Dr. Ouko's body guard, Mr. Ondu to Dr. Ouko's Koru home to establish the whereabouts of the Minister.

66. On the same day February 14, 1990, the Government issued a press release to the effect that, the Minister for Foreign Affairs and International Co-operation was missing from his Koru home in Kisumu District. The press release appealed to Dr. Ouko to contact his family or the nearest police station as soon as practicable.

67. Following the press release, the then Commissioner of Police, the late Mr. Philip Kilonzo accompanied by the then Deputy Director of Criminal Investigations Department (CID), Mr. Cleophas Okoko, flew to Kisumu on February 15, 1990 and after meeting with the heads of various sections of the police in Nyanza Province, commenced investigations into the disappearance of the Minister.

68. Meanwhile, the Kisumu District and Nyanza Provincial Security Committees appointed a search team headed by the then Officer Commanding Police Division (OCPD), Kisumu, Mr. Emmanuel Mwachiti Chiti, to start a search from the Koru home on the same day. The charred remains of Dr. Ouko were discovered the following day Friday, February 16, 1990 at about 10.20 a.m.

Support to the investigation by the British Government (New Scotland Yard)

69. As a result of the impact of the death of Dr. Ouko, the Kenya Government requested the British Government for support in the

investigations. The British Government sent in specialized investigators from the New Scotland Yard headed by Detective Superintendent John Troon. On their arrival and on receipt of the terms of reference from the then Commissioner of Police, Mr. Philip Kilonzo, they immediately took over the investigations from Mr. Cleophas Okoko.

70. Det. Supt. Troon then visited the Ouko Koru home and the scene where the charred remains of the body had been discovered at Got Alila. He then commenced interviewing witnesses and collecting specimen exhibits. In a bid to conduct further analysis, some specimen of the body and other specimen collected earlier were sent to London for forensic tests. After collecting evidence from several witnesses, he compiled a report which was incomplete due to several factors mentioned later in this report. In the report, he strongly recommended that, a full and impartial investigation be carried out into:-

(i) the allegations by the directors of BAK Group of Companies against some senior Cabinet Ministers and other public servants which he felt had a bearing on the death of Dr. Ouko;

(ii) to establish what happened during the unofficial visit to Washington, DC, USA by the former President by interviewing all members of the delegation;

(iii) the allegations that files and papers were taken from the Ouko Koru home;

(iv) the parallel investigations carried out by the predeccesor of NISS (the Special Branch);

(v) the movements and alibis of Mr. Hezekiah N. Oyugi, then Permanent Secretary, incharge of Provincial Administration and Internal Security, Office of the President, from February 09 to 13, 1990 (both dates inclusive);

(vi) the alibi put forward by Mr. Joab H. O. Omino, then a former Permanent Secretary and any connection that he and/or Hon. K.N.K Biwott, EGH, MP may have had with Muhuroni Sugar Complex.

71. On the request of Supt. Troon, the then Commissioner of Police, Mr. Philip Kilonzo after consultation with the then Head of State, allowed Supt. Troon to interview the following persons at their offices:-

(i) Mr. Hezekiah N. Oyugi, Permanent Secretary, in-Charge of Provincial Administration and Internal Security;
(ii) Mr. Jonah O. Anguka, District Commissioner, Nakuru;
(iii) Hon. Joab H. O. Omino, former Permanent Secretary;
(iv) Mr. Julius Kobia, Provincial Commissioner, Nyanza Province.

72. He was not allowed to interview Hon. K.N.K. Biwott until he had submitted an initial interim report.

Judicial Commission of Inquiry (The Gicheru Commission)

73. Before the end of his investigations Supt. Troon's inquiry was disbanded prematurely and he presented a report to the Government in September, 1990. After studying the same, the Government decided to appoint a Judicial Commission of Inquiry on October 02, 1990 comprising Justice Evans Gicheru as he then was, as Chairperson, Justice Akilano Akiwumi and Justice Richard Otieno Kwach. The Lead Counsel was Mr. Benard Chunga, then Director of Public Prosecutions. The Commission received evidence from numerous witnesses including Supt. Troon who presented his report by reading it out in its entirety. At the conclusion of his evidence, Supt. Troon named Hon. K.N.K. Biwott and Mr. H.N. Oyugi as prime suspects in the murder of the late Minister. The report also disapproved the then Government's attempt to attribute the death of Dr. Ouko to suicide. The Commission was, however, disbanded by the then President, before concluding its work. It is to be noted that a few days later Hon. Biwott, Mr. Oyugi, Mr. George Odinga Oraro (the advocate to Dr. Ouko) amongst others were arrested but Hon. Biwott was released afterwards without charges being preferred against him. Mr. Oyugi fell sick while still in police custody and later died while undergoing treatment in London.

Further Police Inquiry headed by Crispo Willis Ongoro, Deputy Commissioner of Police

74. Following the disbandment of the Judicial Commission of Inquiry, the then Attorney General Hon. Justice Mathew Guy Muli, EGH, MP, directed the Commissioner of Police to institute further investigations into the death of the late Minister in line with the recommendations of Supt. Troon, particularly with regard to those implicated.

75. A team of Police Investigators comprising Mr. Nehemiah Ombati, Senior Assistant Commissioner of Police (SACP), Mr. Peter Mbuvi (SACP), Mr. S. Mutungi (SACP) and Mr. J. M. Marete (ACP) headed by Mr. C.W. Ongoro, Deputy Commissioner of Police and Deputy Director of Criminal Investigations carried out further investigations which resulted in one suspect, Mr. Jonah Orawo Anguka, being charged with the murder of the late Minister. The first trial was before the late Hon. Justice Fidahussen Abdallah who died in mysterious circumstances after finding a "p*rima facie*" case against Mr. Anguka. Following the death of the judge, the trial aborted and a second trial commenced before Justice Daniel Aganyanya who acquitted Mr. Anguka after placing him on defence upon finding a "p*rima facie*" case against him. Mr. Anguka later fled the country into exile.

76. No further action was taken until the National Assembly resolved on March 26, 2003 to establish a fifteen member *Ad hoc* Select

Committee to investigate and report on the circumstances leading to the disappearance and subsequent death of the late Minister.

MOTIVES BEHIND THE DEATH

77. The motives behind the death of Dr. R. J. Ouko could be categorized in five parts, as follows:

(i) 1988 General Elections and after.

(ii) Corruption surrounding -

  (a) Kisumu Molasses Plant;

  (b) Other Corruption Issues.

(iii) Visit by former President to Washington DC, USA.

(iv) Perceived foreign support to further the political career of Dr. Ouko.

(v) Moral Issues.

1988 General Elections and after

78. The crusade by Dr. Ouko against corruption in both central Government and Local Authorities, evidently raised his political profile both locally and abroad. This attracted the attention of those opposed to him. Thus, in the 1988 general elections, he faced stiff opposition spearheaded by, among others, the Hon. K.N.K. Biwott and Mr. Hezekiah N. Oyugi who supported his chief challenger, the late Joab H. O. Omino.

79. During a campaign rally in Kolwa, the convoy of the late Minister was attacked and acid poured on his vehicle by a group led by Mr. Lawrence Akinyi Oile, campaigner for Hon. Omino. The late Dr. Ouko was stopped and harassed during these campaigns at a police road block. Several incidents during the campaign period point to growing personal hatred against Dr. Ouko by his political opponents. The available evidence clearly indicate that Hon. Biwott and Mr. Oyugi supported the late Hon. Omino.

80. The Committee is of the view that, the 1988 general elections could have been the beginning of political problems which eventually led to the murder of Dr. Ouko, almost a year later.

Corruption

Kisumu Molasses Plant

81. While Minister for Industry, Dr. Ouko became deeply involved in the revival of the Kisumu Molasses Plant, situated in his constituency. The available evidence clearly shows that, at a rally in Kisumu during the same period the former President, announced government plans for its revival and gave Dr. Ouko authority to proceed. The former President was responding to a request by Dr. Ouko, although some high ranking public servants felt that the project was not viable.

82. Dr. Ouko as the Minister for Industry took appropriate measures to revive the project. To ensure that the project was revived without

misuse of funds meant to complete it, the Minister made every effort to engage reputable international companies to undertake the revival.

83. In the course of the search for reputable international companies, Dr. Ouko came to know Mr. Dominic Airaghi and Ms. Marriane Brinner Mattern, who were directors of BAK Group of Companies in Switzerland. The company whose name is an acronym, which according to the evidence of Ms. Mattern stood for Brinner, Airaghi and Kiptanui or Business Activities in Kenya was involved in introducing reputable international companies to undertake projects not only in Kenya but also in other countries in East Africa. These companies according to her could in some cases arrange finances for the projects they undertook. M/s. TECHNIT and M/s. ITALCEMENT were eventually introduced by BAK who agreed to undertake the feasibility study for the revival of the Kisumu Molasses Plant besides building a cement factory at Shimoni.

84. There is undisputed evidence of the involvement of BAK in the revival of the Kisumu Molasses Plant and the action taken by the directors of the company to introduce reputable international companies to undertake the project.

85. It was the wish of Dr. Ouko to have the contract for the revival of the project awarded to BAK. However, some of his Cabinet colleagues, particularly Hons. K.N.K Biwott and Prof. George

Saitoti, Ministers for Energy and Finance respectively, opposed that suggestion in favour of other contractors who were willing to give commissions and kick backs.

86. Dr. Ouko abhorred corruption and this brought him on a collision course with Hons. K.N.K. Biwott and Prof. George Saitoti during deliberations regarding the revival of the project. The sharp differences between them emerged when Prof. George Saitoti excluded the deliberations to revive the Kisumu Molasses Plant from the agenda of bilateral talks between Kenya and Italy and instead a project associated with Prof. Saitoti known as Noolturesh Water Project in his Kajiado North Constituency, was substituted for the molasses project. It is in evidence that, Prof. Saitoti was influenced by Hon. Biwott to exclude the molasses project from the bilateral talks in Italy. On many occasions, the Minister for Finance is said to have refused to approve funds for the project.

87. Ms. Brinner Mattern, one of the directors of BAK, has made, serious allegations against Hon. Biwott regarding his interference in the revival of the plant, which were manifested in the various problems, encountered by her company and those she had intended to introduce to undertake the revival of the project. She alleges that the opposition to the revival of the molasses project and others her company intended to undertake came from Hons. Saitoti and Biwott, primarily over "commissions and kickbacks" that had to be paid to them before the award of contracts. In her evidence, she alleges that, Hons. Saitoti and Biwott used one, Mr.

Mohamed Aslam, then Chairman of the Pan African Bank, Nairobi, to collect commissions on their behalf. According to Ms. Brinner, Mr. Aslam told her that, if any company associated with BAK wished to undertake any project in Kenya, including, the molasses plant, it had to pay between 5% and 10% commissions on the total amount of contract to each of the following: Hons. Biwott, Saitoti, Elijah W. Mwangale, Mr. Abraham Kiptanui and Mr. Mohamed Aslam.

88. The allegations of corrupt deals of Hons. Biwott and Saitoti by directors of BAK, compelled Dr. Ouko to compile a report on corruption for the President. There is evidence from his brother, Mr. Eston Barack Mbajah, his wife Christabel Ouko and his sister Dorothy Randiak to Det. Supt. Troon, that the Minister, had taken files and papers at Koru home so as to prepare the report, prior to his disappearance. Evidence from his bodyguard Gordon Okoth Ondu established that, he took two brief cases with him to Koru on February 05, 1990, containing papers and official files. The brief cases remained with Dr. Ouko at Koru home over the period he remained there until his disappearance and subsequent death.

89. According to Ms. Mattern the weekend Dr. Ouko disappeared from his Koru home, he was preparing a report on allegations of corruption and that she had sent him some documents in support of the allegations. Upon his death there is evidence from witnesses that officers from defunct Special Branch searched the study room of the late Dr. Ouko and took away files and papers

from the two brief cases. These allegations of corruption against Hons. Biwott and Saitoti is one of the likely motives behind the death of Dr. Ouko.

Other Corruption Issues

90. Evidence on record clearly indicate that, Dr. Ouko was involved in the fight against corruption on issues beyond those in his constituency. However, it is acknowledged that, he was instrumental in setting up the inquiry into corruption in the Municipal Council of Kisumu regarding the allocation of plots. According to Mr. Timothy Maloba, the then Provincial Special Branch Officer (PSBO), Nyanza, there was rampant corruption at the Kisumu Municipal Council in 1990 concerning the allocation of plots to influential persons. It is his evidence that, some top ranking provincial officers in Kisumu were allocated plots corruptly, these included the then Nyanza PSBO, Mr. Timothy Maloba and Mr. Francis O. Omwenga, DSBO, Kisumu.

91. Dr. Ouko was involved in the fight against corruption in Kisumu Municipality. The available evidence shows that besides compiling a report on corruption in the Government, Dr. Ouko was also compiling yet another report on corruption on allocation of plots in the Municipal Council of Kisumu. Evidence from Det. Supt. Troon has established that, upon taking over the investigations, he found a file in respect of Kisumu Municipality in the Koru home.

Visit by the former President to Washington DC, United States of America (USA)

92. The other key motive behind the death of Dr. Ouko is to be found in the activities that took place during the unofficial visit to Washington DC, USA by the former President accompanied by a large delegation in January/February, 1990.

93. On January 27, 1990, the former President accompanied by Dr. Ouko and other government officials *(a list of delegation of 84 persons is in Appendix VI)* travelled to Washington DC to attend a prayer breakfast meeting. The visit was private. Before the departure of the delegation, the Kenya Ambassador to the United States, Mr. Dennis D. Afande, sent a telex to Amb. Bethuel Kiplagat, the Permanent Secretary, Ministry of Foreign Affairs and International Co-operation advising that, the trip be cancelled due to the fear of demonstrations by various factions in USA opposed to the Kenya Government.

94. There is evidence from the secretary of Dr. Ouko, Mrs. Esther Ruvaga that the telex message was brought to the attention of the Minister who later travelled to Nakuru State House to consult with the former President. It is not clear what happened after their consultation since the visit went ahead.

95. During investigations evidence has been given on the misunderstanding between Dr. Ouko and the Hon. Biwott. There is evidence from, some witnesses, including, Mr. Barrack Mbajah, a

brother of Dr. Ouko, that, the Minister had arranged a meeting between the former President and the then US President George Bush (Snr.) who had earlier been unwilling to meet the former President owing to Kenya's bad record in corruption and human rights abuse. After the meeting which was also attended by Dr. Ouko, it is alleged that Hon. Biwott was not happy with the ability of Dr. Ouko to prevail upon the USA government to allow the meeting. Eventually a confrontation erupted between the two, in the course of which Hon. Biwott allegedly referred to Dr. Ouko as *"Mr. President"*. Dr. Ouko did not take this remark lightly and his effort to report the incident to the former President was allegedly thwarted by Hon. Biwott.

96. Ms. Herine Ogembo, an alleged second wife of Dr. Ouko also testified to the misunderstanding between Dr. Ouko and Hon. Biwott during the visit to Washington DC. In her statement to Det. Supt. Troon, she stated that, Dr. Ouko telephoned her from Washington DC during that trip and informed her of the fight between him and Hon. Biwott. The then Director of Administration in the Ministry of Foreign Affairs, Mr. Malacki Oddenyo confirmed the alleged misunderstanding.

97. On his return from Washington DC on February 04, 1990, Dr. Ouko looked worried and indeed he went and confided his worries to his sister Dorothy Randiak and informed her of the serious disagreement between him and Hon. Biwott.

98. Dr. Ouko who looked very much disturbed on his return reported to his mother the differences between him and Hon. Biwott. According to Mr. Mbajah, Dr. Ouko told his late mother at their Nyahera home in Dholuo that, *"nitiere jalang'o moro miluongo ni Biwott, giriwore gi wuod loka miluongo ni Oyugi gidwaro nega"* which in English means *"there is a Kalenjin by the name Biwott and a son of South Nyanza called Oyugi who are conspiring to kill me".*

99. According to the evidence of Messrs. George Otieno Ndege and Gordon Okoth Ondu, both bodyguards to Dr. Ouko, on February 04, 1990 they went to Jomo Kenyatta International Airport (JKIA) to receive the Minister on his return from Washington DC but never saw him alighting from the aircraft which had brought the delegation back home from London. Shortly afterwards, the two bodyguards saw Dr. Ouko walking from Unit Three of JKIA towards the VIP Pavilion where former President and his delegation were being entertained by choirs and traditional dancers. This means Dr. Ouko had travelled back on a separate flight.

100. Dr. Ouko had addressed an international press conference in Washington DC which had enhanced his respect in the eyes of the international community, thereby, worsening the already strained relationship between him and Hon. Biwott who now considered him as a threat to the leadership of the former President.

101. Mr. George O. Oraro also testified to this bad blood between Dr. Ouko and Hon. Biwott arising from American concern about the state of corruption which made the Minister anxious when he visited him at his office on February 05, 1990.

Perceived foreign support

102. The other possible motive behind the death of Dr. Ouko is the perceived power struggle within the then Government.

103. According to the evidence of Ms. Herine Ogembo in her statement to Det. Supt. Troon, Dr. Ouko telephoned her from Washington DC and informed her that following his misunderstanding with Hon. Biwott, he had been left behind in Washington DC. On their arrival in London, the Kenya High Commissioner Dr. Sally Kosgei was instructed to summon Dr. Ouko to London to facilitate the meeting between former President Moi and the British Prime Minister; who was not willing to meet the former President in the absence of the Minister for Foreign Affairs and International Co-operation. Incidentally, Dr. Ouko had arranged that meeting earlier and this explains the reasons why the British Foreign Office required the presence of Dr. Ouko during the meeting. It is alleged that, the former President had not been aware that Dr. Ouko had been left behind in Washington DC until he arrived in London.

104. Prior to this incident, there is evidence to the effect that before the 1988 general elections, Dr. Ouko had been invited to the United Kingdom by the British Prime Minister, Mrs. Margaret Thatcher, to

preside over a function organized by the Confederation of British Industry. After the function, Mrs. Thatcher had invited Dr. Ouko to her official up-country home at Checkers. It is not clear what Dr. Ouko discussed with Mrs. Thatcher at her home but it is clear that after his return from London, Dr. Ouko told Mr. James O. K'Oyoo that his visit to Mrs. Thatcher was being misinterpreted by his enemies in the Government that, he was being "groomed" by the British Government to take over the leadership of Kenya.

105. These two incidents caused anxiety in the former President and Hon. Biwott who perceived his rising political career and popularity amongst international leaders as a threat to the leadership of former President.

Moral issues

106. This motive came up during the evidence of Ms. Brinner Mattern in London. The Committee examined this motive and found it not tenable, because it was not corroborated.

SEQUENCE OF EVENTS LEADING TO THE DISAPPEARANCE AND SUBSEQUENT DEATH OF THE LATE DR. THE HON. ROBERT JOHN OUKO, EGH, MP

107. This part of the report highlights movements of the late Minister prior to his demise as well as events and activities which occured before and after his death.

The aftermath of the 1988 General Elections

108. As stated earlier, Dr. Ouko was first elected to Parliament at the general elections of November, 1979. He was re-elected in September, 1983. On both occasions he represented Kisumu Rural Constituency in Kisumu District. However, in the general elections of March, 1988, he shifted base to the neighbouring Kisumu Town Constituency, swapping constituencies with Hon. Wilson Ndolo Ayah.

109. The evidence presented to the Select Committee indicate that, certain powerful and influential personalities, including Messrs: the late Joab H.O. Omino, Mark T. Too, K.N.K. Biwott, Ketan Somaia and the late Lawrence Akinyi Oile did not favour the re-election of Dr. Ouko. *Among the witnesses whose evidence confirms this are, Messrs: Eliud William Aum· Ndalo, Gordon Okoth Ondu, James Onyango K'Oyoo, Marianne Brinner Mattern and John Eric Ouko Reru.*

110. It is apparent that, the opposition to the re-election of Dr. Ouko in the 1988 general elections persisted. The resolve by Dr. Ouko to implement his election pledges, including, the revival of the Kisumu Molasses Plant were frustrated.

111. The opposition which persisted even after the 1988 general elections, appear to have given credence to the perceived support by some influential Western powers to further Dr. Ouko's political career. Such perception appears to have upset powerful

individuals in the national political leadership. This is supported by the evidence of Messrs*: John Eric Ouko Reru, James Onyango K'Oyoo and Marriane Brinner Mattern amongst others.*

Visit by the former President of Kenya to the United States of America

112. The US government hosts a meeting of the National Prayer Breakfast annually to which various international leaders, politicians, Heads of State and Government are invited. Invitation to the National Prayer Breakfast does not constitute an official invitation to visit the USA. All persons invited and attending, regardless of their status, would be doing so in their private individual capacity.

113. The evidence presented by various witnesses indicate that, the former President did lead a delegation of eighty-four (84) leaders to the annual National Prayer Breakfast held in Washington D.C. The evidence further indicate that the delegation comprised amongst others, Cabinet Ministers Hons. Robert J. Ouko, Elijah W. Mwangale, Dalmas A. Otieno, K.N.K. Biwott, J.J. Kamotho, Maalim H. Mohamed; Assistant Minister, Joseph Muliro; Permanent Secretaries, Hezekiah N. Oyugi, Bethuel Kiplagat and other high ranking public servants and private individuals. The former President left Nairobi on January 27, 1990 and returned on February 04, 1990; after a two day stop-over in London; *the foregoing is supported by the evidence presented by, among*

others, Messrs: Ambs. Dennis David Afande, Ochieng Adala, Bethuel Kiplagat, Malacki Oddenyo and K. N. K. Biwott.

114. The nature of the visit was such that, it would not entail the former President being received formally by his US counterpart. However, through the personal contact of the late Dr. Ouko, the former President was indeed received in audience by the US President George Bush, (Snr). The meeting was attended by the US Secretary of State, James Baker, Cabinet Ministers Hons. Ouko and Biwott. However, the evidence indicates that this meeting was not as friendly and cordial as would have been expected diplomatically; *the foregoing is supported by the evidence presented by, among others, Messrs: Ambs. Afande, Bethuel Kiplagat, Amb. Ochieng Adala, Malacki Oddenyo, K. N. K. Biwott and Supt. John Troon.*

Movements and activities of Dr. the Hon. Robert J. Ouko, EGH, MP between February 05 and 11, 1990

115. The Presidential delegation returned to Kenya in the morning on February 04, 1990, but Dr. Ouko had not travelled back in the same plane with the President and the rest of the delegation.

116. The evidence presented indicates further that:-

(i) the late Dr. Ouko's diplomatic passport was withheld by immigration officials at the Jomo Kenyatta International Airport (JKIA), Nairobi; *this is supported by the evidence of,*

Messrs: Gordon Okoth Ondu, George Otieno Ndege, Eston B. Mbajah, amongst others.

(ii) Dr. Ouko did not leave JKIA Nairobi in the Presidential motorcade; *this is supported by the evidence of, Messrs: Gordon Okoth Ondu, George Otieno Ndege, and James Onyango K'Oyoo;*

(iii) Dr. Ouko accompanied by his youngest two children, tried to meet the former President on the afternoon of February 04, 1990 at Kabarnet Gardens Nairobi, but, the former President declined to see him; *this is supported by the evidence of, Messrs: Eston B. Mbajah and Supt. John Troon, amongst others.*

(iv) later the same evening, Dr. Ouko went to see Permanent Secretary Hezekiah N. Oyugi at his Nairobi house; *this is supported by the evidence of, Messrs: Eston B. Mbajah and Supt. John Troon, amongst others.*

(v) Dr. Ouko escorted the Canadian High Commissioner to meet the President at State House, Nairobi in the morning of February 05, 1990; *this is supported by the evidence of, Messrs: Bethuel Kiplagat, Eston B. Mbajah, Malacki Oddenyo, Christabel Ouko and Abraham Kiptanui, amongst others.*

(vi) thereafter Dr. Ouko was allegedly given an off-duty by the former President and directed to spend that period at his rural home in Koru; *this is supported by the evidence of Messrs: Bethuel Kiplagat and Abraham Kiptanui; Det. Supt. John Troon states that, Dr. Ouko was apparently sacked by the then President that same morning.*

(vii) Dr. Ouko visited and held discussions with his counsel, George Odinga Oraro, at the counsel's office in Jubilee House, Nairobi and also visited his brother Barrack Mbajah at Sheria House, Nairobi; *this is supported by the evidence of Messrs: George Odinga Oraro, Eston B. Mbajah, Gordon Okoth Ondu, George Otieno Ndege and Christabel Ouko, amongst others.*

(viii) Dr. Ouko went to his office at the Ministry of Foreign Affairs at about 1.00 p.m the same day (February 05, 1990), then drove to his home in Loresho, Nairobi. Thereafter, he departed for Koru accompanied by Gordon Okoth Ondu, one of the two bodyguards and the driver, Mr. Joseph Otieno Yogo. It appears that the Ministers official security and driver had been withdrawn by this time; *this is supported by the evidence of Messrs: Eston B. Mbajah, Gordon Okoth Ondu, Georgo Otieno Ndege, Christabel Ouko, Malacki Oddenyo, Supt. John Troon and Esther Ruvaga, amongst others.*

(ix) Dr. Ouko made an unexplained trip during the night of February 06/07, 1990; *the evidence to this effect was adduced by Messrs: Francis Osano Omwenga, Supt. John Troon, Christabel Ouko, James Onyango K'Oyoo, Clement Nzomo Kiteme and Timothy Maloba, amongst others.*

(x) On February 08, 1990, Dr. Ouko released his body guard Mr. Gordon Okoth Ondu. On the same day he sent his driver with his official car to Nairobi. The driver later drove back to Koru on February 09, 1990 in the family car leaving the official Mercedes Benz in Nairobi.

(xi) On the same day February 09, 1990, the Minister made an early morning visit to the then Kericho DC, Mr. Peter Lagat. However, on his return journey to Kisumu he was involved in an accident at Awasi along the Kisumu – Kericho Road.

(xii) Dr. Ouko attended a function hosted by the Rotary Club at Imperial Hotel, Kisumu on February 10, 1990; *this is supported by the evidence of Messrs: Christabel Ouko, James Onyango K'Oyoo, Eston B. Mbajah, Francis Osano Omwenga and Gordon Okoth Ondu, amongst others,.*

(xiii) Dr. Ouko attended a church service on Sunday, February 11, 1990 in Koru; *this is supported by the evidence of Messrs. Christabel Ouko, Philip Rodi Ogutu and Supt. John Troon, amongst others.*

(xiv) Dr. Ouko was visited by his sister Mrs. Dorothy Randiak and friends in the evening of February 12, 1990 at his Koru home; *this is supported by the evidence of Messrs: Philip Rodi Ogutu, Selina Were, Christabel Ouko, Zablon Agalo, James Onyango K' Oyoo, Supt. John Troon, Eliud William Aum Ndalo, Cleophas Okoko and Francis Osano Omwenga, amongst others.*

(xv) During his entire stay in Koru between February 05 to 12, 1990 when he disappeared, Dr. Ouko experienced difficulties in his telephone lines which were going on and off with numerous interruptions; *this is supported by the evidence of Messrs: Supt. John Troon, Godfrey Mate, Selina Were, James K'Oyoo, Nzomo Kiteme, amongst others.*

The night of disappearance

117. The evidence presented indicates that, Dr. Ouko spent the whole of Monday, February 12, 1990 at his home in Koru. His wife Christabel Ouko left in the family car driven by Joseph Yogo for Nairobi the same day. During the night, Dr. Ouko remained alone in his house after escorting his sister Mrs. Dorothy Randiak and others who had visited him. However, during and after the departure of Mrs. Dorothy Randiak and her group the following incidents occurred at the home:-

(i) unusual failure of electricity supply between 7.00 p.m and 10.00 p.m; *this is supported by evidence adduced by, Messrs: Edward Charles Nyagilo, Philip Rodi Ogutu, Selina Were, Eliud William Aum Ndalo, Zablon Agalo Obonyo, Francis Osano Omwenga and Supt. John Troon, amongst others.*

(ii) Dr. Ouko allegedly took all the keys to the doors of his house and the gates from Mr. Philip Rodi; *this is supported by the evidence of, Messrs: Philip Rodi Ogutu, Selina Were and Supt. John Troon, amongst others.*

(iii) Dr. Ouko's storeman, Mr. Philip Rodi Ogutu allegedly kept away the fierce dogs. *this is supported by the evidence of, Messrs: Selina Were, Zablon Agalo Obonyo, Det. Supt. John Troon, Mburu Mukhwana, Dickson Owen Ogada and Harrison Angir.*

(iv) According to Ms. Selina Were, Mr. Zablon Agalo Obonyo, an Administration Police Officer assigned to guard the home, had warned the employees from venturing out of their houses, were they to hear any noises at night.

(v) In her further evidence, Ms. Selina Were testified that some persons and vehicles visited the home of Dr. Ouko during the night of February 12/13, 1990 and on their departure, she heard some commotion from the direction of Dr. Ouko's house and the main gate to the homestead whilst in her

room. After a while she went out and saw a white car drive away through the main lower gate; *this is corroborated by Messrs: Philip Rodi Ogutu, Supt. John Troon, Owen Ogada, Harrison Angir and Councillor Owino.*

(vi) According to Mr. Philip Rodi Ogutu, he saw Messrs: K.N.K. Biwott, Hezekiah N. Oyugi and Jonah Anguka amongst others at the homestead during the night of February 13, 1990; *this is corroborated by the evidence of Messrs: Selina Were, Supt. John Troon and a witness who testified in camera, amongst others.*

(vii) According to a statement by Councillor Owino (to Supt. John Troon) he visited the home on February 13, 1990 and talked to AP Zablon Agalo Obonyo who stated that the Minister had left in a Government vehicle at around 3.00 a.m that morning.

118. The evidence available to the Committee indicates that the late Minister was abducted by known senior government officials accompanied by others on the night of February 12/13, 1990 between 1.00 a.m and 3.00 a.m. The Minister appears to have been lured out of his house or trapped as he was walking from the poultry house to his residence during the night in question. It is clear that a commotion ensued and the Minister was disabled by injury before being forced into a government vehicle which then drove away. *this is supported by the evidence of Messrs: Selina*

Were Ndalo, James Khwatenga, Christopher Timbwa, Harrison Angir, Mburu Mukhwana, Owen Ogada, James Owino Okuto and a witness who testified in camera, amongst others.

The search and discovery of the charred remains at Got Alila Hills

119. (i) The burning remains of the Minister's body were apparently cited by a herdsboy, Mr. Shikuku at the foot of Got Alila Hills approximately 2.5 Kilometres from the Minister's home. Mr. Shikuku reported to his employer and other people who reported the matter to the Provincial Administration the same day. *This evidence is supported by statements of Messrs: Jesse Gichuru, Peter Lagat, Captain Litubula, Supt. John Troon and Osano Omwenga.*

(ii) In the meantime Dr. Ouko's bodyguard, Gordon Okoth Ondu who was supposed to have met the Minister at the Bata Shoe Shop in Kisumu reported to the District Special Branch Office that Dr. Ouko had gone missing but no action was taken, instead he was told to go back and return the following day. Mr. Ondu returned to the office on February 14, 1990 and after a whole day's delay he was dispatched to the Minister's home accompanied by DSBO; *this is supported by the evidence of, Messrs: Osano Omwenga, George Okoth Ondu and Supt. John Troon.*

(iii) In the meantime Mrs. Christabel Ouko had since learned that her husband was missing when he failed to return to Nairobi. She made several calls to Koru and the Ministry of Foreign Affairs before complaining to the Government that her husband was missing. She then traveled to Koru accompanied by Messrs. Onyango K'Oyoo, George Otieno Ndege and the driver Joseph Yogo; *this is supported by the evidence of Messrs: Christabel Ouko, Onyango K'Oyoo and George Otieno Ndege.*

(iv) Following a joint meeting between the Kisumu District Security Committee and the Nyanza Provincial Security Committee which was attended by Mr. Hezekiah Oyugi, Kisumu police were ordered to carry out a search for the Minister around Koru. A search team led by the then Kisumu OCPD, Mr. Emmanuel Mwachiti Chiti mounted a search for Dr. Ouko around his Koru home on February 15 and 16, 1990, leading to the eventual "discovery" of the body on February 16, 1990 at about 10.20 a.m; *this is supported by the evidence of, Messrs: Mr. Timothy Maloba, Osano Omwenga, Wilson Kareithi, Emmanuel Mwachiti Chiti, Clement Nzomo Kiteme, Winston Shikuri, Jerphither Ndambiri and Supt. John Troon.*

(v) The Committee noted that the official government announcement of the disappearance of the Minister was in the evening of February 14, 1990.

(vi) Investigations into the disappearance commenced on February 15, 1990 and upon the "discovery" of the charred remains, Mr. Cleophas Okoko was appointed to lead investigations into the disappearance and death of the Minister. At the same time government officials started suggesting that Dr. Ouko had committed suicide. *The suicide theory was instigated by Messrs: Hezekiah Oyugi, the then Police Commissioner, Mr. Philip Kilonzo, Noah arap Too and Dr. Kaviti, Government Pathologist, amongst others.*

The impact of the death of Dr. Robert J. Ouko, EGH, M.P.

120. Judging from the massive evidence presented to the Select Committee by various witnesses, it is clear that, the death of Dr. Ouko had far reaching effect on a cross section of Kenyans and international community. This is illustrated by reactions against the manner in which the late Minister was abducted from his Koru home and later brutally murdered. The sombre mood of the nation following the death of Dr. Ouko was captured clearly in the media.

121. However, nothing more can illustrate the lack of commitment by the Government than its failure to institute serious investigations into the circumstances of the disappearance and subsequent death of the late Minister. The manner in which the Government reacted to the disappearance of Dr. Ouko as portrayed in the speeches of the former President soon after his abduction from his Koru home and the conduct of the security personnel, particularly that of the

Special Branch demonstrates clearly Government's lack of commitment to resolve the mystery surrounding the brutal murder of the late Minister. The institution of various investigations into the murder of Dr. Ouko by the Government and the attempt to attribute his death to suicide was meant to cover up the murder.

122. There were spontaneous protests by Kenyans and international community against the murder of the late Minister as a result of which the Government found it necessary to ask for the help of detectives from the New Scotland Yard.

ANALYSIS OF EVIDENCE

123. The available evidence can be analysed and categorized in the following sequence of events leading to the disappearance and subsequent death of the late Dr. Robert J. Ouko:-

(a) 1988 Election and after
(b) Corruption
(c) Unofficial Visit by the former President to Washington D.C, United States of America.
(d) Attempt on the Minister's life.
(e) Tribulations prior to disappearance and subsequent death.
(f) Disappearance of the Minister.
(g) Search for the Minister.
(h) Discovery of the charred remains of the late Minister at Got Alila Hills.
(i) Advent of massive cover up of the heinous crime.

1988 Election and after

124. As captured in the heading entitled "Motives surrounding the death of Dr. Ouko", it is clear that his opponents attempted to harm him during those elections. The pouring of acid on his vehicle by a group led by Mr. Akinyi Oile, one of the campaigners of Hon. Joab Omino and the deliberate and unusual disobedience exhibited by the police against Dr. Ouko during the campaigns allegedly at the behest of Hon. Biwott and Mr. Oyugi, who were both supporters of his rival could be seen as clear indication of what was to befall him.

125. However, the evidence on record has established that, despite personal hatred leveled against him by his political opponents, the Minister still triumphed over them by winning the election. This, however, did not deter his enemies from carrying on their activities against him long after the general elections.

126. It is to be noted that Dr. Ouko as Minister for Foreign Affairs and International Co-operation at a time when Kenya was not popular internationally, was forced to defend the image of the country abroad under hostile circumstances.

127. According to the available evidence, the crusade of Dr. Ouko against corruption both in the central Government and in Kisumu Municipality earned him permanent enemies in the Government. His desire to revive the Kisumu Molasses Project was met with

strong opposition from none other than Hon. Biwott who frustrated the BAK Group of Companies, who were ready and willing to introduce reputable international companies to undertake the revival of the project. Dr. Ouko never lived to see the restoration of the project he loved so much because he abhorred corruption, which Mr. Biwott saw as a means of making money easily. The search and confiscation of files containing the report he was allegedly writing on corruption from his home at Koru after his disappearance was the beginning of the cover up of his brutal murder. Evidence has established that the Special Branch was involved in the search and confiscation of the files.

128. The evidence of Ms. Marianne Brinner-Mattern, a director of BAK Group of Companies, establishes interference in the revival of the Kisumu Molasses Project allegedly by Hon. Biwott. The demand for "commissions" and "kick backs" by Mr. Aslam on behalf of senior government Ministers from the companies BAK had introduced to undertake the revival of the project contributed a lot to its abandonment by these companies and, in particular, TECHNIT and ITALCEMENT. However, Hon. Biwott was not alone in this war which was instigated to frustrate Dr. Ouko's effort to revive the project and to fight against the rampant corruption in the Government of the former President Daniel arap Moi. Indeed evidence on record points to similar interference from Prof. George Saitoti then Minister for Finance, by excluding the deliberations of the molasses project from the agenda of the bilateral talks between Kenya and Italy and substituting the same with a project

associated with him demonstrate the dislike which the two Ministers had developed against the late Minister. Hon. Dalmas Otieno who later became the Minister for Industry was sucked into the premeditated scheme to frustrate effort to revive the plant by Hon. K.N.K. Biwott.

129. Having considered the evidence of Messrs: Marianne Brinner, Onyango K'Oyoo, Dickson Owen Otieno and Supt. John Troon, the Committee is satisfied that Dr. Ouko's crusade against corruption in the Government contributed a lot to his eventual murder.

The unofficial visit by the former President to Washington DC, USA

130. As stated earlier, the visit undertaken by the former President in 1990 accompanied by Dr. Ouko, Hon. Biwott and a large number of Cabinet Ministers and civil servants has a bearing on his death.

131. It is evident that the behaviour of the late Minister upon his return from Washington, DC, indicate that he was abnormally worried and concerned. This abnormal behaviour was noticed by several persons including his family and close friends. Indeed Mr. Eston Barack Mbajah, reckons that Dr. Ouko was disturbed and concerned with his safety after his return from the United States. His immediate decision to report to his mother an imminent danger to his life stemming from the alleged misunderstanding between him and Hon. Biwott in Washington, DC, indeed

underscores the worries and concern the late Minister entertained following his return. The evidence of Supt. Troon suggests that Dr. Ouko also confided fear for his life to his sister Mrs. Dorothy Randiak. Unfortunately the Committee had no opportunity of hearing in person, the evidence from the late Mrs. Dorothy Randiak and the late Minister's mother who are both deceased. Such evidence would have corroborated that of his mother, sister and brother. However, the evidence of Supt. Troon adds credence to that of Mr. Mbajah in so far as it concerns the report of Dr. Ouko to his mother concerning threats to his life by Hon. Biwott and Mr. Oyugi. Besides, Mrs. Dorothy Randiak testified to this fact before the Judicial Commission of Inquiry at Kisumu. Ms. Hęrine Ogembo the alleged second wife to Dr. Ouko has also talked of the bad blood between Dr. Ouko and Hon. Biwott while they were in Washington, DC. According to her statement to Supt. Troon, Dr. Ouko telephoned her from Washington, DC and informed her of his fight with Hon. Biwott and how he was left in Washington, DC after their misunderstanding.

132. The evidence on record further suggests that Dr. Ouko never travelled back to Kenya in the same aircraft President Moi used together with his delegation. Messrs. George Otieno Ndege and Gordon Okoth Ondu both body guards of the late Minister never saw him alight from the aircraft which brought the delegation back home from London when they went to welcome him at JKIA on February 04, 1990. However, shortly afterwards the two bodyguards saw Dr. Ouko walking alone from the direction of unit

3 towards the VIP pavilion where Moi and his delegation were being entertained by choirs and traditional dancers. Dr. Ouko who was welcomed to the pavilion by the Chief of Protocol Mr. Mahugu was directed to sit three rows behind the President despite protocol requirement that he sits next to the President in such functions as the Minister of Foreign Affairs and International Co-operation under whose jurisdiction the said trip fell.

133. The Committee's examination of Dr. Ouko's diplomatic passport clearly indicates that the same was not stamped by immigration personnel upon his arrival at JKIA. This corroborates the evidence suggesting that the late Minister's passport was confiscated by immigration officials upon arrival. One witness obstinately insisted that he handled Dr. Ouko's passport and that he ensured that it was stamped after their arrival home on February 04, 1990 withdrew his evidence to that effect when he was shown that the late Minister's passport was not stamped unlike other passports. The witness later stated that he might not have handled Dr. Ouko's passport on their arrival at JKIA on the said day.

134. Hon. K.N.K. Biwott attempted to prove to the Committee that Dr. Ouko returned to Kenya in the same flight with the former President and his delegation used by referring to a document he had obtained from Kenyan High Commission in London containing the names of people who traveled from London to Nairobi on February 04, 1990. However, when taken to task to explain the authenticity of the same document, Hon. Biwott was not able to

satisfy the Committee that he had returned from Washington, DC together with Dr. Ouko on the same aircraft. It is common knowledge that passenger manifests are obtained from airlines and not from High Commissions. The photographs he referred to, which he intended to rely on to prove that indeed he had travelled with Dr. Ouko back to Kenya on the said day turned out to be fake and dubious as he could not explain how the former President and security personnel in attendance could have saluted with their left hands on the day he arrived in Nairobi. On thorough scrutiny of the two documents, the Committee came to the conclusion that the Hon. Biwott had intended to mislead them.

135. His action of presenting dubious documents to the Committee to conceal the truth about the return of Dr. Ouko clearly shows that Hon. Biwott was hiding something. Suffice it to say that the available evidence clearly shows that something extremely bad happened between Hon. Biwott and Dr. Ouko in Washington, DC as a consequence of which the late Minister was left behind when the rest of the delegation left for London, United Kingdom. The evidence of the two bodyguards, and Mr. Ochieng Adala the then Director of Political Affairs in the Ministry of Foreign Affairs and International Co-operation clearly show that Dr. Ouko returned from London in a different aircraft on February 04, 1990.

136. Evidence shows that after his arrival in Kenya on February 04, 1990, Dr. Ouko, in the company of his two youngest children attempted unsuccessfully to see the former President at his

Kabarnet Gardens home. It appears Dr. Ouko intended to appeal to the President's sense of love for children to meet him and give his version of the story regarding the alleged misunderstanding between him and Hon. Biwott in Washington, DC. In spite of that snub by the former President, Dr. Ouko visited State House on February 05, 1990 where according to the evidence of Amb. Bethuel Kiplagat, and the two bodyguards he presented the Canadian High Commissioner to the former Head of State.

137. It is not clear which discussions Dr. Ouko held with President Moi after the said official function but evidence on record suggests that Dr. Ouko was forced by Moi to proceed to Koru on an indefinite leave. Why would the former President restrict Dr. Ouko to his Koru home if the leave was voluntary upon his own request? Supt. John Troon in his evidence states that he was convinced that Dr. Ouko had been sacked when he went to State House, Nairobi on February 05, 1990.

138. The Committee was informed that from State House, Dr. Ouko proceeded to the offices of his lawyer Mr. George Oraro where he expressed US concern about corruption in Kenya. Indeed when Mr. Oraro appeared before the Committee to rebut the adverse evidence against him, did confirm Dr. Ouko's visit to his office on that day and his personal feelings about the concern of the US government with corruption in Kenya. The allegation that Dr. Ouko was given an undisclosed large amount of money by President Moi at State House, Nairobi and which he later handed

over to his lawyer was denied by Mr. Oraro who only admits to discussing with him, his intention to purchase some land around his Koru home; after he had expressed his concern about certain events during the visit to Washington, DC.

139. From the office of Mr. Oraro, the Minister proceeded to his office where he stayed shortly before proceeding to his Loresho home to prepare for the journey to Koru in the evening. However, at some stage before reaching Loresho, he went to see his brother Mr. Barrack Mbajah at Sheria House where the issues regarding the happenings during the trip to Washington, DC and the order from President Moi to proceed on leave at his Koru home were discussed.

140. The Committee heard that just after 5.00 pm on February 05, 1990, the Minister left for his Koru home accompanied by his driver Mr. Joseph Yogo Otieno and only one body guard Mr. Gordon Okoth Ondu, following the withdrawal of the other bodyguard Mr. George Otieno Ndege. The Committee found it unusual for the Minister to travel at night accompanied by the driver and one bodyguard only, something which the Minister had avoided in the past.

141. It is evident from Mr. Gordon Okoth Ondu that, the Minister carried two briefcases containing some files and documents. The documents disappeared from his Koru home soon after the discovery of the charred remains of his body at Got Alila. It has

been established by evidence that intelligence personnel entered the study room at Koru home and carried out a search and took away those files and documents. The Committee is satisfied that Dr. Ouko took with him files and documents in the two brief cases and that whilst there, he had been writing a report on corruption before he disappeared and subsequently died in mysterious circumstances. It is to be noted that Ms. Brinner Mattern testified that she sent documents regarding corruption on the Kisumu Molasses Plant to Dr. Ouko just before his disappearance.

ATTEMPT ON THE LIFE OF DR. OUKO

142. It has been established that Dr. Ouko was involved in a road accident on February 09, 1990 along Kericho - Kisumu road after visiting the District Commissioner, Kericho, Mr. Peter Lagat, who appeared before the Committee and confirmed the visit. The accident which was not investigated thoroughly was, in our view, an early attempt on the Minister's life by the forces behind his tribulations.

TRIBULATIONS

143. The evidence on the record indicate that, the Minister remained at his Koru home after the accident save for February 10, 1990 when he attended a function at the Imperial Hotel, Kisumu organized by the Rotary Club. It would be recalled that, Dr. Ouko had earlier released his driver Mr. Otieno Yogo and remained at Koru without

a vehicle. It is the evidence of Supt. Troon established through investigation that, Dr. Ouko remained worried and depressed during the weekend preceding his disappearance. The evidence of Mrs. Christabel Ouko establishes the fact that during that week Dr. Ouko complained of interference with his telephone at Koru which persisted until his disappearance. The Committee is of the view that interference with the telephone at Koru home was caused by the Special Branch.

144. During the same period, Dr. Ouko was concerned about the family dispute between himself and his two brothers Mr. Barack Mbajah and Mr. Collins Mbajah. Evidence was adduced before the Committee by Mr. Mbajah on how undisclosed enemies of Dr. Ouko had attempted to drive a wedge between them following his transfer to Office of the Attorney General from Central Province where he had been the Deputy Provincial Commissioner. This non-existent bad blood was used in the 1988 general election by supporters of Hon. Omino. Mr. Mbajah denied any dispute between himself and Dr. Ouko.

145. In her evidence Mrs. Christabel Ouko was not emphatic about the alleged family dispute. However, she discounted the rumour that Mbajah was involved in the murder of Dr. Ouko because of the family dispute. The Committee is of the view that if such a dispute ever existed, it could not have led Mr. Mbajah to be involved in the murder of his brother.

146. Regarding the movement of Dr. Ouko a few days prior to his disappearance. it is clear from the evidence of Mrs. Christabel Ouko that, on February 11, 1990 the Minister and herself had attended a local church at Koru and later returned home. Later he released her to return to Nairobi by road promising to join her the following day. Indeed, Mrs. Ouko left Koru and was driven to Nairobi in a family vehicle. From that time the Minister remained at Koru home alone except for his farm staff. He also remained at Koru without any transport, which is strange considering the fact that he had planned to return to Nairobi the following day by evening flight from Kisumu. It is therefore difficult to understand how the Minister would have travelled from Koru to Kisumu on February 12, 1990 in the absence of transport at his Koru home.

DISAPPEARANCE

147. The Minister employed several workers at his Koru farm, however, those most concerned with the events of the night of February 12 and 13, 1990 are Ms. Selina Were Ndalo, the maid; Mr. Erasto Olang, who looked after the chicken; Mr. Philip Rodi, the storeman and AP Zablon Agalo Obonyo, who was a security guard.

148. According to Ms. S. W. Ndalo, the Minister had remained at home for virtually the whole of February 12, 1990 and at about 7.00 p.m. he was visited by his sister Mrs. Dorothy Randiak in the company of among others, Messrs: Peter Kasuku and Otieno Gor.

During the visit, there was electricity failure which lasted three hours, roughly between 7.00 p.m. and 9.00 p.m.

149. At around 10.00 p.m. Mrs. Dorothy Randiak and her friends left the Minister's home. What happened thereafter has been summarized in the evidence of Ms. Selina Were and Mr. Philip Rodi. It is however, clear from the evidence of Ms. Were that she heard a loud bang which sounded like a gunshot and she awoke from sleep and peeped through the window of her room and saw some people in the compound. She identified Messrs: Oyugi and Anguka and others dressed in jungle uniform. At the same time, she saw Mr. Philip Rodi tip-toeing towards the store in the company of some people in jungle uniform. Later she came out of her house and walked towards the visitors hut where she saw a white car with dim lights driving away towards Koru. Strangely enough she did not hear the barking of the dogs in the home which were under the care of Mr. Rodi; Mr. Zablon Agalo Obonyo, the security guard was nowhere to be seen.

150. After seeing the white vehicle drive off towards Koru and noticing no movement near the main house she returned to her house and slept until around 5.30 a.m. when she woke up to go and prepare breakfast and warm bathing water for the Minister. However on checking in all the rooms she did not see him. She concluded that the Minister had left in the white vehicle she had seen in the early hours of February 13, 1990 being driven towards Koru.

151. On his part, Mr. Philip Rodi, reckons to have identified Hon. Biwott, Mr. Hezekiah Oyugi and Mr. Jonah Anguka at the home of the Minister in the night he went missing. However, the conduct of Mr. Philip Rodi during and after the disappearance of Dr. Ouko raises more questions than answers. The jerry can, which was later, found at the scene of the charred remains of the body of Dr. Ouko came from the store of which he was in-charge. There is evidence that, he was given money. His subsequent employment at NSSF and later at K.P.A. Mombasa with the assistance of Mr. William Kivuvani then Deputy Director of the Special Branch after the death of the Minister, clearly shows that he was being rewarded for something. The Committee is convinced that Mr. Philip Rodi did not tell everything he knew, regarding the events at the Minister's home during the night in question.

152. The Committee noted that AP Zablon Agalo Abonyo is not a witness of truth. As a security guard at the home of Dr. Ouko, his testimony that he did not see Dr. Ouko leave his Koru home on the fateful night is unacceptable. The Committee is of the view that he saw Dr. Ouko's abductors. His conduct of defiance while answering questions and his "I don't care" attitude showed clearly that he knew what happened to the late Minister on the fateful night but was not willing to divulge this crucial information to the Committee.

SEARCH AND DISCOVERY OF THE CHARRED REMAINS OF THE BODY OF DR. OUKO

153. What followed after the disappearance and subsequent murder of Dr. Ouko is a matter of evidence received from witnesses herein and summarized adequately in the preceding paragraphs of this report. However, the conduct of the police before and after the disappearance of Dr. Ouko clearly shows that they participated in the abduction and subsequent murder of the late Minister. Their stage managed search for Dr. Ouko after his disappearance was calculated to support the suicide theory floated by the Government soon after the discovery of Dr. Ouko's body. The decision to plant Mr. Jonah Anguka on Supt. Troon to monitor the manner in which he was conducting investigations underlines the massive cover up of the Minister's murder.

154. The British Government appointed Det. Supt. Troon to lead the investigations assisted by Det. Inspector Graham Dennis, Det. Sgt David Sanderson, Forensic Officer and Dr. Ian West a Pathologist from the Home Office attached to Guys and St. Thomas Hospital London.

155. On February 21, 1990, the team arrived in Kenya and commenced investigations.

156. The Committee traveled to London to receive evidence from retired Det. Supt. John Troon. This became necessary after the

witness declined to travel to Kenya and testify because of security reasons.

157. On February 16, 2005, Supt. Troon began testifying before the Committee at the Kenya High Commission in London.

158. In his evidence the witness confirmed the Kenya Government had requested the British Government to send in detectives of the New Scotland Yard to undertake the investigation into the circumstances surrounding the disappearance and death of Dr. Ouko. It is the view of Supt. Troon that the New Scotland Yards were invited by the Kenya Government because there was a countrywide unrest following the brutal murder of Dr. Ouko. The team of investigators were invited to show the people of Kenya that an independent team of investigators in the name of the New Scotland Yards were coming to Kenya to investigate the death of Dr. Ouko and find the culprits. However, the real intention of the Government was to invite the New Scotland Yards to quell the anger of the people against the initial shoddy investigations into the brutal murder of Dr. Ouko.

159. In his testimony of six days Supt. Troon first stated to the Committee how he and his team were welcomed to Kenya by Messrs; Anguka, Oyiolo and Professor Oliech. It is his evidence that, he had thought Mr. Anguka and Mr. Oyiolo were formal representatives of the Government. He, however, found it strange that no police officer came to welcome them at the airport. Soon

he realized that Mr. Anguka was planted on him deliberately by Mr. Hezekiah Oyugi to find out what he was doing. This realization came to Supt. Troon after attending a meeting in Mr. Oyugi's house following the postmortem on the body of Dr. Ouko where Mr. Oyugi suggested that Dr. Ouko had committed suicide. However Supt. Troon and Dr. Ian West were convinced that this was a case of homicide and not suicide.

160. Supt. Troon further informed the committee that the then Commissioner of Police Mr. Philip Kilonzo also tried to convince him that Dr. Ouko had committed suicide.

161. From the conduct of Mr. Oyugi and the Commissioner of Police, Supt. Troon was convinced that they knew the circumstances surrounding the death of Dr. Ouko and that was why they did not want him to investigate the death of the Minister as murder. They wanted Troon and Dr. West to say that it was suicide when it was obvious from the postmortem result that the Minister was indeed murdered.

162. Supt. Troon eventually commenced investigations after obtaining terms of reference from Mr. Philip Kilonzo through difficulties. The Committee was informed that during the investigations supt. Troon found it difficult to interview some witnesses owing to some interference from former President Daniel arap Moi. It is the evidence of Supt. Troon that there was pressure from the President himself that he should not interview Mr. Biwott before he

submitted an interim report. It is clear from the evidence of Supt. Troon that President Moi shielded Mr. Biwott from interrogation regarding the death of Dr. Ouko.

163. Supt. Troon in addition informed the Committee that he had only been allowed to interview other government officials including Messrs Julius Kobia, H. Oyugi, Jonah Anguka, at their own convenience. The Committee was of the view that the former President knew the circumstances of the death of the Minister, hence the reasons for shielding senior government officials from investigation by Supt. Troon. It is the evidence of retired Supt. Troon that, the murder of Dr. Ouko was committed following an executive order from the former President. This is corroborated by the conduct of the security machinery prior to and after the disappearance and death of Dr. Ouko. Indeed Superintendent Troon maintained his earlier findings that Hon. Biwott and Mr. Oyugi were the prime suspects in the murder of the late Minister.

ADVERSELY MENTIONED WITNESSES

164. During the conduct of investigations, directly adverse evidence was adduced against the following people:

(i) Hon. Nicholas Biwott
(ii) Mr. George Oraro
(iii) Mr. James Onyango K'Oyoo
(iv) Mr. Paul Gondi

(v) Mr. Eric Onyango

(vi) Mr. Hezekiah Oyugi and

(vii) Mr. Jonah Anguka

(viii) H.E. Daniel Toroitich arap Moi

Messrs. Hezekiah Oyugi and Eric Onyango are deceased. Mr. Jonah Anguka fled the Country to USA after his acquittal in Dr. Ouko's murder case. The Committee was unable to trace him.

165. Messrs. George Oraro, James K'Oyoo and Paul Gondi were adversely mentioned by Messrs. Daniel Mburu Mukhwana, Harrison Owour Angir, Dickson Owen Ogada and Barack Mbajah, who implicated the three to have been present when Dr. Ouko was abducted from his Koru home. We found the evidence of these witnesses credible as they corroborated each other. There is no evidence of enemity between these witnesses and Messrs. Oraro, Gondi and K'Oyoo, and, therefore, the possibilities of them framing up Oraro, Gondi and K'Oyoo is ruled out.

166. Former President Daniel arap Moi declined an opportunity to rebut adverse evidence against him, despite valid and binding summons being issued to him through his advocates.

167. Messrs. George Oraro and James Onyango K'Oyoo appeared and were hard put to rebut the adverse evidence against them. Matters were complicated further when it was established that they had bribed Mr. Daniel M. Mukhwana who had implicated them

to retract his earlier evidence. **The Committee having carefully considered the evidence of Messrs. Daniel M. Mukhwana, Harrison Owuor Angir and Barack Mbajah is of the view that M/s George Oraro and James Onyango K'Oyoo were at the scene of the abduction of Dr. Ouko from his Koru home on the night of February 12 and 13, 1990.** Their evidence is supported by the conduct of M/s Oraro (who was visibly uncomfortable before the Committee) and K'Oyoo who helped to bribe Mr. Mburu Mukhwana to absolve them from the crime.

168. The evidence against Mr. Biwott came from Messrs. Marianne Brinner Mattern, Philip Rodi, Barack Mbajah, James Lando Khwatenge, Supt. Troon and a witness who appeared in camera. The evidence of these witnesses allege a big role for Hon. Biwott in the murder of Dr. Ouko. It is the evidence of Supt. Troon that Hon. Biwott and Mr. Hezekiah Oyugi were prime suspects in the murder of Dr. Ouko. Indeed, he maintained this when he appeared before the Committee in London. **The Committee has considered carefully the adverse evidence against Hon. Biwott and find that he was involved either directly or indirectly in the disappearance and subsequent murder of Dr. Ouko.**

169. Mr. Biwott appeared before the Committee for four days to rebut the adverse evidence against him. His conduct was of one determined to "clear his name" in the murder even by using clearly

faked/dubious documents. He was accompanied throughout by his lawyers Mr. Desterio Oyatsi, Ms. Affendi and two investigators of British origin.

170. The Committee formed the view that, Hon. Biwott appeared with a fixed mind of absolving himself from involvement in the murder of Dr. Ouko. In a desperate attempt to prove that, Dr. Ouko was his friend and that no misunderstanding had occurred between them during the visit to Washington, DC, Hon. Biwott produced documents which could unfortunately incriminate him. These were photographs, faked passenger manifest, obtained from Kenya High Commission in London and the diary of former US President Bush (Snr). (See annex 1 of Hon. Biwott's documents). The Committee could not comprehend how the former President and security personnel around him could salute with their left hands as depicted in the photographs. Hon. Biwott failed to explain to the Committee satisfactorily this strange misrepresentation of facts.

171. As concerns, the fake passenger manifest, Hon. Biwott failed to give the Committee a satisfactory explanation as to why he resorted to Kenya High Commission instead of obtaining the same from the relevant airline used by the former President and his delegation from London to Nairobi on February 04, 1990.

172. Efforts by the Committee to obtain these documents from Kenya Airways, Presidential Press Service, Kenya Broadcasting

Corporation, Kenya News Agency and the National Archives failed to bear fruit since none of the documents produced by Hon. Biwott were available. **The logical inference that would be drawn from the non-availability of these documents anywhere is that, some people involved in the murder of Dr. Ouko interfered with them to conceal the truth.**

173. On the issue of the official diary of the former US President, Hon. Biwott did not state the source of the same and why some entries were blocked out. **The Committee carefully perused these documents and came to the conclusion that they could not be authenticated.**

174. Upon request Hon. Biwott produced his diplomatic passport to prove that he had travelled together with Dr. Ouko throughout the visit. However, after thorough scrutiny of his passport, the Committee discovered that, Hon. Biwott had left the country on February 25, 1990 contrary to his earlier evidence that he had left on February 27, 1990 together with Dr. Ouko. When put to task to explain the disparity, Hon. Biwott requested to be given time to check his passport after which he insisted that he travelled together with Dr. Ouko on February 27, 1990 despite his passport indicating the contrary date.

175. On March 08, 2005, Hon. Biwott declined to give further evidence before the Committee after his request to read statements was deferred. Like other witnesses adversely mentioned Hon. Biwott

had earlier been allowed to read a statement before answering questions from the Committee. He was also allowed to table the documents. The Committee declined to allow him to read further statements in line with the rules of the Committee and parliamentary practice which allows questioning on tabled documents which become part of the record.

176. The assurance given by the Committee to Hon. Biwott that, he would be allowed to give any further evidence not covered through questions fell on deaf ears. Consequently, the Committee closed the investigations on the same day and proceeded to write this report.

OBSERVATIONS

177. The following observations are made on the basis of the evidence adduced in order of attendence and refer to significant evidence only. The complete summary of evidence given by each witness is provided under Volume (II) of this report.

MS. SELINA WERE NDALO

178. The witness who was a house help at the Koru home in 1990 appeared before the Committee on February 23 and 24 and September 27 and 28 2004. Arising out of her evidence, the Committee observed that:

(i) She was awokened by some noise which sounded like gunshots at around 3.00 a.m. in the morning of Tuesday, February 13, 1990 and that she saw a white car drive away shortly afterwards. Other witnesses corroborate this evidence.

(ii) Other witnesses also corroborated information that the dogs at the Koru home were tied during the night.

The Committee noted that her evidence became even more lucid when she accompanied the Committee to the Koru home and that she provided accurate information as to what transpired at the home during the night Dr. Ouko went missing.
The Committee is of the view that she was a witness of truth and that her evidence should be taken seriously.

MR. ELIUD WILLAM AUM NDALO

179. Mr. Ndalo escorted his sister Ms. Selina Were Ndalo to give evidence before the Committee in Nairobi and later accompanied the Committee to Got Alila. He also gave evidence on February 24 and September 29, 2004. It is apparent that Mr. Ndalo was used by the defunct Special Branch to trace Mr. Philip Rodi who was then taken to the head office at Nyati House, where Mr. Rodi was induced into making a statement implicating Mr. Anguka and Mr. Oyugi in the abduction of Dr. Ouko. It is clear that Mr. Rodi was influenced to exclude other people he saw at the Koru home the

night Dr. Ouko went missing. **The evidence of Mr. Ndalo must be treated with caution as he betrays a close working association with the defunct Special Branch whose officers appear to have participated in the disappearance, death and cover up of the murder of Dr. Ouko.**

MR. ESTON BARRACK MBAJA

180. The witness, who is a brother to Dr. Ouko, appeared before the Committee on February 26 and 27 and September 30, 2004. The Committee observed that:

(i) his allegation that there was a note left for him by Dr. Ouko indicating who had come to collect him from his Koru home has not been corroborated; however, his evidence that, he was tortured by CID Officers led by Supt. Muchori, who then took the alleged note, has been corroborated by Supt. Troon;

(ii) his evidence that, parts of the body of Dr. Ouko were taken to London but not returned were confirmed when the Committee visited London; and

(iii) the allegation that, former President offered him money to participate in the cover-up of Dr.Oukos murder has not been corroborated.

The committee was of the view that Mr. Mbajah was a witness of truth.

MR. DANIEL MBURU MUKHWANA

181. The witness was a police officer based in Kisumu and was later attached to the New Scotland Yards team headed by Supt. Troon. He was later attached to the Gicheru Commission. His evidence that, Mr. Zablon Agalo Obonyo the AP guard had made a statement implicating Messrs. Anguka ,K'Oyoo, Oraro and others in the abduction of Dr.Ouko was corroborated by the evidence of other witnesses. His evidence that, members of the Nyanza Provincial and Kisumu District Security Committees were present at the home of Dr. Ouko when he was abducted is also well corroborated.

The committee observed that economic hardships might have driven him to write an affidavit disowning evidence he had tendered before the committee.

MR. GORDON OKOTH ONDU AND MR. GEORGE OTIENO NDEGE

182. Both witnesses were attached to Dr. Ouko as bodyguards and gave evidence before the Committee on several occasions including during visits to the JKIA and to Koru home.

The committee observed that:

(i) they appeared to have been withdrawn immediately upon return by Dr. Ouko from Washington, DC;

(ii) their evidence that, Dr. Ouko had returned on a separate flight from London on February 04, 1990, has been corroborated; and

(iii) both witnesses were forced to make statements, which were untruthful, by the Kenya Police in 1990.

The committee concluded that both were witnesses of truth.

MR. DICKSON OWEN OGADA

183. The witness appears to have been closely associated with Dr. Ouko in many aspects and appeared to have been an informer for Dr. Ouko.

The committee observed that:

(i) the Hon. K.N.K. Biwott corroborated his evidence regarding the visit to Kenya by the Finance Minister of France;

(ii) other witnesses have also corroborated his evidence as to those who were present when the Minister was abducted from his Koru home; and

(iii) Mr. Ogada was in a position to obtain information from workers at Koru home having been close to them.

The committee concluded that Mr. Ogada was a witness of truth.

MESSRS J. NDAMBIRI, W. SHIKURI AND G. AYIETA

184. The three are still serving police officers and their evidence with regard to the search and discovery of the body is straightforward. **The committee concluded that they were witnesses of truth.**

MR. ZABLON AGALO OBONYO

185. He was the AP responsible for security at Koru home. The committee observed that Mr. Agalo ought to have known what transpired at Koru home during the night of February 12 to 13, 1990, but would not tell. There is evidence from other witnesses that he had admitted that a government vehicle came to collect Dr. Ouko during the night in question and even named the persons involved but later retracted this information. **The committee is convinced that Mr. Agalo knew how and when the Minister**

disappeared but was very uncooperative and arrogant suggesting that he was an accomplice in the murder of the late Dr. Ouko.

MR. WILLIAM WAKHU NANGABO

186. Mr. Nangabo was a former cook at the Nairobi home of Mr. Oyugi. The Committee noted that, the evidence given by the witness was not corroborated and that further investigation was necessary in the following areas:

(i) the meeting allegedly held at the home of Mr. Oyugi by former President, Hon. Biwott, Mr. Anguka and Mr. Oyugi himself on February 11 and 12, 1990; and

(ii) Mr. Oyugi leaving his Nairobi house on February 12, 1990 and returning the following day, February 13, 1990.

MR. HARRISON ANGIR

187. The witness is a former officer of the Special Branch who was based on the Kericho side opposite Koru home. He named those who picked Dr. Ouko from his home as Messrs:

(i) Hezekiah Oyugi;

(ii) Julius Kobia;

(iii) George Oraro;

(iv) John Anguka;

(v) Timothy Maloba;

(vi) Francis Omwenga and others.

Other witnesses have corroborated this evidence. He also indicated that GSU personnel from Molo were used in the abduction and that duplicate keys were used to gain access to the house. This evidence has also been corroborated.

MR. MARIO TITEKET

188. The witness was an AP officer guarding the residence of Mr. Anguka then District Commissioner, Nakuru. The witness confirmed to the Committee that Mr. Anguka had left his residence on February 12, 1990 only to return the following morning looking very tired. From then Mr. Anguka became very friendly. **The Committee observed that he was a witness of truth.**

MR. CLEMENT NZOMO KITEME

189. He was the District Officer for Muhoroni Division at the time of the death of Dr. Ouko. The Committee observed that as his office was located approximately four kilometres away from the Koru home and he ought to have known what happened to the Minister on the night in question. Since security personnel were used in the abduction, he must have been privy to the events at the Koru home during the night of February 12 to 13, 1990. **The committee was convinced that Mr. Kiteme was not a witness of truth.**

MR. GEORGE SOLOMON OCHIENG'

190. He was a Special Branch officer based at Kisumu and was sent to Koru home on February 14, 1990. He carried out an unauthorized search of the house. The search was carried out in a manner to suggest that the Minister had committed suicide. **The committee observed that Mr. Ochieng was not a witness of truth.**

MR. CHARLES NYAGILO

191. He was the manager of Kenya Power and Lighting Company (KPLC) Kisumu. He was interviewed with regard to the power failure at the Koru home and informed the Committee that, the extended power failure specific to the Koru home could have been caused by the interference with a transformer serving the residence only. **The committee observed that he was a witness of truth.**

MRS. ESTHER RUVAGA

192. She was the personal secretary to Dr. Oúko and her evidence that a telex advising against the Presidential visit to Washington, DC, was received at the Ministry of Foreign Affairs has been corroborated. Her evidence with regard to the misunderstanding between Dr. Ouko and Hon. Biwott has also been corroborated. **The committee observed that she was a witness of truth.**

MR. JOTHAM BIKET CHESIRE

193. Mr. Biket Chesire was a scene of crime officer based at Kisumu. Mr. Chesire took photographs of the Koru home including the store, main gate and residence even before the discovery of the body, suggesting that he knew in advance that, the Minister was already dead. He took specific photographs of a jerry can in the store before the discovery of the body. This type of jerry can was later found at Got Alila.**The Committee noted that he did not dust for fingerprints, as would normally have been the case in such an inquiry; and observes that, the witness had been involved in the cover-up of the murder. The committee further observed that he was not a witness of truth.**

MR. JAMES OWINO GENDI

194. He was an Inspector of AP in-charge of Muhoroni Division. He visited the Koru home and held a meeting with the workers in a suspicious manner. Following the disappearance of the Minister, he did not take any active part in interrogating the AP guard who was under his command. **The Committee observed that Mr. Owino knew exactly what took place at Koru home but would not tell. He was not a witness of truth.**

MR. ACHESA LITABALIA

195. He was an Inspector of Police attached to Traffic Department, Kisumu. He investigated the motor vehicle accident involving the Minister on February 09, 1990. He did not carry out proper investigations in regard to the same. In view of the fact that, it has been claimed that the accident was actually an attempt on the life of Dr. Ouko, the Committee is of the view that the matter should be investigated further.

MR. JAMES OWINO OKUTO

196. Mr. Okuto is a former scene of crime officer in Kisumu. Mr. Owino gave the Committee an overview of how a scene of crime should be handled professionally and suggested that evidence at the scene of crime had been tampered with by Mr. Humprey Kariuki and Mr. Biket Chesire. His evidence clearly suggested that police officers were used to cover-up the murder by tampering with evidence. Mr. Okuto informed the Committee that Dr. Ouko was murdered by agents of the State i.e the Provincial Administration and Special Branch officers, hence the cover-up on behalf of the Government. **The Committee found him to be a witness of truth.**

MR. HUMPREY KARIUKI

197. Mr. Humphrey Kariuki was the deputy in charge of Scene of Crime Section within the CID in Kenya in 1990. From the evidence presented, the Committee noted that Mr.Kariuki actively participated in the cover-up of the murder by selective fingerprinting, delay in visiting the scene, advancing the suicide theory, planting items at the scene and test firing the gun of Dr. Ouko before ballistic examination. **Mr. Kariuki was not a witness of truth and should be investigated further.**

MR. JEREMIAH KAVITA MUNGUTI

198. Mr. Kavita appeared before the Committee as a professional witness having been a Government analyst. He confirmed to the Committee that the gun previously used by Dr. Ouko had been tampered with before presentation to him. **The Committee observed that he was a witness of truth.**

DR. JASON NDAKA KAVITI

199. He was the Chief Government Pathologist in 1990. He informed the Committee that the estimated date of Dr Ouko's death was February 14, 1990. He admitted to having floated the suicide theory but later admitted before the Committee and the Gicheru Commission that suicide could not have been the cause of the death of Dr. Ouko. **The committee observed that Dr. Kaviti**

had apparently been used in the cover-up of the Minister's death and should be investigated further.

MR. GODFREY MATE

200. He was the Kisumu District Commissioner in 1990. The Committee observed that:

(i) he was not concerned at the Minister's accident on February 09, 1990;

(ii) he failed to contact Dr. Ouko personally, instead he went talking through the DO Muhoroni who then sent AP Inspector Owino Gedi to Koru home on February 09, 1990;

(iii) though he learnt of the Minister's disappearance on February 13, 1990 he did not take any action until February 14, 1990;

(iv) he had just been transferred to Kisumu District prior to the Minister's murder.

Considering his conduct both before and after the Minister's disappearance and subsequent murder, the Committee was of the view that he was part of a larger conspiracy to abduct and murder Dr.Ouko.

MR. EMANUAEL MWACHITI CHITI

201. He was the OCPD, Kisumu in 1990. During his evidence, the Committee found Mr. Chiti to be evasive. He generally feigned ignorance about the events surrounding the Minister's disappearance and subsequent murder, yet this occurred within his area of responsibility. He gave instructions for the search for Dr.Ouko in thickets and bushes around his home instead of elsewhere, suggesting he had prior knowledge of the fate of the Minister. **The Committee concluded that Mr.Chiti was party to the conspiracy to abduct and kill Dr.Ouko.**

MR. CLEOPHAS JOSEPH OKOKO

202. He was the Deputy Director of CID at the time and was the senior officer appointed to head initial investigations into the disappearance of Dr. Ouko. The Committee learnt that he was related to Mr.Oyugi. He admitted to never interviewing the workers at Koru home before handing over investigations to Supt. Troon. He admitted knowing that the body of Dr. Ouko had been discovered at 10.30am on February 16, 1990 but still went on to interview Mrs. Ouko at approximately 12.30 pm. From his evidence the Committee observed that he did not carry out any serious investigations into the murder and deliberately proffered the suicide theory to cover-up Dr. Oukos' murder. **The committee concluded that he was not a witness of truth.**

MR. FRANCIS OSANO OMWENGA

203. He was the District Special Branch Officer (DSBO) in Kisumu in 1990. Arising out of his evidence, the Committee noted that he posed as a friend of the Minister while the opposite was true. The committee noted that Mr. Omwenga was deeply involved in the entire episode though he was evasive and feigned ignorance on questioning. **He was not a witness of truth and generally appeared to have been a major conspirator in the plan to abduct and kill Dr. Ouko.**

MR. AMOS LITUBULA

204. He was a Chief Inspector of Police attached to the Nyanza Provincial Criminal Investigation Department in Kisumu as a Chief Investigator. He gave evidence to the Committee on Wednesday, September 15, 2004.

Arising out of his evidence, the Committee noted that:

(i) he was instructed to investigate the disappearance of the Minister on February 15, 1990. He denied prior knowledge of the Minister's disappearance;

(ii) he confirmed that intelligence officers took away files from Koru house;

(iii) he went to the Kericho side of the border between Kericho and Kisumu Districts and traced a herds boy, Master Shikuku, who showed him the murder scene, to which he directed members of the search team, eventually leading to the 'discovery' of the charred remains of Dr. Ouko at about 10.20 a.m. on Friday, February 16, 1990;

(iv) he confirmed that Shikuku did not see the items later found at the scene on February 13, 1990 when he first sighted the burning body of Dr. Ouko;

(v) he informed the Committee that the body was dumped at the scene and was burned using acid; and

(vi) Mr. Anguka tried to mislead Supt. Troon by deliberate mistranslation of evidence given by Ms. Selina Were.

The Committee observed that, although the witness appeared candid in many respects he did not tell the Committee everything he knew particularly with regard to the discovery of the body and evidence collected from Dr. Ouko's workers at the initial stages.

MR. VINCENT WAKAYANDA

205. He was the Principal Personnel Officer of the Kenya Ports Authority (KPA) in 1994. He confirmed to the Committee that, he received

instructions from the then Managing Director of KPA, Mr. Simeon Mkalla to employ Mr. Philip Rodi, which he did. **He was generally found to be a witness of truth.**

MR. CHRISPO WILLIS ONGORO

206. He was the Deputy Director of CID in 1991. He was appointed to head a team of CID officers to carry out further investigations into the murder of Dr. Ouko. The Committee noted the following:

(i) he was used by the Government to exonerate most of those implicated in the murder of Dr. Ouko by Supt. Troon and only one person, Mr. Anguka was charged as a result;

(ii) in particular, he exonerated Hon. Biwott from any involvement in the murder without carrying out proper investigations, particularly with respect to the visit to Washington, DC, thus, he based his conclusions on incomplete and insufficient investigations.

From his evidence, the Committee concluded that, he was not a witness of truth and he was used in the continuing cover up of the late Minister's murder. His report is in Appendix III.

MR. DONALD MBUGU MUGO

207. Mr. Mugo is a ballistic expert attached to CID Headquaters, Nairobi and appeared before the Committee to produce Mr.Callaghans' report before the Committee, as a professional witness. **He was a witness of truth.**

MR. JAMES ONYANGO K'OYOO

208. He was one of Dr. Ouko's campaigners and friend during the 1988 General Elections and was closely associated with the Minister up to the time of his death. The committee noted that shortly after Dr. Ouko's death, he became a close friend of Mr. Hezekiah Oyugi and as a result also developed a relationship with the former President who helped him to secure a job. He also later became a close friend to the former Director of the CID, Hon. Noah arap Too and acquired sudden wealth in the same period. The Committee also noted that he organized for Mr. Mburu Mukhwana a witness who had appeared before the Committee to visit the offices of Mr. Oraro where Mr. Mukhwana was prevailed upon to sign an affidavit withdrawing his evidence implicating Mr. Oraro and Mr. K'Oyoo in the abduction of the late Minister. **The committee observed that, he was not a witness of truth and that his evidence, should be treated with caution.**

AMBASSADOR DENNIS D. AFANDE

209. He was Kenya ambassador to the USA in 1990. The Committee observed that the witness sent a telex to Nairobi advising against the visit to Washington, DC. However, he was non-categorical about a press conference held in Washington, DC by the former President and Dr. Ouko. He admitted having written a letter to the Ministry of Foreign Affairs in October 1998 regarding what happened during the presidential visit in 1990, despite the fact that he was no longer Kenya ambassador to the USA. That letter was subsequently used to rebut that a problem occurred during the visit, despite evidence to the contrary. **The Committee found Mr. Afande an unreliable witness.**

MR. PHILIP RODI OGUTU

210. He was both a storekeeper and gatekeeper at Koru home in 1990. Following his evidence, the Committee observed that, Mr. Rodi did not reveal all he knew regarding the Minister's disappearance in view of the fact that:-

(i) there are allegations that he helped duplicate keys to Dr. Ouko's compound and residence, which has not been answered adequately;

(ii) having been rewarded with a sum of Kshs. 50,000 part of which was deposited into a bank account, and, a job, first at

the NSSF and later at KPA, he was persuaded into signing a statement admitting to having seen Mr. Anguka and Mr. Oyugi at Koru home in the night the Minister disappeared. Later he admitted before the Committee that, Hon. Biwott was also at the home during the night in question. He has not indicated the names of the other persons who were at the home during that night; and

(iii) the Committee observed that his demeanor was one of fear and uncertainty and he had to be persuaded every step of the way to give the names of the people he saw.

The Committee has dealt with other aspects of his evidence under the heading of Recommendations and Conclusions later in this report.

MRS. CHRISTABEL OUKO

211. She is the widow of the late Dr. Ouko. Arising from her evidence before the Committee, it is observed that, even at this late stage, she did not tell everything she knew about her late husband's death for reasons best known to her. She appeared reluctant to give evidence before the Committee and only attended when summoned severally. **The Committee observed that deeper investigations be carried out on her evidence.**

MR. J. J. ODHIAMBO

212. He was in charge of Scenes of Crime Section in Nyanza Province in 1990 and Inspector Chesire worked under him. Although he attended Koru home and the Got Alila Hills, his junior, Inspector Chesire did all the work; his aloofness suggests that he knew that something big was going on and he did not want to be involved. **He was not a witness of truth.**

MR. JOHN ERIC OUKO RERU

213. The witness was the campaign manager during the 1988 general elections. He was also a cousin to the Minister. The witness confirmed evidence regarding the Kisumu Molasses plant. Upon the discovery of the Minister's body, he went to Koru and confirmed that the neighbours knew that Dr. Ouko was abducted by policemen and struggled with them as he tried to free himself. **Mr. Reru was found to be a witness of truth.**

MR. WILLIAM KIVUVANI

214. He was the Deputy Director of Special Branch in 1990. He later became the Director of the organization. Mr. Kivuvani, who was evasive and feigned ignorance about almost everything, alleged that he heard about the Minister's disappearance through the media. Being in charge of security intelligence network, he was reasonably expected to be in the know and his denials led the

Committee to believe that he knew more than he was willing to tell. **In the circumstances the allegations that he compromised Philip Rodi using money and jobs cannot be ruled out. He was not a witness of truth.**

MR. TIMOTHY MALOBA

215. He was the Provincial Special Branch Officer (PSBO) Nyanza at the time. He knew that Dr. Ouko's security had been withdrawn, as had been his passport. He informed the security intelligence machinery immediately. The witness was evasive and untruthful throughout like all other security officials interviewed by the Committee. **He was dimmed to be unreliable. The Committee observed that, he was part of the conspiracy to abduct and kill the late minister.**

AMBASSADOR BETHWEL KIPLAGAT

216. He was the Permanent Secretary in the Ministry of Foreign Affairs in 1990. He denied knowledge of the telex sent from Washington, DC advising against the visit. The witness also denied knowledge of any problems between Dr. Ouko and Hon. Biwott during the Washington visit. **The Committee observed with concern that the witness was untruthful despite his senior position in the diplomatic world.**

HON. DALMAS A. OTIENO

217. He was the Minister for Industry in 1990. His evidence was generally found to be untruthful and evasive, **particularly regarding events in Washington, DC, the return flight and issues relating to the revival of the Kisumu molasses plant. The Committee observed that, he was an untruthful witness who should be further investigated.**

A WITNESS IN CAMERA

218. He was a Special Branch official based in Kisumu. He presented evidence in regard to the parallel investigations carried out by the Special Branch in Kisumu in 1990 but was generally found to be untruthful and deliberately concealed information. **He was an unreliable witness.**

MR. MALACKI ODENYO

219. He was the Director of Finance and Administration at the Ministry of Foreign Affairs in 1990. He disclosed to the Committee that there had been a misunderstanding between Dr. Ouko and Hon. Biwott when Hon. Biwott referred to Dr. Ouko as "Mr. President" during the visit to Washington, DC. He was the first person to release this information to Mr. Mbajah; however, he could not properly explain the withdrawal of the official vehicle and the passport. The Committee was further concerned at his

involvement, together with Amb. Kiplagat, in the taking of the Ouko family to State House Nairobi, where the family was given money by the former President. **Though the witness seemed reliable, the Committee was of the opinion that he did not tell everything he knew about the death of the late Minister and should therefore be investigated further.**

MR. JESSEE GICHURU MUHORO

220. He is a retired civil servant and his son Peter Kuria Muhoro served as a D.O. in Kericho District in 1990. He informed the Committee that his son knew about the discovery of the body of the late Dr. Ouko on February 13, 1990. The son was later killed under suspicious circumstances. **The Committee observed that Mr. Muhoro was a witness of truth as others had corroborated his evidence.**

MR. NELSON YEGO MATEB

221. He was a senior Special Branch Officer in 1989. He informed the Committee of intelligence information received about a planned assassination of a senior government official. He revealed this information directly to the then head of state but he was sacked immediately after. **The Committee observed that although the witness seemed to be reliable, further investigations were needed to verify the details.**

MR. NGACHA MUCHORI

222. He was a Supt. of Police within the CID department in 1990 and he was one of the officers attached to Supt. Troon. In the company of other officers, they tortured Mr. Barrack Mbajah. The witness, however, denied this although Supt. Troon confirmed it. **The Committee noted that he was generally untruthful and unreliable.**

HON. SIMEON MWERU MKALA

223. He was the Managing Director of KPA in 1994. He denied having ever given instructions for the employment of Mr. Philip Rodi at the KPA which the Committee found to be untruthful. **The Committee observed that, he was an untruthful witness.**

MR. CHRISTOPER TIMBWA ONGONDA

224. He was the Provincial CID Officer, Nyanza in 1990 and was transferred from Western to Nyanza on February 09, 1990, while still on leave. He learned of the Minister's disappearance on February 15, 1990 whilst still on leave and went back to Kisumu, but found that Mr. Okoko was in-charge of investigations. He was generally kept away from the investigations until the arrival of the Troon team on February 22, 1990.

225. He disclosed to the Committee that the late Minister was abducted from his Koru home by Government officials including the late Julius Kobia who was then Nyanza Provincial Commissioner and that the Minister was driven towards Nakuru but was not sure about the exact place of death. He obtained this information from informers. **The witness was found to be reliable and truthful**.

MR. NELSON KIOKO MBATHA

226. He was the deputy Nyanza Provincial CID officer and was in-charge at the time of Dr. Ouko's death. The person in-charge of the District CID was Mr. Peter Rukwaro. **He should have known what happened to Dr. Ouko but the witness was generally evasive and unnecessary defensive.**

AMBASSADOR OCHIENG' ADALA

227. Amb. Ochieng' Adala was the Director of Political Affairs in the Ministry of Foreign Affairs and was on the visit to Washington, DC. He handled the passport of the Minister on February 14, 1990 prior to the trip to The Gambia. Once at the JKIA, he was informed that, the Minister was arriving from Mombasa. This was never to be. **The witness seemed generally well informed but he never really provided any useful information that would assist the Committee; should therefore be further investigated.**

MR. JEREMIAH KIPKORIR TERER

228. The witness informed the Committee that AP Constable Agalo Obonyo informed the Commissioner of Police in his presence that he had been called from his place of work by the DO, of Muhoroni, Mr. Nzomo on February 12, 1990. **The reasons for this strange call are unknown and the matter should be further investigated. The witness was found to be reliable and truthful.**

MR. JAMES LANDO KHWATENGE

229. He was a Special Branch officer in Nakuru in 1991 and was later transferred to Iten. As an intelligence officer, he had access to sensitive information which included:

(i) the approach by Dr. Ouko to Kericho DC Mr. Peter Lagat for assistance to mend the strained relationship with the former President;

(ii) the involvement of Mr. Jonah Anguka and Mr. Hezekiah Oyugi in secret government plans to keep political leaders from Nyanza in check;

(iii) evidence corroborated by other witnesses that Dr.Ouko was abducted from his home by senior government security

officials and driven to State House Nakuru, where he was killed; and

(iv) that, the late Mr. Masinde Muliro was killed by intelligence agents because he had information regarding Dr.Ouko's death.

The committee concluded that the witness was truthful.

MR. GEORGE ODINGA ORARO

230. The witness appeared before the Committee on December 06 and 14, 2004. From his evidence, the Committee noted that, Mr. Oraro, who was accompanied by more than three advocates, was uncomfortable, before the Committee. His demeanor was that of one trying to conceal something from the Committee. Arising out of his evidence, the Committee observed that:

(i) Mr Oraro did not reveal all the information, which might be pertinent to this investigation, which could have been disclosed to him by Dr. Ouko when the latter visited his office on February 05, 1990. This same observation was made by Supt.Troon in his report;

(ii) of equal concern is the fact that, Mr. Oraro acted for Dr.Ouko as his family lawyer whilst at the same time acting for Mr.Hezekiah Oyugi ,thereby creating the spectre of

conflict of interest. The Committee noted that Mr. Oyugi was later to be named as one of the prime suspects in the murder of Dr. Ouko;

(iii) a witness, Mr. Mbajah intimated that Dr. Ouko had been given a large sum of money by then former President when he left State House on February 05, 1990 and that the money was apparently left with Mr. Oraro. Mr Oraro has denied this. However, the Committee has information that the former President did give Dr.Ouko a large sum of money;

(iv) Mr. Oraro confirmed having met Mr. Oyugi in Kisumu on February 09, 1990, a day when Dr.Ouko was involved in a mysterious motor vehicle accident and Mr. Oyugi was booked at the Sunset Hotel also under mysterious circumstances. This is a rather unusual coincidence;

(v) Mr. Oraros' legal fees for representing the Ouko family at the Gicheru Commission of Inquiry was paid by the Government. This combined with the fact that the government paid school fees for education of the children and outstanding loans owed by the Ouko family, may have been an attempt to gag the family and their lawyer. It is common knowledge that, Mr. Oraro subsequently got numerous instructions particularly from parastatals;

(vi) Mr. Oraro, a prominent advocate who must be well versed with the provisions of the National Assembly (Powers and Privileges) Act Cap 6, Laws of Kenya, interfered with a witness Mr. Mukhwana and influenced him to swear an affidavit disowning his earlier evidence to the Committee. Mr. Mukhwana, a former police officer, knew the consequences of disowning his evidence and must have been induced to disown his evidence.

The Committee observed that Mr. Oraro was not a truthful witness, and should be investigated further.

MR. WILSON KARIITHI

231. The witness was the OCS Koru Police Station in February, 1990. Arising from his evidence, the Committee observed that Mr. Kariithi was not a witness of truth and had to be stepped down. He was generally evasive and did not present any useful information despite the fact that he was the senior most police officer in charge of the area surrounding the Koru home. **His demeanor was that, of one who knew how the Minister was abducted and killed but would not disclose it thereby suggesting complicity in the murder.**

RTD. JUSTICE BERNARD CHUNGA

232. The former Chief Justice appeared before the Committee on January 19, 2005. The Committee noted that at the time of incident he was a State Counsel within the Attorney General's Chambers. He was later appointed as Assisting Counsel to the Gicheru Commission of Inquiry. The Committee observed that as Assisting Counsel he suppressed information which would have led to the conclusion of the inquiry much earlier. Evidence with regard to the employment of Mr. Philip Rodi and corruption involving the Kisumu Molasses Plant are cases in point. However, it is to be noted that the former Chief Justice was working under the instructions of the government of the day.

MR. PAUL GONDI ODHIAMBO

233. The witness gave evidence before the Committee on January 19, 2005. From his evidence, the Committee observed that, whilst he did not know Dr.Ouko personally, he was used by Mr. Hezekiah Oyugi, who planted him in Dr.Ouko's burial committee, for unknown reasons.

MR. JAMES KANYOTU

234. Mr. James Kanyotu was the long serving Director of Special Branch in Kenya in February, 1990. The Committee observed that the evidence of Mr. Kanyotu was full of denials and exhibited a

singular determination to avoid the truth. It was clear to the Committee that, the organization he headed, was involved in the abduction and cover-up of the murder of Dr.Ouko. The same organization monitored Dr. Ouko's telephone communications. Mr. Kanyotu was particularly uncomfortable when asked about the circumstances under which Mr. Hezekiah Oyugi died upon incarceration at GSU headquarters in Nairobi. **He was not a witness of truth who should be further investigated.**

MR. PETER LAGAT

235. He was the Kericho DC in February, 1990. Arising out of his evidence, the Committee noted that, the witness feigned ignorance to most of the questions put to him and was not a witness of truth. In particular, he failed to disclose the reasons why Dr. Ouko visited him on February 09, 1990. The Committee also established that he was aware of the Minister's disappearance and death by February 13, 1990 but was not willing to disclose the same. The government later stage-managed 'the discovery' of the remains of Dr.Ouko three days later on Friday, February 16 1990.

A WITNESS IN CAMERA

236. He was a Special Branch officer attached to the Protocol Section of the Ministry of Foreign Affairs. He denied knowledge of the problems between Dr. Ouko and Hon. Biwott during the visit to Washington, DC and tried to suggest that, he handled Dr. Ouko's

passport but retracted his evidence when confronted with information to the contrary. He also later admitted not having seen Dr. Ouko physically at Nairobi Airport on the return trip. Finally, he was assigned to receive and accompany the Scotland Yards team during the investigations. Being an intelligence official, he could only have been there for other purposes than to help the Troon team.

MR. ABRAHAM KIPTANUI

237. He was Controller of State House and Private Secretary to the President in February, 1990. He denied involvement in the BAK Group of companies and denied knowledge of any press conference addressed by the former Head of State in Washington, DC, when in fact, one was held. He also attempted to convince the Committee that Dr.Ouko had arrived with the Presidential delegation. **He was generally evasive and was not a witness of truth.**

HON. NOAH ARAP TOO

238. He was the Director of CID in 1990. As director of CID at the time, his department was initially charged with the investigation of Dr. Ouko's disappearance and subsequent death. He has full of knowledge of all the facts surrounding the abduction and murder of Dr.Ouko but would not say so. The origination of the suicide theory and the arrangement of the scene where the remains were

discovered were made by officers within his department and under his command. He also allowed personnel from other departments including the Special Branch to interfere with the investigations. **The Committee observed that the witness was not honest to the Committee and generally avoided taking responsibility for the actions of personnel within his department. He was not a witness of truth.**

MR. WASHINGTON AJUOGA

239. He was a bodyguard to the late Mr. Hezekiah Oyugi and traveled with him everywhere. The Committee observed that, the witness was evasive and avoided the truth, particularly in respect of the movements of his former boss. He received many gifts from his former boss including houses in Nakuru and Nairobi. **Since Mr. Oyugi was a prime suspect in the murder and he was always together with Mr. Oyugi, he must be considered an accomplice.**

A WITNESS IN CAMERA

240. He was formerly a driver attached to the office of the Provincial Commissioner, Nyanza in 1990. He admitted having been sent to Eldoret to collect unknown persons whom he brought to Kisumu. They later drove in a convoy of vehicles to the Koru home from where he was abducted and driven to Nakuru State House. **The Committee observed that no one would admit to**

participating in such an affair, even if under instructions, and concluded that he was a witness of truth.

MS. MARIANE BRINNER MATTERN

241. Ms. Mattern is a Swiss-German citizen, who lived and operated in Kenya for more than two decades and was in contact with the Government as an investment/development consultant. She appeared before the Committee on November 30, December 02 and 03, 2004 in Nairobi and then on February 23, 2004 at the Kenya Commission, London. From her evidence the Committee noted the following:

(i) allegations of corruption surrounding and hampering efforts to revive the stalled Kisumu Molasses Plant, whereby she alleged that there were demands for kickbacks of between 5% and 10% by Ministers- K.N.K Biwott, Elijah W. Mwangale, George Saitoti and also Mr. Abraham Kiptanui. This has been corroborated by Dorothy Randiak, Supt. John Troon, Esther Ruvaga, Eston B. Mbajah, James Onyango K'Oyoo and Christabel Ouko; though denied by Mr. Abraham Kiptanui;

(ii) the evidence of Hons. K.N.K Biwott and Dalmas A. Otieno has corroborated the deportation of her business partner Mr. Dominic Airaghi from Kenya in 1998;

(iii) the presence at and participation in the sub-committee of the Cabinet on the revival of the Kisumu Molasses Plant has been corroborated by the evidence of Mr. Dalmas A. Otieno;

(iv) on learning that the Kisumu Molasses Plant had been omitted from the agenda of the Kenya-Italian bilateral meeting to be held in Rome in 1990, she telephoned Dr. Ouko who was on an official visit to Bangok, upon which Dr. Ouko quickly left Bangok and travelled to Rome. The government team in Rome comprised Ministers: K.N.K Biwott, George Saitoti and Dalmas A.Otieno;

(v) she was present at the Moi Stadium, Kisumu when the former President announced the revival of the Kisumu Molasses Plant and charged Dr. Ouko with the task of spearheading the project;

(vi) she was due to give evidence at the Judicial Commission of Inquiry (the Gicheru Commission) just before the former President disbanded it. This evidence has been corroborated by Messrs Bernard Chunga, Supt. John Troon and Crispo Ongoro;

(vii) Dr. Ouko spoke to her by phone between February 05 and 12, 1990 from his Koru home. The evidence is corroborated by Dr. Ouko's sister Mrs. Dorothy Randiak, Mr. Peter Kasuku and Mrs. Christabel Ouko;

(viii) she had invitations to attend the ceremony marking twenty-five years of independence, both at Nyayo National Stadium and at the Garden Party at State House, Nairobi; Messrs Dalmas Otieno and James O. K'Oyoo corroborate this;

(ix) upon return from Washington, DC, Dr. Ouko had telephoned and requested her to inform the former President that should anything happen to him, she was to let the President know that Hon. K.N.K. Biwott was to be held responsible.

(x) the existence of a group of companies by the name BAK is not in doubt as affirmed by the evidence of Messrs K.N.K Biwott, James Onyango K'Oyoo, Dalmas A. Otieno and Esther Ruvaga;

(xi) her contact with Mr. F.J. Addly of Ms. Kaplan and Stratton Advocates, who was an advocate for the former President, was affirmed by the documents she presented; and

(xii) allegations of the existence of private intimate relations with the former President and on information on this had been in the hands of Dr. Ouko has not been corroborated.

DET. SUPT. JOHN TROON

242. An officer of the New Scotland Yard, United Kingdom was appointed to lead the investigations into the circumstances of the death of the late Dr. Ouko, by the British Government on request of the Government of Kenya. Forensic Surgeon, Dr. Ian West from the British Home Office and other officers, accompanied Det. Supt. John Troon.

243. Det. Supt John Troon appeared before the Committee and presented evidence on February 14, 15, 21 and 22, 2005 at the Kenya High Commission, London. From the oral evidence, and the documents presented the Committee noted that:

(i) Presidential visit to Washington DC, USA.

- his request to interview all members of the delegation including the Hon K.N.K Biwott was turned down;

- his request to contact the US government officials was also turned down;

(ii) During the investigations,

- he soon discovered that Messrs. Jonah O. Anguka and Alexander Oyiolo were planted on him as spies;

- he was not facilitated to interview all the persons he believed had useful information including, the former President, Hon. K.N.K. Biwott, Mr. Philip Kilonzo, Mr. Hezekiah Oyugi and Mr. Julius Kobia;

- he faced delays in receiving final terms of reference which restricted the investigations to Kenya;

- the scene of the crime was tampered with and set to advance the suicide theory;

- only the file on corruption in the City of Kisumu was availed yet it was clear that Dr. Ouko had other files on corruption within the government; Troon concluded that this file had been planted for him to find;

- there were parallel investigations by the Special Branch in which state agents interviewed witnesses he had identified before they came to him. certain potential witnesses in Kisumu were arrested in a swoop to forestall their being interviewed.

244. **The evidence given by Det. Supt. Troon was revealing and straightforward. He asserted that Dr. Ouko was killed as a result of an executive order. He was a witness of truth.**

THE HON. K.N.K. BIWOTT, EGH, MP

245. The Hon. K.N.K Biwott appeared before the Committee on February 20; March 02, 03, 04 and 08, 2005 and was fully apprised on the procedure by the Chairperson. The witness raised queries on the procedure as explained. Finally it was resolved that the evidence would be presented by the Committee putting questions to which, he would respond. Further that, once the Committee would have put all the questions deemed necessary, the witness would read out further statements to clarify matters not covered through questions. The witness was allowed to produce all relevant statements, documents and records and was allowed to read his first statement.

246. From the evidence presented by the witness, the Committee observed the following:

(i) the Hon. Biwott, read out his signed statement on Wednesday March 02, 2005, which he also tabled;

(ii) Evidence was then adduced on a question and answer basis during which the Hon. Biwott informed the Committee as follows:

(a) the Hon. Biwott and Dr. Ouko left Nairobi on January 27, 1990 on the same plane for London and on to

Washington and also returned on the same plane to London and on to Nairobi on February 04, 1990.

(b) he sought to affirm the above by the presentation of the following documents:-

- a purported Passenger Manifest;
- photographs showing officials of the USA government including Secretary of State Mr. James Baker and the former President saluting the National Anthem at one of the functions;
- a passport with the date stamp of when he left Nairobi at the start of the Presidential visit to Washington, DC; and
- the former President and Dr.Ouko did not address press conferences.

247. The Committee having analyzed the evidence of Hon. Biwott as presented, arrived at the following conclusions:-

(i) the passenger manifest was neither authentic nor a "manifest", but a list of the delegation, his lawyers had received on request from the Kenya High Commission in London;

(ii) the photographs were inadmissible since the President and the uniformed officers were seen saluting using the left hand; a photograph of a function in Washington, DC, in

which the Hon. K.N.K Biwott identified one of the persons as the US Secretary of State, Mr. James Baker, when in reality it was a World Bank official. Indeed Hon. Biwott agreed that, there were errors in the photographs and in his identification of the persons in the photographs;

(iii) the date of the departure by Hon K.N.K Biwott from Nairobi for Washington, DC as stamped in his passport was January 25, 1990 and not January 27, 1990 hence Hon. Biwott and Dr. Ouko would not have sat next to each other or travelled on the same plane.

(iv) though given time to produce his diaries to confirm his activities and movements at the time of the visit to Washington DC, London U.K and on return to Kenya up to March 13, 1990, the Hon. Biwott failed to do so;

(v) the audio-visual show, confirms Dr. Ouko having addressed a press conference at which he referred to earlier statements by the former President; thus indeed the former President and Dr. Ouko addressed press conferences in Washington, DC. Hon. Biwott denied this.

248. The Committee concluded that Hon Biwott sought to mislead the Committee with false documents and records.

RECOMMENDATIONS AND CONCLUSIONS

THE POLITICAL DIFFERENCES DURING THE 1988 GENERAL ELECTIONS AND AFTER

249. The Committee received evidence from several witnesses, among them, *Messrs: James Onyango K'Oyoo, Marianne Brinner Mattern , Eliud William Aum Ndalo, Gordon Okoth Ondu and John Ouko Reru* to the effect that, during the General Elections of 1988 the late Dr. R.J. Ouko faced stiff opposition from the late J.H.O. Omino and that;

(i) the late J.H.O. Omino received massive material and financial support from among others, *Messrs: K.N.K. Biwott, Hezekiah N. Oyugi, while Mr. Ketan Somaia* disbursed funds for his campaigns at the Hilton Hotel, Nairobi;

(ii) long after the elections, Dr. Ouko continued to face opposition from those who had campaigned against him which from the evidence received was borne out of their opposition to the revival of the Kisumu Molasses Plant being one of Dr. R.J. Ouko's election pledges.

The Committee, therefore, recommends that, government should carry out investigations on Messrs: K.N.K. Biwott and Ketan Somaia with regard to their possible contribution to the circumstances leading to the death of Dr. Ouko.

REVIVAL OF THE KISUMU MOLASSES PLANT

250. The Committee received evidence from several witnesses, among them, *Messrs: Gordon Okoth Ondu, Marrianne Brinner Mattern, John Ouko Reru, James Onyango K'Oyoo, Esther Ruvaga and Dorothy Randiak* to the effect that, the plans by Dr. Robert J. Ouko to revive the Kisumu Molasses Plant were hampered by:

(i) opposition emanating from senior public officers who made demands for kick-backs from the companies identified to undertake the revival; such demands ranging between 5% to 10% of estimated cost of the contract sum, were made by, among others, Cabinet Ministers Hons. K.N.K. Biwott, Elijah W. Mwangale, George Saitoti, Dalmas A. Otieno; civil servants, including, Mr. Abraham Kiptanui and the late Mr. Mohamed Aslam of Pan African Bank who was to receive the kick-backs on behalf of the others; the net effect of the demands for kick-backs was to delay the commencement of the revival works and eventual collapse of the project;

(ii) the Hon. George Saitoti maneuvered during the Kenya-Italy bilateral talks that were to finalise the funding arrangements for the Kisumu Molasses Plant to have it replaced by Noolturesh Water Project (Kilimanjaro-Machakos Water Supply).

(iii) the replacement of the Kisumu Molasses Plant became necessary to fortify political interests in Kajiado North Constituency, then, represented by Hon. George Saitoti;

(iv) the Committee noted that:

(a) the Hon. E.W. Mwangale has since died, while, Mr. Mohammed Aslam died under mysterious circumstances;

(b) Mr. Abraham Kiptanui had during his appearance denied any involvement in the demand for kick-backs emanating from the revival of the Kisumu Molasses Plant; and

(c) Hon. K.N.K. Biwott spurned the opportunity to shed light on his involvement in this matter by engaging in unwarranted defiance of the procedure during his appearance on March 08, 2005.

The Committee, recommends that, government institutes investigations with regard to the activities to revive the Kisumu Molasses Plant in the period 1988 – 1990 and that, the investigations should cover the bank accounts held locally and abroad by Messrs. K.N.K. Biwott, George Saitoti, Mohamed Aslam and Abraham Kiptanui to ascertain any funds which could be traced from payments related to corrupt deals.

UNOFFICIAL VISIT TO WASHINGTON DC BY THE FORMER PRESIDENT AND RETURN TO NAIROBI

251. The Committee received evidence from several witnesses, among them, *Messrs: Malacki Oddenyo, Herine Ogembo, Esther Ruvaga, Barack Mbajah, Dorothy Randiak, Det. Supt. John Troon, George Oraro* , Gordon Okoth Ondu, George Otieno Ndege and K.N.K. Biwott and noted that:-

(i) the relationship between Dr. R.J. Ouko and Hon. K.N.K Biwott worsened after a physical confrontation in the hotel in which they were staying upon the latter's sarcastic reference to the former as *"Mr. President";*

(ii) the differences between Dr. R.J. Ouko and Hon. K.N.K. Biwott caused Dr. R.J. Ouko to travel from Washington, DC to London and then to Nairobi on flights separate from those used by the former President and the rest of the delegation;

(iii) the diplomatic passport of Dr. R.J. Ouko was withheld by the immigration officials at JKIA in Nairobi upon his arrival from London;

(iii) the Hon. K.N.K. Biwott failed to produce his own diary despite producing extracts of the diary of former US President George Bush (Snr.);

(iv) the Hon. K.N.K. Biwott produced photographs indicating in some instance, the former President and his security detail saluting with their left hands and failed to identify some persons in those photographs;

(v) the passport of Hon. K.N.K. Biwott indicates that he departed from JKIA on January 25, 1990 despite his earlier testimony that he travelled together with Dr. Ouko on the same flight on January 27, 1990;

(vi) the Hon. K.N.K. Biwott produced a list of passengers from the Kenya High Commission in London purporting this to be a flight manifest;

The Committee therefore, recommends that, government:-

(i) investigates the authenticity and nature of the documents (purported passenger manifest and extracts of a diary of the former US President George Bush (Snr) and the photographs as presented to the Committee by Hon. K.N.K Biwott pursuant to provisions of section 23 (g), (h) and (i) of the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya;

(ii) investigates the activities of the members of the delegation during their stay in Washington, DC to

ascertain their contribution to the circumstances leading to the death of Dr. R.J. Ouko;

(iii) investigates why Hon. K.N.K. Biwott left Nairobi on January 25, 1990 and where he went;

(iv) the documents which the Committee has handed over to government be used in the foregoing investigations.

PERCEIVED FOREIGN SUPPORT TO FURTHER THE POLITICAL CAREER OF DR. R. J. OUKO

252. The Committee received evidence from some witnesses including, *Messrs. Supt. John Troon, Barrack Mbajah, James Onyango K'Oyoo*, which stated that:-

(i) at a meeting in Washington, DC attended by the then President of the United States of America, Mr. George Bush (Snr) and his Secretary of State, Mr. James Baker, President Moi, Cabinet Ministers R.J. Ouko, K.N.K. Biwott, among others, the US President is reported to have urged the former President to relinquish the presidency and pass it on to Dr. R.J. Ouko being the one Mr. Bush believed could resuscitate Kenya from its diminished international standing due to corruption and human rights abuse; and

(ii) during the 1988 general elections the government of the United Kingdom urged the former President to ensure the re-election of Dr. R.J. Ouko being one believed capable of succeeding him;

(iii) arising from the above, the Committee is of the considered view that misconstrued perception by the Kenya leadership, that, Dr. R.J. Ouko was seeking foreign support to accede to the presidency would be sufficiently supported as a motive to cause his death.

The Committee, therefore, recommends that, the government investigates the above with a view to ascertaining their being circumstances leading to the death of Dr. R.J. Ouko.

DIMINISHING RAPPORT BETWEEN DR. R.J. OUKO AND THE GOVERNMENT

253. The evidence received by the Committee from several witnesses, among them, *Messrs: Esther Ruvaga, Amb. Ochieng' Adala, Malacki Oddenyo, George O. Oraro, Peter Lagat, Barrack Mbajah, Supt. John Troon, Timothy Maloba, Achesa Litabalia, Osano Omwenga,* to the effect that:-

(i) on February 04, 1990, Dr. R.J. Ouko visited former President at his Karbanet Gardens home, accompanied by his two youngest children, hoping that, the presence of the children

would draw the president's sympathy and thus, forgive Dr. R.J. Ouko for the alleged misdeeds during the visit to Washington, DC; the former President declined to see him;

(ii) later in the evening of the same day, Dr. Ouko met Mr. Hezekiah N. Oyugi to seek his intervention with the former President and mollify him on behalf of Dr. Ouko;

(iii) on the morning of February 05, 1990, Dr. R.J. Ouko visited State House, Nairobi and met the former President who gave him off-duty and directed him to rest at his Koru farm; apparently Dr. Ouko had already been sacked;

(iv) thereafter Dr. R.J. Ouko went to the office of Mr. George O. Oraro at Jubilee House and later met some of the staff including Messrs: Esther Ruvaga, Malacki Oddenyo at his office at the Ministry and then his brother Barrack Mbajah at Sheria House;

(v) Dr. Ouko went to his Loresho house and thereafter left for the Koru home;

(vi) the official car was withdrawn and returned to the Ministry whilst his bodyguards were also recalled;

(vii) Dr. Ouko visited the official residence of Mr. Peter K. Lagat, District Commissioner, Kericho, to seek Mr. Lagat's

intervention with the former President to forgive him, and on his way home he was involved in a questionable accident near Awasi;

(viii) while at his home on February 12, 1990 he experienced prolonged electricity blackout from 7.00 p.m. to 09.00 p.m. and intermittent interference with the house telephone which occurred persistently between February 05 and 12, 1990, the interferences on February 12, 1990 were witnessed by his sister Mrs. Dorothy Randiak and other relatives;

(ix) in the meantime Dr. Ouko's passport had been withheld upon his arrival at JKIA on February 04, 1990; and

(x) Dr. R.J. Ouko disappeared in the early hours of February 13, 1990.

The Committee recommends that, government investigates:

(i) the withdrawal of Dr. Ouko's passport, bodyguards and official transport and the staff of the Ministry of Foreign Affairs, especially Messrs. Bethwel Kiplagat and Malacki Oddenyo;

(ii) the circumstances of the accident near Awasi;

(iii) the interference with the telephone and electricity supply at Dr. Ouko's Koru home

THE NIGHT DR. R.J. OUKO DISAPPEARED FROM HIS KORU HOME

254. The evidence presented to the Committee by several witnesses, among them, Messrs: *Selina Were, Philip O. Rodi, Zablon Agalo Obonyo, Eston B. Mbajah, Dorothy Randiak, Harrison Angir, Owen Ogada, Supt. John Troon, a witness who appeared in camera, James Lando Khwatenge, Christopher Timbwa and Mburu Mukhwana* states that:-

(i) the official Mercedez Benz car registration number GK M530 white in colour for the Nyanza Provincial Commissioner, Mr. Julius Kobia, was on February 12, 1990 used to pick some three unknown persons from Eldoret to the Kisumu official residence of the P.C. Nyanza, from where, they left in a convoy of several vehicles in which were, among others, Messrs: Julius Kobia, K.N.K. Biwott, Hezekiah N. Oyugi and Jonah O. Anguka for the Koru home of Dr. Ouko ;

(ii) the following were present at Koru home when Dr. Ouko was violently abducted in the early hours of February 13, 1990, Messrs K.N.K. Biwott, Hezekiah Oyugi, Julius Kobia, James Onyango K'Oyoo, George O. Oraro, Jonah Anguka, Eric Onyango, Timothy Maloba, Owino Gendi, Washington Ajuoga, Wilson Kariithi, Paul Gondi, Francis Osano

Omwenga, Michael Owiti, some twenty General Service Unit officers from Molo Camp under the command of a Mr. Lagat and members of the Provincial and District Security teams in Nyanza Province;

(iii) at the home, Dr. Ouko was abducted and forced into the Mercedez Benz of the Nyanza PC and driven in the same convoy to State House, Nakuru;

(iv) at State house, Nakuru, Dr. R. J. Ouko was bundled into one of the rooms where he was killed allegedly in the presence of among others, Hon. K.N.K. Biwott.

The Committee, therefore, recommends that, government institutes investigations to ascertain:

(i) the role and activities of, among others, all the persons who were at State House, Nakuru on the night of February 12/13, 1990; and

(ii) the role and activities of, among others, Messrs. K.N.K. Biwott, James Onyango K'Oyoo, George O. Oraro, Timothy Maloba, Julius Kobia, Owino Gendi, Washington Ajuoga, Wilson Kariithi, Hezekiah Oyugi, Eric Onyango, Osano Omwenga, Paul Gondi, Michael Owiti, Philip Rodi Ogutu, Zablon Agalo, Eliud William Aum Ndalo and other members of Provincial and District Security teams in Kisumu, in the

circumstances leading to the disappearance and death of the late Dr. Ouko;

(iii) the persons named in (ii) above, be investigated further to establish whether they are accessory after the fact of Dr. Ouko's murder;

(iv) Mr. Philip Rodi Ogutu a store keeper who doubled as a gate keeper and dog handler at the Koru home, should be investigated with a view to establishing whether he was an accomplice in the disappearance and death of Dr. R. J. Ouko; and

(v) Mr. Zablon Agalo Obonyo should be investigated further to establish amongst others; failure to prevent a felony and gross negligence of duty;

INTERFERENCE AND COVER UP OF INVESTIGATIONS

255. The evidence presented to the Committee by several witnesses including Messrs: Supt. John Troon, Amos Litubula, Jesse Muhoro, Christopher Timbwa, Clephas Okoko, Humphrey Kariuki, Biketi Chesire, Omwenga, Dr. Jason Ndaka Kaviti, and Jeremiah Munguti indicate that, there was a concerted effort by the government of the day to prevent proper investigations into the matter and to deliberately cause fear among witnesses thereby interfering and covering up the murder of the late Dr. Ouko, detailed as follows:

(i) although there is evidence that, the body of Dr. Ouko was discovered in the early afternoon of Tuesday, February 13, 1990 by a herdsboy, Mr. Shikuku and that the discovery was reported to the Provincial Administration the same day, the Government actually announced the 'discovery" on Friday February 16, 1990, some three days later, allowing for the burning of the body and interference with the scene;

(ii) the scene of crime was tampered with and items brought there to simulate suicide;

(iii) there was no attempt to fingerprint items found at the scene including the gun of Dr. Ouko, which was test-fired before ballistic examination;

(iv) photographs were taken at the home of Dr. Ouko even before the "discovery" of the body suggesting that the police knew that Dr. Ouko was already dead;

(v) initial investigation led by Mr. Cleophas Okoko amounted to a comedy of errors unseen in any police force in the world;

(vi) upon arrival Supt. Troon and his team were not met by police officers but by other government officials planted to spy on them and, later, there was a delay with issuing the terms of reference to the team which delayed

commencement of investigations and limited the teams investigation to Kenya only;

(vii) there was a deliberate attempt to cajole Supt. Troon into accepting that Dr. Ouko had committed suicide;

(viii) the officers of the Special Branch carried out parallel investigations contrary to Supt. Troon's terms of reference which led to the drying up of information after they arrested people who had been lined up for interview and threatened them;

(ix) Supt. Troon was prevented from interviewing senior government officials at his convenience only being allowed to do this at their offices, but there was absolutely no permission to interview Hon. K.N.K. Biwott, unless an interim report was released first;

(x) this was shortly followed by threats to the lives of Det. Supt. Troon and his team, leading to the premature closure of the investigations;

(xi) a Judicial Commission of Inquiry was then appointed but again this was disbanded before it could complete its work, and even then, an attempt was made to prevent it from looking into corruption matters related to their inquiry by the appointment of another Commission which never took off;

(xii) subsequently, the government of the day ordered premature arrests of individuals before further investigations were carried out as recommended by Supt. Troon;

(xiii) a further team of investigators led by Mr. Crispo Ongoro was appointed to investigate the matter though its main aim was to absolve the main suspects and frame Jonah Anguka who was the only person charged with the death of Dr. Ouko;

(xiv) the Government security machinery was used extensively to spread fear among witnesses, most of whom died under mysterious circumstances or were cajoled to give testimony suitable to the State, using threats, money and even jobs; and

(xv) most of the participants in the murder and subsequent cover up were rewarded with rapid promotions and are still in active service to-date.

The Committee recommends that :

(i) government should:

(a) institute fresh investigations into the circumstances of the disappearance and death of Dr. Robert J. Ouko; and

(b) exhume the bodies of Messrs. Hezekiah N. Oyugi, Philip Kilonzo, Julius Kobia, Nehemiah Obati, Sergeant Ochanda, Corporal Nzomo, Joseph Yogo, Corporal Ndiema, Chief Inspector Midianga, Mohammed Aslam, to ascertain the causes of their death;

(ii) government should institute fresh inquiries into the evidence of Mr. William Wakhu Nangabo;

(iii) government should investigate the activities of Messrs: Timothy Maloba, Francis Osano Omwenga and Solomon Ochieng' to establish whether they committed the offence of destroying exhibits which were in the two briefcases carried away from the bedroom of the Koru home by Special Branch officers;

(iv) government should investigate the activities of among others, Messrs: Timothy Maloba, Johnson Ndaka Kaviti, Noah arap Too, Cleophas Okoko, James Kanyotu, William Kivuvani, Washington Ajuoga, Wilson Kariithi, Owino Gendi, Humphrey Kariuki and Biket Chesire to ascertain whether they committed acts of commission or ommission which interfered with the investigations; and

(v) **in view of the evidence presented by Messrs: Lando Khwatenge and another witness to the effect that Dr. R.J. Ouko was allegedly killed at State House, Nakuru, government should institute investigations to ascertain whether among others, Messrs: K.N.K. Biwott, Hezekiah N. Oyugi, Julius Kobia and Jonah O. Anguka and their accomplices participated in the commission of the offence of murder.**

THE SPECIFIC ROLE OF FARM WORKERS AND SECURITY

256. In view of the fact that the evidence presented by Messrs. Philip Rodi Ogutu, Zablon Agalo Obonyo and Selina Were appeared inconclusive and lacked sufficient details on the on-goings during the early hours of February 13, 1990 which the Committee believes they should have been able to hear, witness and thus **present, government should investigate their relationships with the local police and Provincial Administration to ascertain their being accessories to the commission of a felony.**

BREACH OF PROVISIONS OF NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT CAP 6, LAWS OF KENYA

257. In the course of the work of the Committee, especially in applying the provisions of Cap 6, which the Committee was mandated to apply as stated in the resolution of the National Assembly of March 26, 2003, it came to our attention that, cases of breach and

contempt of Parliament (and Committees) contrary to provisions of Cap 6 occurred. The Committee wishes to bring to the attention of the House the cases we believe should receive their attention.

258. In so doing, we humbly recommend that, the National Assembly would deem it appropriate to adopt our recommendation so that the government would take appropriate measures pursuant to provisions of Cap 6. Among such cases are:-

(i) activities contrary to section 18(I) (interference with witnesses)

- Messrs. George O. Oraro, James Onyango K'Oyoo and Josephat Tindi in relation to witness, Mr. Daniel Mburu Mukhwana.

(ii) activities contrary to section 23(g), (h), (i)

- Mr. Eliud William Aum Ndalo for addressing a press conference where he gave information contradicting the evidence he had earlier presented to the Committee; and

(iii) the non-authentic/falsified documents (purported passenger manifest) and photographs presented to the Committee by Hon. K.N.K. Biwott.

REPORT OF THE SELECT COMMITTEE INVESTIGATING CIRCUMSTANCES LEADING TO THE DEATH OF THE LATE DR. THE HON. ROBERT J. OUKO, EGH, MP

APPENDICES

Parliament Buildings
Nairobi

March, 2005

APPENDIX ONE

RULES OF PROCEDURE

The Select Committee has been constituted pursuant to a resolution of the National Assembly to investigate the circumstances of the sudden disappearance and subsequent death of the late Dr. the Hon. Robert J. Ouko, EGH, MP.

The Committee makes the following Rules of Procedure for the conduct and management of the proceedings of the investigation pursuant to provisions of the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya and the Standing Orders.

(i) The Committee shall sit on such days and at such times, as it shall deem appropriate.

(ii) The proceedings of the Select Committee shall be presided over by the Chairperson or in his absence, the Members present shall elect one of them to act in his place.

(iii) The Select Committee may direct that the public shall not be admitted to all or any specified part of the proceedings of the investigation, and subject to any such direction, the investigation shall be held in public.

(iv) The Select Committee may exclude any person or class of persons from all or any part of the proceedings of the **Investigation if satisfied that it is desirable so to do for the preservation of**

order, for the due conduct of the Investigation or for the protection of any witness in the Investigation.

(v) The Select Committee may, at its **sole discretion**, summon any person or persons to testify before it on oath and the person so summoned shall be obliged to attend pursuant to provisions of the National Assembly (Powers and Privileges) Act, Cap 6 Laws of Kenya.

(vi) The Select Committee may examine any person before it and may call for the production of published reports, text, writings, official records and documents, court proceedings or record of the public, judicial and parliamentary inquiries relating to matters under investigation or relevant statements of those persons previously mandated or assigned duties or functions of investigating into the sudden disappearance and subsequent death of the late Dr. the Hon. Robert J. Ouko, EGH, MP, or persons involved in any capacity in any trial involving the death or murder of the late Dr. Ouko who may not be living now or are out of the jurisdiction of the Select Committee.

(vii) Any person who is in any way implicated or concerned in any matter under inquiry shall be entitled to be represented by an advocate of his own choice.

(viii) The Counsel assisting the Select Committee will present evidence relating to the Investigation.

(ix) The Members of the Select Committee will cross-examine any person implicated or concerned in any matter under investigation and any witness summoned by the Select Committee.

(x) Any person who is in any way implicated or concerned in any matter under investigation may adduce material evidence on his behalf in connection with the matter under investigation.

(xi) The Select Committee may call for any further evidence on any point relating to any matter before them and may recall any witness for further examination.

(xii) Evidence shall be adduced by question and answer method.

(xiii) At the conclusion of the inquiry, the Select Committee will present its report to the National Assembly for necessary action.

(xiv) The summons to secure or compel the attendance of witnesses will be signed by the Clerk of the National Assembly or a parliamentary officer designated by the Clerk.

HON. ERIC G. SUNGU, MP,
CHAIRMAN
PARLIAMENTARY SELECT COMMITTEE
INVESTIGATING THE DEATH OF THE LATE
DR. THE HON. ROBERT J. OUKO, EGH, MP.

Revised
March 10, 2004

RULES TO GUIDE THE MEDIA FOR BROADCASTING OF PROCEEDINGS OF THE COMMITTEE

THE RULES

Coverage by the media of all proceedings of the Committee shall be governed by and in compliance with the procedure of the House together with the following Rules:-

(i) The media may take wide-angle shots of the Committee Room used during the sittings of the Committee.

(ii) The witnesses may use graphs, tables, *etc.*, which the media could capture and use.

(iii) Any matters ruled upon or disallowed by the Chair shall not be captured and or reported upon.

(iv) All information and material captured/recorded should only be used for purposes of fair and accurate report of proceedings.

(v) The information and material captured/recorded should not be used for:

(a) Political party advertising or election campaigns, or

(b) commercial advertising.

PENALTIES – SANCTIONS FOR BREACH

Non-compliance with the above Rules by a media house/group shall elicit the following sanctions:

- The media house/group shall be required to give an appropriate apology for any breach; in addition to which the Committee may order the withdrawal of access to broadcast the proceedings or such sanction as may be determined by the Committee on Powers and Privileges.

Speakers Chamber,
National Assembly,
Parliament Buildings,
NAIROBI. **September 29, 2003**

LAWS OF KENYA

The National Assembly (Powers and Privileges) Act

CHAPTER 6

Revised Edition 1998 (1980)
Printed and Published by the Government Printer
Nairobi

CHAPTER 6

THE NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 6

THE NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT

25 of 1952, 36 of 1961, L.N. 602/1963, L.N. 87/1964, 14 of 1966, 21 of 1966, 4 of 1973, 10 of 1981.

Commencement: 22nd April, 1952

An Act of Parliament to declare and define certain powers, privileges and immunities of the National Assembly and of the members of the National Assembly; to secure freedom of speech in the National Assembly; to make provision regulating admittance to and conduct within the precincts of the National Assembly; to give protection to the persons employed in the publication of the reports and other papers of the National Assembly; and for purposes incidental to or connected with the matters aforesaid

PART I—PRELIMINARY

Short title. L.N. 602/1963.

1. This Act may be cited as the National Assembly (Powers and Privileges) Act.

Interpretation. 36 of 1961, s. 3, L.N. 602/1963, L.N. 87/1964.

2. In this Act, except where the context otherwise requires—

"Assembly" means the National Assembly;

"Chamber" means the chamber in which the proceedings of the Assembly are conducted, and includes any galleries and places therein provided for members of the public or representatives of the press, and any lobbies, offices or precincts used exclusively in connexion with the proceedings of the House;

"Clerk" means the person appointed to be Clerk to the Assembly;

"committee" means any standing, sessional, select or other committee of the Assembly;

"journals" means the minutes of the Assembly or the official record of the votes or proceedings thereof;

"member" means a member of the Assembly;

"officer of the Assembly" includes any officer of the Assembly, any person acting within the precincts of the Assembly under the orders of the Speaker and any police officer on duty within the precincts of the Assembly;

"precincts of the Assembly" includes the Chamber, every part of the building in which the Chamber is situated, the offices of the Assembly, the galleries and places provided for the use or accommodation of members, strangers, members of the public and representatives of the press, and any forecourt, yard, garden, enclosure or open space appurtenant thereto and used or provided for the purposes of the Assembly:

Provided that any part of the buildings, forecourt, yard, garden, enclosures or open space may, by an order signed by the Speaker and published in the Gazette, be excluded from the foregoing definition, either generally or for specific purposes, and either temporarily or permanently;

"Serjeant-at-Arms" means the person appointed to be the Serjeant-at-Arms of the Assembly;

"Speaker" means the person elected to be Speaker of the Assembly under the Constitution, and includes the Deputy Speaker elected under the Constitution or any member while for the time being presiding at a sitting of the Assembly under the Constitution;

"Standing Orders" means the Standing Orders of the Assembly for the time being in force;

"stranger" in relation to the Assembly means any person other than the Speaker, a member of the Assembly or an officer of the Assembly.

PART II—PRIVILEGES AND IMMUNITIES

Postponement of disqualification to enable appeal. 4 of 1973, Sch.

3. Where any member has been sentenced to death or imprisonment, adjudged to be of unsound mind, adjudged bankrupt, or convicted of any offence prescribed under section 35 (4) of the Constitution, the decision shall not have effect for the purposes of section 39 of the Constitution until the expiration of the period prescribed by a written law for the entry of any appeal, or further appeal, which is open to the member in respect of that decision or, if an appeal is entered within that period, until the final determination of the appeal or further appeal, as the case may be.

Immunity from legal proceedings. L.N. 602/1963.

4. No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Assembly or a committee, or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise.

Freedom from arrest for civil debt during session. L.N. 602/1963.

5. No member shall be liable to arrest for any civil debt except a debt the contraction of which constitutes a criminal offence, whilst going to, attending at or returning from a sitting of the Assembly or any committee.

Service of civil process. L.N. 602/1963.

6. No process issued by any court of Kenya in the exercise of its civil jurisdiction shall be served or executed within the precincts of the Assembly while it is sitting, nor shall any such process be served or executed through the Speaker or any officer of the Assembly unless it relates to a person employed within the precincts of the Assembly or to the attachment of a member's salary.

Right to enter Assembly. L.N. 602/1963.

7. No stranger shall be entitled, as of right, to enter or to remain within the precincts of the Assembly.

Speaker's orders. L.N. 602/1963.

8. (1) The Speaker may from time to time issue such orders as he deems necessary or expedient for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing power may by such orders make provision for—

(*a*) regulating the admittance of strangers to and the conduct of strangers within the Chamber;

(*b*) regulating the admittance of strangers to and the conduct of strangers within the precincts of the Assembly and any part thereof other than the Chamber; and

(*c*) the deduction from any moneys due to a member in pursuance of the National Assembly Remuneration Act of any amount payable by that member in respect of refreshments or other facilities made available to members within the precincts of the Assembly. Cap. 5.

(2) Copies of orders made by the Speaker under this section shall be authenticated by the Clerk and exhibited in a conspicuous position in the precincts of the Assembly; and the copies when so authenticated and exhibited shall be deemed to be sufficient notice to all persons affected thereby.

Code of Conduct. 14 of 1966, s. 2

9. The Speaker may, from time to time as he deems expedient, issue directions in the form of a Code of Conduct regulating the conduct of members of the Assembly whilst within the precincts of the Assembly other than the Chamber.

Committee of Privileges. 14 of 1966, s. 2. 10 of 1981.

10. (1) There shall be established a committee, to be known as the Committee of Privileges, consisting of the Speaker and ten other members of the Assembly under the chairmanship of the Speaker.

(2) The members of the Committee of Privileges other than the Speaker shall be nominated by the Sessional Committee of the Assembly.

(3) The quorum of the Committee of Privileges established under subsection (1) shall be six including the chairman, but otherwise, subject to this Act, the Committee shall regulate its own meetings and its own procedure.

(4) The Committee of Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued under section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the member thereof, or to be contrary to the best interests of the Assembly or the members thereof.

(5) The Committee of Privileges shall, after such inquiry as is referred to in subsection (4), report its findings to the Assembly together with such recommendations as it thinks appropriate.

(6) The Assembly shall, in accordance with rules made by it (which rules need not be published in the Gazette), consider the report and the recommendations thereon and may take such disciplinary action against the member concerned as may be provided by those rules.

(7) Any disciplinary action such as is referred to in subsection (6) may include suspension from the service of the Assembly.

Suspended member deemed to be stranger. 14 of 1966, s. 2.

11. Where any member of the Assembly is, under the Standing Orders or under section 10, suspended from the service of the Assembly, he shall, during the period of suspension and for the purposes of this Act, be deemed to be a stranger and in addition he shall not enter the precincts of the Assembly without the written consent of a Speaker.

Proceedings not to be questioned in courts. 14 of 1966, s. 2.

12. No proceedings or decision of the Assembly or the Committee of Privileges acting in accordance with this Act shall be questioned in any court.

13. The Speaker, the Serjeant-at-Arms and any other officer authorized in that behalf by orders issued under section 8 (1) (*a*) or (*b*), may at any time order any stranger to withdraw from the Chamber or the precincts of the Assembly.

Power to order withdrawal of strangers. L.N. 602/1963.

PART III—EVIDENCE

14. (1) The Assembly or any standing committee thereof may, subject to the provisions of sections 18 and 20, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

Power to order attendance of witnesses. L.N. 602/1963.

(2) The powers conferred by subsection (1) on a standing committee may be exercised by any other committee which is specially authorized by a resolution of the Assembly to exercise those powers in respect of any matter or question specified in the resolution.

15. (1) Any order to attend to give evidence or to produce documents before the Assembly or a committee shall be notified to the person required to attend or to produce the documents by a summons under the hand of the Clerk issued by the direction of the Speaker.

Attendance to be notified by summons. L.N. 602/1963.

(2) In every summons under subsection (1) there shall be stated the time when and the place where the person summoned is required to attend and the particular documents which he is required to produce, and the summons shall be served on the person mentioned therein either by delivering to him a copy thereof or by leaving a copy thereof at his usual or last known place of abode in Kenya with some adult person; and there shall be paid or tendered to the person so summoned, if he does not reside within four miles of the place of attendance specified in the summons, such sum for his expenses as may be prescribed by Standing Orders of the Assembly.

(3) A summons under this section may be served by an officer of the Assembly or by a police officer.

16. The Assembly or any committee may require that any facts, matters and things relating to the subject of inquiry before it be verified or otherwise ascertained by the oral examination of witnesses, and may cause any such witnesses to be examined upon oath, which the Speaker or the chairman of the committee, as the case may be, or other person specially appointed for that purpose may administer.

Witnesses may be examined on oath. L.N. 602/1963

Objection to answer question or to produce papers. L.N. 602/1963.

17. (1) Where any person ordered to attend to give evidence or to produce any paper, book, record or document before the Assembly refuses to answer any question that may be put to him or to produce the paper, book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry, the Speaker may excuse the answering of the question or the production of the paper, book, record or document, or may order the answering or production thereof.

(2) Where any person ordered to attend or to give evidence or to produce any paper, book, record or document before any committee refuses to answer any question that may be put to him or to produce the paper, book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry, the chairman of the committee may report his refusal to the Speaker with the reasons therefor; and the Speaker may thereupon excuse the answering of the question or the production of the paper, book, record or document, or may order the answering or production thereof.

Privileges of witnesses. L.N. 602/1963, L.N. 87/1964.

18. (1) Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Assembly or a committee shall be entitled, in respect of that evidence or the disclosure of any communication or the production of any paper, book, record or document, to the same right or privilege as before a court of law.

(2) Except with the consent of the President, no public officer shall—

(*a*) produce before the Assembly or a committee any paper, book, record or document; or

(*b*) give evidence before the Assembly or a committee,

relating to the correspondence of any naval, military or air force matter, nor shall secondary evidence be received by or produced before the Assembly or a committee of the contents of any such paper, book, record or document.

(3) Except upon the direction of the President, no public officer shall refuse—

(*a*) to produce before the Assembly or a committee any paper, book, record or document; or

(*b*) give evidence before the Assembly or a committee,

relating to the correspondence of any civil department or to any matter affecting the public service; and secondary evidence shall not be received by or produced before the Assembly or a committee of the contents of any such paper, book, record or document which the President has directed shall not be produced.

Evidence of proceedings in the Assembly or any committee not to be given without leave. L.N. 602/1963.

19. (1) No member or officer of the Assembly, and no person employed to take minutes of evidence before the Assembly or any committee, shall give evidence elsewhere in respect of the contents of those minutes of evidence or of the contents of any document laid before the Assembly or that committee or in respect of any proceedings or examination held before the Assembly or that committee without special leave first obtained.

(2) The special leave referred to in subsection (1) may be given during a recess or adjournment by the Speaker, or in the absence or other incapacity of the Speaker, the Clerk.

Questions relating to evidence and production of documents before the Assembly or committee to be determined in accordance with usage of the U.K. Parliament. L.N. 602/1963.

20. Where at any time any question arises in the Assembly or in a committee in regard to—

(*a*) the right or power of the Assembly or a committee to hear, admit or receive oral evidence; or

(*b*) the right or power of the Assembly or a committee to peruse or examine any paper, book, record or document or to summon, direct or call upon any person to produce any paper, book, record or document before the Assembly or committee; or

(*c*) the right or privilege of any person (including a member of the Assembly or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or document before the Assembly or committee,

that question shall, subject to the preceding provisions of this Act, and except in so far as express provision is made in those provisions for the determination of that question, be determined in accordance with the usage and practice of the Commons House of Parliament of the United Kingdom.

PART IV—OFFENCES AND PENALTIES

False evidence L.N. 602/1963

Cap. 63.

21. Any person who before the Assembly or any committee intentionally gives a false answer to any question material to the subject of inquiry which may be put to him during the course of any examination shall be guilty of an offence under section 108 of the Penal Code and liable to the penalty prescribed by the appropriate section for that offence.

Offences relating to admittance to the Assembly or the Chamber. L.N. 602/1963.

22. Any person, being a stranger, who—

(*a*) enters or attempts to enter the Chamber or the precincts of the Assembly in contravention of any order of the Speaker; or

(*b*) fails or refuses to withdraw from the precincts of the Assembly or the Chamber when ordered under section 8 so to do; or

(*c*) contravenes any order made under this Act regulating the admittance of strangers to or the conduct of strangers within the precincts of the Assembly or the Chamber, or any rule or order made by the Speaker under the Standing Orders,

shall be guilty of an offence and liable, on conviction before a subordinate court of the first class, to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

Other offences. 36 of 1961, s. 8. L.N. 602/1963. 10 of 1981.

23. Any person who—

(*a*) disobeys any order made by the Assembly or a committee for attendance or for production of papers, books, documents or records, unless his attendance or production is excused under section 17; or

(*b*) refuses to be examined before, or to answer any lawful and relevant question put by, the Assembly or a committee, unless refusal is excused under section 17; or

(*c*) offers to any member or officer of the Assembly any bribe, fee, compensation, gift or reward in order to influence him in his conduct as such member or officer, or for or in respect of the promotion of or opposition to any Bill, resolution, matter, rules or thing submitted to or intended to be submitted to the Assembly or any committee; or

(*d*) assaults, obstructs, molests or insults any member coming to, being within or going from the precincts of the Assembly, or endeavours to compel any member by force, insult or menace to declare himself in favour of or against any proposition or matter pending or expected to be brought before the Assembly or any committee; or

(*e*) assaults, interferes with, molests, resists or obstructs any officer of the Assembly while in the execution of his duty; or

(*f*) creates or joins in any disturbance which interrupts or is likely to interrupt the proceedings of the Assembly

or any committee while the Assembly or committee is sitting; or

(*g*) presents to the Assembly or a committee any false, untrue, fabricated or falsified document with intent to deceive the Assembly or committee; or

(*h*) publishes any false or scandalous libel on the Assembly or its proceedings; or

(*i*) speaks words defamatory of the Assembly or its proceedings,

shall be guilty of an offence and liable, on conviction before a subordinate court of the first class, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Members not to receive reward for promotion of or opposition to Bills, etc. 36 of 1961, s. 9, L.N. 602/1963.

24. (1) No member shall accept or receive either directly or indirectly any bribe, fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill, resolution, matter or thing submitted or intended to be submitted for the consideration of the Assembly or any committee.

(2) Any person who acts in contravention of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings, or to both such imprisonment and fine, and every bribe, fee, compensation, gift or reward accepted or received by him shall be forfeited.

PART V—MISCELLANEOUS

Journals printed by order of the Assembly to be admitted as evidence. L.N. 602/1963, L.N. 87/1964.

25. Upon any inquiry touching the privileges, immunities and powers of the Assembly or of any member, any copy of the journals printed or purporting to be printed by the Government Printer shall be admitted as evidence of those journals in all courts and places without any proof being given that such copy was so printed.

Penalty for printing false copy of Act, journal, etc.

26. Any person who prints or causes to be printed a copy of any Act now or hereafter in force, or a copy of any report, paper, minutes or votes and proceedings of the Assembly as purporting to have been printed by the Government Printer or by or under the authority of the Assembly, or by the Speaker, and it is not so printed, or tenders in evidence any copy purporting to be so printed knowing that it was not

so printed, shall be guilty of an offence and liable, on conviction before a subordinate court of the first class, to imprisonment for a term not exceeding three years.

Protection of persons responsible for publications authorized by the Assembly. L.N. 602/1963, L.N. 87/1964.

27. Any person, being a defendant in any civil or criminal proceedings instituted for or on account or in respect of the publication by him or by his servant, by order or under the authority of the Assembly, of any reports, papers, minutes, votes or proceedings, may, on giving to the plaintiff or prosecutor twenty-four hours' written notice of his intention, bring before the court in which the proceedings are being held a certificate under the hand of the Speaker stating that the reports, papers, minutes, votes or proceedings in respect whereof the proceedings have been instituted were published by him or by his servant by order or under the authority of the Assembly together with an affidavit verifying the certificate, and the court shall thereupon immediately stay the proceedings, and every process issued therein shall be deemed to be finally determined.

Publication of proceedings without malice.

28. In any civil or criminal proceedings instituted for publishing any extract from or abstract of any report, paper, minutes, votes or proceedings referred to in section 26, if the court is satisfied that the extract or abstract was published bona fide and without malice, judgment or verdict, as the case may be, shall be entered for the defendant or accused.

Courts not to exercise jurisdiction in respect of acts of Speaker and officers of the Assembly. 36 of 1961, s. 11, L.N. 602/1963, L.N. 87/1964.

29. Neither the Speaker nor any officer of the Assembly shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or such officer by or under this Act or the Standing Orders.

Officers of the Assembly to have powers of police officer. L.N. 602/1963, L.N. 87/1964.

30. Every officer of the Assembly shall, for the purposes of this Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.

Attorney-General to sanction prosecutions.

31. No prosecution for an offence under this Act shall be instituted except with the written sanction of the Attorney-General.

Offences cognizable.

32. Every offence under this Act shall be cognizable to the police.

HOUSE OF COMMONS
LONDON SW1A 0AA
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From the Clerk of the House of Commons
R B Sands

RECEIVED
29 DEC 2003
CLERK'S OFFICE

16 December 2003

Dear Colleagues,

Normally, when my predecessors have sent out their pre-Christmas newletters, the new session of Parliament, which customarily has been opened sometime during the first few days of November, would have been well launched and the House would have been making good progress with the initial stages of the Government's new legislative programme. This year the State Opening of Parliament took place as recently as 26 November and, at the time of writing, not one of the Government's new bills has yet received a second reading. 2004, which is widely predicted to be the last full parliamentary year before the next general election, therefore promises to be crowded and contentious.

The Hutton Inquiry

In the meantime this newsletter will concentrate on the main political event of the summer, the Hutton inquiry. Although this was a Government rather than parliamentary inquiry, and I and my colleagues had no direct responsibility for it, it nonetheless had a strong parliamentary content and occupied a considerable amount of my and other Clerks' time and attention during what might otherwise have been the summer holiday period.

You will recall that in my last letter I referred to the dispute between Downing Street and the BBC, played out before the Foreign Affairs Committee in the early summer, concerning the significance of weapons of mass destruction in the British decision to go to war in Iraq. My signature was hardly dry on my letter (and I use this expression literally, rather than figuratively) when this very public dispute blew up in a manner both tragic and wholly unexpected. By the following day – 18 July – news began to emerge of the presumed (and subsequently confirmed) suicide of the Government weapons adviser, Dr David Kelly, whose possible role as the BBC's informant had become a central element in the argument. Within a further twenty-four hours the Prime Minister had announced a judicial Inquiry into the circumstances surrounding Dr Kelly's death, and these circumstances were generally agreed to include the evidence given to the Foreign Affairs Committee both by Dr Kelly himself, only two days before his death, and by the BBC journalist involved (Mr Andrew Gilligan), on the day itself. The House had, on the evening of 17 July, gone into the summer recess, and most Members and Officers were fast departing from Westminster.

The form of the Inquiry chosen by the Government created a number of problems which might, in different circumstances, have been resolved by the House itself. In particular it raised the difficult question of what evidence could be given to the Inquiry by either Members or Officers without compromising the protection enshrined in Article IX of the Bill of Rights[1] - long regarded as the cornerstone of freedom of speech not only in Westminster but also, of course, in many other Commonwealth jurisdictions. Instead of a formal tribunal appointed under the Tribunals of Inquiry (Evidence) Act 1921, this Inquiry was entrusted to a senior judge (Lord Hutton of Bresagh) sitting alone, with neither evidential nor penal powers. The establishment of a tribunal under the 1921 Act would have required the recall of both Houses, but in any case it is likely that in preferring a non-statutory Inquiry the Government was mindful of the advice given by a former Attorney General in 1999 - to the effect that a statutory tribunal might be regarded as sufficiently similar to a court to constitute a "place out of Parliament" for the purposes of Article IX, and that such a tribunal would therefore be "precluded from examining proceedings in Parliament"[2]. The implication of that opinion was that a non-statutory Inquiry would not be precluded from including parliamentary proceedings in its investigations. This, however, was only the view of the then Attorney General; and it is curious that although most of Article IX (and particularly the meaning of "questioned or impeached") has been mulled over at length by our courts during the last two centuries, the meaning of the final, and equally crucial, phrase appears never to have been subject to judicial interpretation. My own view is that a judicial inquiry, however appointed, should be regarded as covered by the Bill of Rights.

Two factors, however, were unquestionable: that the media (and presumably the public) expected the Foreign Affairs Committee to co-operate fully with Lord Hutton's Inquiry, and that the Members concerned, at a hastily convened meeting of the Committee, had resolved that they would co-operate. While, therefore, it was clear that no Member could be compelled to give evidence to Lord Hutton[3], it was equally clear that it would have been impracticable to seek to prevent them so doing voluntarily. So when, shortly afterwards, Lord Hutton wrote to the Speaker to seek guidance on the application of privilege, he was sent a suitably cautious but pragmatic reply.

Another problem was that the areas of questioning Lord Hutton outlined at the beginning of his Inquiry[4] went some way beyond issues which could be revealed either by individual Members in oral testimony or by the Committee's published evidence and Reports. As recounted below, the Committee itself took its own decision, soon after the Inquiry's terms of reference were announced, to submit a whole range of working papers which, if required by a court, would certainly require a Resolution of the House, as May makes clear.[5] These were reported to the House at the next opportunity - six weeks after they had reached the Inquiry.

The Hutton Inquiry therefore took place in a somewhat ambiguous constitutional atmosphere. I was, however, reassured not only by Lord Hutton's initial willingness to seek advice, but also by his subsequent acknowledgement, during the Inquiry's proceedings, of the importance of the principle of "mutual comity" (or mutual respect) between legislature and judiciary. It is to be

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[1] "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".
[2] Report from the Joint Committee on Parliamentary Privilege, Session 1998-99, HL Paper 43-I, HC 214-I, para 93.
[3] *May* (22nd edn), p 90.
[4] including "the reasons for the respective appearances of Mr Gilligan and Dr Kelly; what evidence was given by them; the reliability of the evidence given by them; and the nature of the questioning of them".
[5] *May*, pp 90-93.

hoped that his report (expected in the New Year) will turn out to reflect that principle when addressing matters internal to the proceedings of the House and its committees. But the whole saga does tend to reinforce the views of many of us that there is a need for some statutory re-statement of the privileges of the House, as recommended by the 1999 Joint Committee on Parliamentary Privilege.

..... and the Foreign Affairs Committee

Members of select committees are used to asking the questions. Their job is to scrutinise the actions and policies of others. But the establishment of the Hutton Inquiry placed the Foreign Affairs Committee in the unusual position of its own activities (including the activities of its staff) being subject to searching scrutiny.

Once Members' wish to co-operate fully became clear, the committee staff moved quickly to collate documents which might be relevant to the Inquiry. Most of these were internal committee papers, of a kind normally kept private under the 30-year rule.[6] Other papers were already in the public domain - including the full transcript of Dr Kelly's evidence. The internal papers, all prepared by the Clerks, fell into four broad categories: briefs setting out suggested lines of questioning of witnesses; the notes prepared for the Chairman before each meeting; informal minutes of meetings; and the transcript of the evidence given in private by Mr Gilligan on 17 July. Relevant correspondence was also identified. E-mails were archived, in case they too should be required.

When they met at the end of July Members both authorised the provision of these papers to the Inquiry and agreed to delegate to their Chairman the authority to make further papers available if in his judgment this was necessary. They also agreed to allow the Clerk to assist the Inquiry by attending in person if requested. Although the Committee felt confident that it was exercising powers derived from the House, there can be little doubt that, if the House had been sitting, such questions would have been decided in the Chamber, and not on the Committee corridor. There was no precedent for the Committee's decisions, but these were uncharted waters, and with the House in recess, the sensible, pragmatic course appeared to be for the Committee to decide them for itself.

The techniques adopted by the Hutton Inquiry were innovative in several respects. With impressive speed, it established a website on which a great mass of documentary information (much of it hitherto carrying a security classification) could be made available to the public. The small courtroom deep in the Royal Courts of Justice in which its proceedings took place was soon equipped with screens for all those present, on which a live transcript of oral evidence was displayed, alongside the text of documents referred to in evidence (other than witness statements). The live transcript was produced by stenographers using a computer-aided system, similar to that used for preparing live teletext displays of television news broadcasts. A corrected version was available on the Inquiry's website twice daily, within two hours or so of the conclusion of proceedings. The documents referred to at each session were similarly available, having been scanned by the Inquiry's secretariat. It was all a bit different from what parliamentary committees are able to do, but it was achieved, of course, with greater resources, and in response to huge demand from the press and public. One of Lord Hutton's earliest decisions, however, was not to allow the televising of anything other than the opening and closing statements. Explaining this decision, which of course disappointed the broadcast media, Lord Hutton referred to the pressure which he believed Dr Kelly himself had felt when his appearance before the Foreign Affairs

[6] under which no unpublished documents may be released to the public. We are currently in the process of revising our publication and release arrangements to meet the requirements of the Freedom of Information Act 2000, about which I expect to write to you next July.

Committee was televised. Whether he will comment on this aspect of committee proceedings is a question we await with some interest.

The committee Chairman, Mr Donald Anderson, and one other committee member (in a personal capacity) gave oral testimony to the Inquiry in late August: none of the staff was, in the event, asked to do so. Like all witnesses during the first phase, the Members were examined by Counsel appointed for the Inquiry, James Dingemans QC.[7] As was the case with other witnesses, Lord Hutton himself intervened from time to time. The questioning was at all times courteous, but it was thorough. The mass of written evidence which the Inquiry had received from government departments, from the BBC, from the Foreign Affairs Committee and from others was used to the full. For anyone accustomed to running a select committee inquiry, the dynamics were familiar, but the process was different, and of considerable professional interest to those clerks who attended.

One obvious difference from committee procedure was the Inquiry's use of Counsel to examine witnesses. Lord Hutton himself asked Mr Anderson whether parliamentary committees should consider using Counsel in this way, as of course occurs in the US Congress and in some other legislatures. Mr Anderson - a barrister himself before becoming an MP - wisely replied that this was a matter for the House as a whole to consider, but cautioned against allowing committee proceedings to become, as he put it, "professionalised". In one of the few moments of humour associated with this sad episode, Lord Hutton observed that he "was not suggesting more work for the Bar."

What Lord Hutton will suggest in his Report remains to be seen. His conclusions will certainly be studied closely in Parliament and elsewhere. Moreover, the implications of the method by which the Inquiry proceeded – exposing to public scrutiny a vast array of internal Government papers, as well as many confidential parliamentary documents – is likely to have an impact on the ongoing debate both about the powers of parliamentary committees to obtain the former, and of the public to see the latter. Not surprisingly, some of us harbour the hope that the Inquiry will be regarded by all concerned as a one-off response to a unique set of circumstances, and certainly not as a precedent for the future, although some younger colleagues at least may rather envy the hi-tech facilities so speedily made available!

Yet more on Article IX

This has been a year when we have had good cause for concern about the principle of parliamentary freedom of speech enshrined in Article IX of the Bill of Rights. Not only did the Hutton Inquiry allow what amounted to a *de facto* "questioning" of the proceedings of a Commons committee. We were also faced with a Government Corruption Bill (currently in draft form only) which would specifically over-ride the prohibition on the questioning of proceedings in Parliament in corruption cases, whether involving a Member of Parliament or not: under this proposed legislation, anything said in the House or a committee could be used as evidence by a court if germane to a charge of corruption, and this would apply both to what is said by Members and what is said by witnesses. A robust Report from a Joint Committee on the draft Bill[8] made some destructive criticisms about the bill as a whole and about the over-ride clause in particular, but it is not yet clear whether the Government is prepared to back down. One hopeful sign is that the proposal did not re-appear in the Queen's Speech in November, and may therefore not appear in non-draft form for the time being.

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[7] in a second phase, some witnesses from the BBC and the Government (but none from Parliament) were recalled to face questioning also from Counsel for the various parties, including Dr Kelly's family.

[8] Report from the Joint Committee on the draft Corruption Bill, Session 2002-03, HL Paper 157, HC 705, paras 101-135.

There have, however, been some encouraging signs elsewhere. In December 2002 we won a case (the *A* case) in the European Court of Human Rights in Strasbourg (the kind of supra-national procedure from which most of you are no doubt glad to be immune!), which found that the absolute nature of parliamentary privilege was justified as a protection of freedom of speech, however allegedly defamatory the words spoken by a Member. This judgment justifies some optimism that our European commitments will not in practice suborn this most cherished of parliamentary privileges.

Furthermore, the Law Lords in late July passed down a significant judgment clarifying the interpretation in *Pepper v Hart*[9] of the limits on the extent to which the courts can draw on ministerial statements and other parliamentary material when seeking to construe legislation which is ambiguous, obscure or anomalous. Although the case in question (the *Wilson* case) in fact extended the range of matters which the courts could examine by reference to parliamentary material, this was only to cope with the new task imposed on them by the Human Rights Act 1999, of assessing the compatibility of United Kingdom legislation with provisions of the European Convention on Human Rights. The Law Lords' recognition of the limits which should apply, both in construction and compatibility cases, was a welcome sign of their continuing recognition of the force of Article IX of the Bill of Rights. That said, I fear that the ambiguities of Article IX will continue to create significant problems of interpretation, particularly in this new litigious age.

Carry-over of bills

This year has also seen some procedural changes and specifically provision for the carry-over of public bills. Though it has always been possible to carry a private bill over from one session to another – either by a suspension at the end of one session or a revival at the start of the next – it has not been the normal practice to carry over public bills. An exception was made in the case of the Financial Services and Markets Bill, which was carried over from session 1998–99 to session 1999–2000: it was reported to the House at the end of the first session so far as it had been amended, then lay on the Table until the second session, when it was introduced afresh.

A new Sessional Order agreed to on 29 October 2002; and effective for the remainder of this Parliament, now makes provision for carry-over of public bills. Under that Order, a bill can be carried over by motion. If a bill is carried over, it is reprinted (as amended in the previous session) *as a new bill*, and notices of amendments, new clauses and new schedules tabled but not disposed of in the first session are automatically reprinted. Two bills, both of which had completed their committee stage last session but had then proceeded no further, have been reintroduced this session taking advantage of the new procedure.

Pay for Select Committee Chairmen

On 14 May 2002, the House debated a package of proposals from the Modernisation Committee and resolved that the Review Body on Senior Salaries (SSRB) should be invited to consider what additional remuneration was appropriate for chairmen of select committees.

SSRB duly reported to the Leader of the House on 24 January 2003, but the Government did not publish the report[10] until 17 July, the day the House rose for the Summer Recess. The report contained four recommendations:

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[9] see *May* (22nd edn), pp 91-92.
[10] Cm 5673.

- payment should be made only to the chairmen of the departmental select committees, and of certain other committees described by SSRB collectively as "externally focussed 'cross-departmental' committees", but with the final decision on which committees should be included resting with the House;

- a single level of additional payment should be made;

- the sum should be £12,500 per annum above chairmen's other parliamentary entitlements; and

- before introducing the extra payment, the House should decide on whether or not Chairmen of the relevant committees should relinquish "paid or conflicting" outside interests.

The Leader of the House therefore asked the Committee on Standards and Privileges to look into the matter of chairmen's outside interests, and to report its findings to the House in the autumn. The Committee duly reported in October (Sixth Report, HC 1150). It noted that it had received no evidence arguing that the present arrangements aimed at ensuring that outside interests of those who chair select committees do not generally conflict with their responsibilities, nor compromise their effectiveness in this role, were either ineffective or inadequate. It also looked at the position in Australia, Canada and the United States, and found that in none of these were chairmen (whether paid or unpaid) subject to additional restrictions by virtue of their office. The House itself does not impose additional restrictions on any other paid office holders.[11] The Committee therefore concluded that, as a matter of principle, payment alone did not justify imposing additional restrictions on chairmen's outside interests.

On the practical level, the Committee was concerned that there should be no question of, nor any appearance of, double payment—from both a chairman's salary and an outside interest, for an outside activity "arising primarily as a result of the chairmanship". Nor, like Ministers, should chairmen gain private benefit from work done, in whole or in part, with any assistance from public resources. The Committee invited the House to endorse those principles, if it decided to pay select committee chairmen, and also undertook to bring forward guidelines in these circumstances.

The House considered the matter on 30 October and, after a thinly-attended debate, approved a motion noting the SSRB proposals, approving the Committee's report and endorsing the two principles set out above, by 86 votes to 59. An 'effective' motion to implement the SSRB proposals was subsequently agreed to 81 votes to 53, with the result that these were implemented without amendment from the start of the present Session.

Responsibility rests with chairmen themselves for ensuring that they do not accept payment from outside interests in breach of the principles endorsed by the House. The Registrar of Members' Interests is available to offer them advice, if necessary in consultation with the Parliamentary Commissioner for Standards. On 20 November, just before Prorogation, the Committee published the promised guidance in its Seventh Report (HC 1292). This included a test for chairmen to consider when seeking to decide whether a paid activity was "arising primarily as a result of the chairmanship". The Committee on Standards and Privileges intends to keep the guidance under review in the light of experience, and its Chairman has asked fellow chairmen to alert him to any problems encountered, and suggestions for its improvement.

[11] Ministers are, of course, also subject to the provisions of the Ministerial Code, issued on the authority of the Prime Minister.

The meaning of "war"

As a tailpiece, I should mention that my reference in the last newsletter to the United Kingdom "going to war" in Iraq attracted a searching procedural query from sharp-eyed fellow Clerks. If this was war, I was asked, how was it that a supplementary Estimate covering the necessary extra military expenditure had been allowed to pass through the House under the normal, expedited Supply procedures laid down in Standing Order No. 55, when the final paragraph of that Order specifically states that "the provisions of this order shall not apply to any vote of credit or votes for supplementary or additional estimates for war expenditure".

When I inquired further, I was told by the Clerk of Supply that the Supplementary Estimates in question, although they included the costs of contingency planning for operations in Iraq, did not make specific provision for those operations. Secondly, however, and more significantly, I was told that there was no precedent that would justify an interpretation of "war expenditure" as including operations that are not explicitly acknowledged as "war" by the Government. According to a statement made to the House of Lords by the Attorney General on 19 February this year (column 1139), the United Kingdom has not declared war since 1939 and is unlikely to do so in the foreseeable future. I am sure that you will be as reassured by that as I was.

May I wish you all a happy, professionally successful and, above all, peaceful 2004.

Yours sincerely, Roger Sands

Roger Sands

APPENDIX THREE

PAPERS LAID

The following papers were laid before the Committee: -

1. Copies of Receipts No. 000809 and No. 000806 dated July 25, 1992 and July 29, 1992 Related to accommodation of Mr. Eliud William Ndalo and Mr. Philip Rodi when they had visited the Special Branch and CID offices in Nairobi to record statements, Laid on February 24, 2004 during the Twenty-Ninth Sitting.

2. Mr. Barak Mbajah's affidavit he swore and presented in Washington D.C., in relation to the death of the late Dr. Ouko, MP. The affidavit was dated September 23, 1991. Laid on February 26, 2004 during the Thirty-First Sitting.

3. Mr. Dickson Owen Otieno presented photos during the official Inauguration of Turkwel Multipurpose Project on 28th November, 1988 by former President Daniel arap Moi. Laid on March 17, 2004 during the Thirty-Eighth Sitting.

4. Exhibits so far produced before the Committee presented by the Lead Counsel Mr. Onyango Oriri on March 23, 2004 during the Fortieth Sitting.

5. Mr. Daniel Mburu Mukhwana's Affidavit in connection with evidence given on 27th November, 2004.

6. Philip Rodi's employment file.

7. Exhibit Memo form to Government chemist and results (A & B).

8. Letter from Mr. Oyugi to Mr. James K'Oyoo.

9. Statement of Kevin Anthony O' Callaghan. Laid by Mr. Donald M. Mugo on September 22, 2004 during the Seventy-First Sitting.

10. Dennis Afande's letter and attached list of the Delegation.

11. Exhibit Memo form to Ballistic office and results (A & B).

12. Work ticket (GK 355T/Corola).

13. Finger print impressions.

14. Traffic accident sketch plan and photos of the accident scene. Laid by Achesa Litabalia on August 31, 2004 during the Fifty-Ninth Sitting.

15. Dr. Ouko's passport (D002700).

16. Post mortem report.

17. Mr. Paul Gondi's Diary (1990).

18. Mr. Philip Rodi produced his passbook and was marked PSC OUKO 37 on September 29, 2004 during the Seventy-Sixth Sitting.

19. Major incident property register (1,2 & 3).

20. Report on further investigations into the disappearance and subsequent death of the late Hon. Dr. Robert John Ouko as recommended by the Troon Report (Ongoro Report).

21. The following papers were laid by Supt. John Troon on February 14, 2005 during the One Hundred and Twenty Fourth Sitting: -

    (i) Copy of his original report
    (ii) Various Documents including statements of witnesses interviewed by him.
    (iii) Copy of a letter sent to him by Ms. Herine Ogembo.

22. The following papers were laid by Supt. John Troon on February 16, 2005 during the One Hundred and Twenty Sixth Sitting: -

    (i) Statements taken by him when he conducted investigations into the disappearance and subsequent death of the late Minister.

    (ii) List showing documents contained in his original report.

    (iii) Copy of a letter sent to him by Ms. Herine Ogembo in 2001.

23. Letter dated 23rd April, 1990 by Det. Supt. John Troon.

24. Hon. Nicholas Biwott laid the following documents on March 03, 2005 during the One Hundred and Thirty Second Sitting:-

- Purported Manifest
- Chronological Statements on the Molasses Project
- Photographs of the Washington trip
- Receipts of purchase of the photos from Nation Newspapers

Receipt Numbers

10026	-	352206
10027	-	356699
10028	-	354703
10029	-	356671

25. Hon. Nicholas Biwott laid the following documents on March 04, 2005 during the One Hundred and Thirty Third Sitting:-

- Passport (His) of 1990 indicating stamp by Immigration department for exit from Kenya on 25/01/1990 and return on 04/02/1990.

- Fax from the then Kenya High Commissioner to U.K. Dr. Sally Kosgey indicating sitting arrangements for the presidential delegation to the US in February, 1990.

- Mr. Oyatsi's letter requesting for a manifest and acknowledgement of receipt of earlier fax.

26. The Attorney General Presented the following documents on September 30, 2003 during the Sixteenth Sitting:-

(a) Troon's initial report;
(b) Troon's main report;
(c) The proceedings of the Judicial Commission of Inquiry to inquire into the circumstances surrounding and leading to the disappearance and death of the late Dr. the Hon. Robert J. Ouko, EGH, MP;
(d) Committal bundles in the murder case against Jonah Orao Anguka;
(e) Court proceedings and judgement in the murder case against Anguka;
(f) Photographs;
(g) Koru initial police investigations file; and
(h) Koru final police investigations file.

27. Mr. George Oraro submitted his statements to the Committee on December 06, 2004 during the One Hundred and Seventh Sitting.

28. Ms. Marriane Brinner Mattern produced volume II of documents supporting her evidence and were named PSC Ouko 41 on December 03, 2004 during the One Hundred and Sixth Sitting.

29. Mr. Crispo Willis Ongoro produced the report by his team of investigators and was named Exhibit PSC OUKO 27 on September 23, 2004 during the Seventy-Second Sitting.

APPENDIX FOUR

LIST OF WITNESSES

1. Ms. Selina Were Ndalo
2. Mr. Eliud William Aum Ndalo
3. Mr. Eston Barrack Mbajah
4. Mr. Daniel Mburu Mukhwana
5. Mr. Gordon Okoth Ondu
6. Mr. George Otieno Ndege
7. Capt. Amos Litubula
8. Mr. Dickson O. O. Ogada
9. Mr. Jerphither N. Gichuki
10. Mr. Winston Shikuri
11. Mr. Zablon Agalo Obonyo
12. Mr. William Wakhunangabo
13. Mr. Harrison Owuor Angir
14. Mr. George Ruheyia Ayieta
15. Mr. Mario Titeket
16. Mr. Clement Nzomo Kiteme
17. Mr.Solomon George Ochieng
18. Mr. Charles Edward Nyagilo
19. Mrs. Esther Ruvaga
20. Mr. Jotham Biket Chesire
21. Mr. James Owino Gendi
22. Mr. Achesa Litabalia
23. Mr. Joseph Owino Okuto
24. Mr. Humphrey Kariuki
25. Mr. Jeremiah Kavita Munguti
26. Dr. Jason Ndaka Kaviti
27. Mr. Godfrey Mate
28. Mr. Emmanuel Mwachiti Chiti
29. Mr. Cleofas Joseph Okoko
30. Mr. Francis Osano Omwenga
31. Mr. Vincent M. Wakayanda
32. Mr. Crispo Willis Ongoro
33. Mr. Donald Mbogo Mugo
34. Mr. James Onyango K'Oyoo
35. Amb. Dennis Daudi Afande
36. Joseph Kipkirui Bett
37. Mr. John J. Odhiambo
38. Mr. John Eric Ouko Reru
39. Mr. Philip Rodi Ogutu
40. Mrs. Christabel Ouko
41. Mr. William Mbatha Kivuvani
42. Mr. Timothy Asomba Maloba
43. Amb. Bethuel Kiplagat
44. Mathews Oniala Lieta
45. Hon. Dalmas M..O. Anyango
46. Mr. Zebedeyo Luvisia
47. Mr. Malacki Oddenyo
48. Mr. Michael Owiti
49. Mr. Washington O. Ajuoga
50. Mr. Jesse Gichuru Muhoro

51. Mr. Nelson Yego Mateb
52. Mr. Edward Ngacha Muchori
53. Mr. Simeon Mweru Mkalla
54. Mr. Christopher T. Ong'onda
55. Mr. Nelson Kioko Mbatha
56. Mr. Ochieng Adala
57. Mr. Jeremiah Kipkorir Terer
58. Ms.Marianne Brinner Mattern
59. Mr. George Odinga Oraro
60. Mr. James Lando Khwatenge
61. Mr. Wilson Kariithi
62. Mr. Benard Chunga
63. Mr. Paul E. Odhiambo Gondi
64. Mr. James Kanyotu
65. Mr. Peter Kipyegon Lagat
66. Mr. Alexander O. Oyiolo
67. Hon. Noah arap Too
68. Rtd. Det. Supt. John Troon
69. Mr. Abraham Kiptanui
70. Hon. Kipyator Nicholas Kiprono Biwott

APPENDIX FIVE

LIST OF WITNESSES/SUSPECTS IN DR. OUKO'S CASE WHO DIED MYSTERIOUSLY

1. **PROVINCIAL ADMINISTRATION**

(i)	Hezekiah Oyugi	-	former Permanent Secretary Ministry of Internal Security
(ii)	Julius Kobia	-	former Provincial Commissioner, Nyanza
(iii)	Peter Kuria Muhoro	-	former District Officer, Belgut

2. **POLICE DEPARTMENT**

(i)	Philip Kilonzo	-	former Commissioner of Police
(ii)	Jadiel Kivaithe	-	former Provincial Police Officer, Nyanza
(iii)	Nehemiah Ombati	-	former PCIO, Rift Valley
(iv)	James Chumba Midiang	-	DCO's office, Kisumu
(v)	Charles Nzomo	-	Koru Police Station
(vi)	C. Ochanda	-	DSI office, Kisumu
(vii)	Corporal Ndiema	-	Intelligence Officer, Koru

3. **JUDICIAL DEPARTMENT**

(i)	Justice Fidahussen Abdullah	-	judge in Anguka first trial

4. **NEW SCOTLAND YARD**

(i) Dr. Ian West
(ii) Dr. Lindsley

5. **MEMBERS OF THE PUBLIC**

(i)	Dorothy Randiak	-	Sister to Dr. Ouko
(ii)	Joseph Yogo	-	Driver to Dr. Ouko
(iii)	Amos Oidho Agalo		
(iv)	Lawrence Akinyi Oile		
(v)	Mohamed Aslam		

EMBASSY OF THE
REPUBLIC OF KENYA
WASHINGTON, D.C.

HIS EXCELLENCY THE PRESIDENT'S PRIVATE VISIT TO THE UNITED STATES OF AMERICA - 29TH JANUARY TO 2ND FEBRUARY 1990

LIST OF DELEGATION

1. Hon. Dr. Robert J. Ouko, M.P. - Minister for Foreign Affairs and International Co-operation.

2. Hon. K.N.K. Biwott, M.P. - Minister for Energy.

3. Hon. E.W. Mwangale, M.P. - Minister for Livestock Development.

4. Hon. Arthur Magugu, M.P. - Minister for Commerce.

5. Hon. H.M. Mohamed, M.P. - Minister of State.

6. Hon. Professor S.K. Ongeri, M.P. - Minister for Technical Training and Applied Technology.

7. Hon. J. Kamotho, M.P. - Minister for Transport and Communications.

8. Hon. G. Ndotto, M.P. - Minister for Reclamation and Development of Arid, Semi-Arid and Wastelands.

9. Hon. Dalmas Otieno, M.P. - Minister for Industry.

10. Hon. M.K. arap Keino, M.P. - Speaker of the National Assembly.

11. Hon. J. Muliro, M.P. - Assistant Minister for Foreign Affairs and International Co-operation.

12. Hon. W. Kamuren, M.P. - Assistant Minister, Office of the President.

13. Hon. J. Mbori, M.P. - Assistant Minister for Local Government.

14. Hon. K. Musyoka, M.P. - Deputy Speaker of the National Assembly.

15. Hon. Mulu Mutisya - Member of Parliament.

16. Hon. Dr. Njoroge Mungai - Member of Parliament.

17. Hon. N. Kanyi Waithaka - Member of Parliament.

Hon. Wafula Wabuge - Member of Parliament.

19. Mr. A.K. Kiptanui - Private Secretary/Comptroller, State House.

20. Mr. Charles C. Mbindyo - Permanent Secretary, Ministry of Finance.

21. Mr. B.A. Kiplagat - Permanent Secretary, Ministry of Foreign Affairs and International Co-operation.

22. Mr. H.N. Oyugi - Permanent Secretary, Provincial Administration and Internal Security Office of the President.

13. Mr. C.N. Mutitu - Permanent Secretary, Ministry of Energy.

14 Mr. F.C.K. Waiganjo - Provincial Commissioner, Nairobi Area.

5. M Y. Haji - Provincial Commissioner, Rift Valley Province.

. Mr. Mark Too - Chairman, KANU, Nandi District.

. Mr. N.M. Mahugu - Chief of Protocol, Ministry of Foreign Affairs and International Co-operation.

Mr. Kipn'geno arap N'geny - Managing Director, Kenya Posts and Telecommunications Corporation.

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29. Mr. William N. Mbote - Managing Director, Kenya Pipeline Company.

30. Mr. S.M. Maitha - Head of Americas Division, Ministry of Foreign Affairs and International Co-operation.

31. Mr. J.W. Oluga - General Manager, National Bank of Kenya.

32. Colonel W.A.C. Boinett - Aide de Camp to His Excellency the President.

33. Mr. Lee Njiru - Head of the Presidential Press Unit.

34. Mr. R.M. Chebochok - Office of the President.

35. Mr. Charles Kimurgor - Office of the President.

36. Dr. D.M. Silverstein - Office of the President.

37. Rev. Dr. J. Kaleli - Office of the President.

38. Mr. P.N. Njuguna - Senior Assistant Secretary, Ministry of Foreign Affairs and International Co-operation.

39. Mr. F.K. Bett - Deputy Comptroller, State House.

40. Mr. David Miller - Office of the President.

41. Mr. D.R. Mutisya - Chief Accountant, Ministry of Foreign Affairs and International Co-operation.

42. Mr. A.O. Oyiolo - Protocol Officer, Ministry of Foreign Affairs and International Co-operation.

43. Mr. A. Andanje - Protocol Officer, Ministry of Foreign Affairs and International Co-operation.

44. Mr. W.E. Mbuthia - Office of the President.

45. Mr. E.M. Mjomba - Office of the President.

46. Mr. David Towett - State House.

47. Mr. Joshua Kulei - State House.

48. Mr. Joel Masiror - State House.

49. Mr. Charles Chebii - State House.

50. Mr. Tirop Yego - State House.

51. Mr. Nashon Mukuna - State House.

52. Mr. Enock Chesereck - Office of the President.

53. Mr. Kenneth Kirimi - Office of the President.

54. Mr. Kipkorir Yator - Office of the President.

55. Mr. Julius Masai - Office of the President.

56. Mr. Charles Yator - Office of the President.

57. Mr. Stephen Sang - Office of the President.

58. Mr. Pius Barasa - Office of the President.

59. Mr. Stephen Sugut - Office of the President.

60. Mr. Noah Tanui - Office of the President.

61. Mr. James Wanjau - Office of the President.

62. Mr. Amos Labatt - Office of the President.

63. Mr. Paul Kipchumba - Office of the President.

64. Mr. Fredrick Imo - Office of the President.

65. Mr. Harun Chelagat - Office of the President.

66. Mr. Joachim Kibor - Office of the President.

67. Mr. James Kithuka - Office of the President.

68. Mr. John Lokorio - Presidential Press Unit.

69. Mr. Charles Mathenge - Technical Officer, Presidential Press Unit.

70. Mr. Abdullah Tairara - Technical Officer, Presidential Press Unit.

71. Mr. Alfred Njeru - Cameraman, Presidential Press Unit.

72. Mr. John Chiambe - Soundman, Presidential Press Unit.

73. Mr. Salim Mohammed - TV/Radio Commentator, Presidential Press Unit.

74. Mr. John Mwangi - Producer, Presidential Press Unit.

75. Mr. Hosea Mukuru - Principal Technical Manager, Presidential Press Unit.

76. Miss. Judith Ngunia - Film Editor, Presidential Press Unit.

77. Mr. Joseph Rotich - Presidential Press Unit.

78. Mr. Harry Karisa - Radio/TV Commentator, Presidential Press Unit.

79. Miss Zarina Kasu - Reporter, Presidential Press Unit.

EMBASSY OF THE
REPUBLIC OF KENYA
WASHINGTON, D.C.

80. Mr. Solomon Kipsang - Photographer, Presidential Press Unit.

81. Mr. Julius Mbogo - Soundman, Presidential Press Unit.

82. Mr. Emmanuel Okoth - Cameraman, Kenya Newsreel.

83. Mr. James Wachira - Soundman, Kenya Newsreel.

84. Mr. J. arap Bett - Kenya Post and Telecommunications Corporation.

HERE PRIVATELY

1. Hon. Kones, M.P.

2. Hon. Lalampaa, M.P.

3. Hon. Bulyaar, M.P.

4. James and Edith Gitau

5. James and Faith Mathenge

6. Chris Malavu

7. James Mageria

8. Godfrey Kavuma

DON A.1.6.12.2004

RECORD OF THE PROCEEDINGS OF THE PARLIAMENTARY SELECT COMMITTEE MEETING ON THE DEATH OF DR. OUKO HELD ON MONDAY, 6TH DECEMBER, 2004, AT THE OLD CHAMBERS

MEMBERS PRESENT

The Hon. G. Sungu, MP - Chairman

The Hon. A. Abdalla, MP
The Hon. J. Khamisi, MP
The Hon. R.B.S. Wanjala, MP
The Hon. K. Kilonzo, MP
The Hon. S.C. Moroto, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. M. Werunga	-	Deputy Clerk
Mrs. S. Kioko	-	First Clerk Assistant
Mr. N. Emejen	-	Third Clerk Assistant
Mr. R. Tiampati	-	Third Clerk Assistant
Mr. Amolo	-	Third Clerk Assistant

POLICE INVESTIGATORS

Mr. G. Mbuvi	-	Senior Superintendent of Police
Mr. Clement Dewa	-	Superintendent

OFFICE OF DIRECTOR OF PROSECUTIONS

Mr. Oriri-Onyango	-	Assistant Deputy Public Prosecutor

(The Committee assembled at 3.10 p.m.)

[The Acting Chairman (Mr. Khamisi) introduced himself and other Members of the Committee]

Mr. Chairman: I think we are now ready to start. I want to start by thanking the hon. Members who are present, Mr. Oraro and his team. Mr. Leshore might join us shortly. Mr. Wanjala is out shortly and he will join us. Before we start, let me just go through a normal formality we do in Parliament.

[Mr. Chairman]

I will read out to you some rules. I would like to appraise the witness before us on the modalities and the law of Parliament relating to his appearance and the evidence he will give.

All witnesses appearing before us are doing so pursuant to the provisions of the National Assembly Powers and Privileges Act Cap.6 Laws of Kenya. The following are the requirements of the law on witnesses and their evidence:

(i) The Committee has the power to order your attendance now and in future. Your failure to attend would constitute an offence punishable before a court of law.
(ii) All witnesses may give their evidence on oath. The oath would be administered by the Secretary of the Committee.
(iii) Should the evidence given be found for any reasons to be false or a lie then, that would constitute an offence punishable before a court of law.
(iv) Should any witness or anybody else attempt to influence any hon. Member of this Committee or the Secretariat by inducements, for whatever reasons, to gain favour, influence or to stop the proceedings, if detected, would constitute an offence punishable before a court of law.
(v) All witnesses and the evidence given here are not open for any questioning by any other authority at any other place and may not be repeated by the witness outside this sitting. Should it be detected that a witness is being subjected to harassment so as to divulge the evidence or inducements have been given to witnesses, members of the Committee or the Secretariat, to procure the same then, the perpetrators of such activities will be committing an offence punishable before the law.

I want to add that some of those rules have been overtaken because we are associating with the public. Mr. Oraro, you will now be sworn in by the Secretary of the Committee.

Mr. Ojiambo: Mr. Chairman, Sir, before the witness is sworn in, could I just make a statement?

Mr. Chairman: well, we do not have a witness until he is sworn in. If he is not sworn in, then he is not a witness before us.

Mr. Ojiambo: That is fair enough.

Mr. Chairman: Welcome, Mr. Oraro!

Mr. Oraro: Thank you, Mr. Chairman, Sir.

(Mr. Oraro was sworn in)

Mr. Chairman: You will hold your horses. I gather that you are accompanied by counsel. It is a good idea that you introduce them so that we officially know who they are.

Mr. Oraro: Mr. Chairman, Sir, I am accompanied by my counsel, who are also my colleagues and friend. With your permission, I will request Mr. Fred Ojiambo to introduce them.

Mr. Ojiambo: Mr. Chairman, Sir, before you today with Mr. Oraro, I appear with Mr. Waweru Gatonye who is seated to my left hand side and Mr. John Ougo, who is seated to my right hand side. My names are Fred Ojiambo.

Mr. Chairman: Before you start, I want to take this opportunity, on behalf of myself, the Members of this Committee and Parliament to welcome you to Parliament. I know there has been a lot of things said and done with respect to some of the evidence which has been given to this Committee with respect to some of the things which may have happened. I want to state the fact that the Committee does not necessarily believe everything it hears. The unfortunate thing is that these things are said in public and therefore, one can well understand your concern because you are a prominent advocate apart from being my neighbour and of course, your potential client. Therefore, I would like to say from the outset that we want to hear from your side. The Committee is only looking for help from you. We are understandably engaged in a very difficult matter; investigation regarding the death a very prominent son of Kenya. That was somebody who was your client and I believe your friend. I know that you are more than willing to help us. However, if unpalatable things have been said against you, I think this will be your day in which you can rebut some of them. Because we do not have penal powers, we will make recommendations accordingly. I honestly believe that you will give us justice today. I also want to welcome the other advocates to Parliament. In line with our practice which has been evolving, I will allow Mr. Ojiambo to make his opening statement. If you have any written statement, you can give it to the Committee so that it can look at it as you go on.

Mr. Oraro: Thank you, Mr. Chairman. I am very grateful.

Mr. Ojiambo: Thank you, Mr. Chairman, Sir, for those words. We are grateful that you have allowed us to be here to accompany our client in this matter. Let me just begin by saying that our client has at all times been ready, willing and indeed, able to appear before you to state what he will state today. Our client has been willing and able to be cross-examined by this Committee and, indeed, by anybody concerning the matters which he will talk to you about. I dare say that he has never been asked make a statement to this day regarding the matter by anyone, but he is willing in any case to speak very honestly. Our client's attendance here is full. In other words, he is not here in a limited sense. He will be willing to be cross-examined on anything that anyone wants to ask, so that this matter which had dogged him for so long might be brought to an end. He is willing to be asked as many questions as you wish. He will be willing to respond to them. As the Chairman knows, there have been court proceedings. In fact, there extant court proceedings relating to the establishment of the principles whether a person has a right to cross-examine witnesses appearing before this Committee. Those are still extant and due to be heard. But notwithstanding that, our client is here to present what he knows about the events into which your Committee is investigating and let himself be cross-examined as the Chair or any Member of the Committee might want. With those words, I would just like to present him to you.

Mr. Chairman: Thank you very much, Mr. Ojiambo. I do not know whether any hon. Member has got any comment to make. There are no comments.

Yes, Mr. Oriri-Onyango!

Mr. Oriri-Onyango: Thank you very much, Mr. Chairman, Sir. I appreciate that the witness has appeared before this Committee accompanied by his counsel and my learned friend, Mr. Ojiambo, has outlined the areas his client to give evidence before the Committee. He has also touched on the issue of court proceedings. As the Committee is aware, and I have brought it to its attention that the witness before you has taken the Committee and the Speaker of the National Assembly to court on a matter which came during the hearing of this inquiry; a matter which I believe will also form part of the questions the Committee will put to him. I would like to ascertain from his lawyer whether they are still proceeding with that matter which, on behalf of the Committee, I have put some preliminary points of objection and is pending hearing. I think the matter was referred to the Chief Justice for direction. Up to now, we have not known whether it is going to be heard or not. However, I would like to ascertain from my learned friend, Mr. Ojiambo, whether they are still pursuing that case. If so, then the Standing Order No.74 of this august House, which I will read with the permission of the Chairman, says:-

> "No Member shall refer to any particular matter which is *sub judice* or to any matter which is in its nature secret."

I believe that the questions you will put to the witness will touch on part of this case. So, the Committee will be going against the Standing Orders of this House if this witness will give evidence on those matters. I would like to know from my learned friend, Mr. Ojiambo, if they are still pursuing the matter in court. If they have withdrawn the case, it is good. We can proceed without being caught up with this Standing Order. Before that, I have also learnt from reliable sources that there is another case which the witness has filed although it has not come to my attention. I learnt this from my friends and colleagues at the Attorney-General's Chambers that an order was served on the Attorney-General. In fact, I was supposed to be in court this afternoon, but unfortunately I was away in Nakuru. I did not reach here on time. That is all, Mr. Chairman, Sir.

Mr. Chairman: I think Mr. Ojiambo can respond to that.

Mr. Ojiambo: Thank you very much, Mr. Chairman, Sir. We are well aware of Standing Order No.74. We know that it does not all impeach on the case which is now before the court. Maybe, what Mr. Oriri-Onyango does not know is that the matter which is before the court now is one which seeks to get a court ruling on a principle as to whether in a Committee such as this one, a party who is adversely mentioned has the right to cross-examine the witness or not. That is the matter which will continue. But as the Chairman and the Members of the Committee will recall, there were two rights which we sought before this Committee. One was to cross-examine witnesses and the second one was to appear.

The second right is met by your Committee giving us summons to appear before it. So, we are here because we already have been given the right to appear since we wanted to

appear and give our side of the story. But the issue of cross-examination still remains. That does not stop this Committee even with the existence of Standing Order No.74 from continuing and taking his evidence. We have considered these things---

Mr. Chairman: You have made your point.

Mr. Ojiambo: Thank you.

Mr. Werunga: Thank you, Mr. Chairman, Sir. From our side, as the advisers of the Speaker and the House on matters of procedure, I indeed, want to confirm that we are aware of what Mr. Ojiambo has said. Our advise to the Committee will be that as long as we steer clear the question of cross-examination, then it can proceed.

Mr. Chairman: Thank you for that advice. I will agree with the Deputy Clerk of the National Assembly as well the counsel for Mr. Oraro, that this Parliament is subject to the rule of *sub judice* so long as we steer away from the issue that you are pursuing, which I believe is your client's legal right. He has got a right to go to court to seek redress if he things that his rights have been infringed. That is a matter of principle with regard to cross-examination, which is actually a major issue. I notice here in the Press that your learned friend, former Member of Parliament, Mr. James Orengo, did quite a bit on it. I think that would be *sub judice*. He really went at it, hammer, thong and nails. But we are ready to take evidence from you so long as you do not touch on the issue of cross-examination which is before the court. We can take that later on. I believe that once we go through with this system and everything exhausted, you may well wish to withdraw that matter from court.

Mr. Ojiambo: Well, we will see about that, Mr. Chairman. We will take your advice.

Mr. Chairman: I was made to understand that you had some statement you want to start with.

Mr. Oraro: Mr. Chairman, Sir, as no statement has been taken from me hitherto, and there have been many issues which have been reported about me in the daily Press, I thought that it would be right for me to respond to them and provide you with any information I have in connection with those issues. After I presented my statement---

Mr. Chairman: The best way to proceed is for you to produce your statement formally to the Committee. We will mark it as an exhibit and then ask questions thereafter. But if you have opening statement you want to make, you can make it. You appear here as a friend of the Committee because we are seeking help from you.

Mr. Oraro: Thank you.

Mr. K. Kilonzo: Thank you, Mr. Chairman, Sir. I want to seek a clarification. The witness is just before us and from the ruling which you have made, I am sure that as we proceed hearing evidence from the him, I will want to ask him questions touching on the

evidence of Mr. Mukwana, which in any case will be touching on cross-examination. How will we steer away from it? Maybe, Mr. Ojiambo should give us direction on that. Are we not going to be limited in so far as the questions we will ask and this witness? When we start talking about cross-examination, we must also be very clear on what we are talking about from the beginning.

Mr. Chairman: Maybe, my ruling did not come out clearly. I said that so long as what we are going to do will not touch on the matters in court, we will not be out of order. Nevertheless, may I hear your response, Mr. Ojiambo?

Mr. Ojiambo: Mr. Chairman, Sir, I think your ruling, in my humble view, is absolutely right. I do not think you should be stopped from asking any questions relating to Mr. Mukwana's evidence. That will not in anyway offend the proceedings before court. What we are seeking to do in court is to establish a principle as to whether cross-examination should be allowed or should not be allowed. You can ask questions about Mr. Mukwana's evidence if you so wish or any other evidence which has been given before you concerning our client.

Mr. Oriri-Onyango: Mr. Chairman, Sir, I think my learned friend, Mr. Ojiambo, is right. But in the first case, he is seeking orders barring the police from investigating his client for the offence of perjury. I think that cross-examination is part of the orders he needs, but the most important one was that he should not be investigated by the police for the offence of perjury which Mr. Mukwana is now in for.

End A

Mr. Khamisi: No, I think Mr. Chairman, we need to make some progress here and I think the matters that have been brought before this Committee are very relevant both by Mr. Ojiambo and Mr. Oriri. We want a clarification as to whether that part of perjury is also inadmissible in as far as these deliberations are concerned.

Mr. Chairman: We only seek his view because he is counsel for our witness but that is for us to decide on this side of the table and Mr. Oriri can advice us on that. The matter you have raised is a weighty issue. Maybe your comment is necessary now.

Mr. Ojiambo: Mr. Chairman, as we have stated, the evidence of Mr. Mukhwana in totality can be addressed here. I do not think it will in any way offend or impeach on the application which is before the court. The applications, we have said, is not deal to with evidence of specific witnesses. It is to deal with the principle as to whether the party who is adversely mentioned can or does not have a right of cross-examination. That is all and I think we can carry on. I do not think we will in any way offend that rule of *sub judice*.

Mr. Chairman: Mr. Oriri, do you want to say something?

Mr. Oriri-Onyango: No, I will not respond to it. Let us proceed provided the members of the Committee will ask any question to the witness touching not really on the evidence of Mukhwana but the evidence of what Mukhwana said about the witness. That one will not offend Standing Order No.74 and then I do not have any problem.

Mr. Werunga: Mr. Chairman, I just need to reiterate that as far as we are concerned, I think Mr. Ojiambo has captured the gist of what is before the court. So, any other matters I think can be addressed by the Committee.

Mr. Chairman: I think then we should make progress. I think I need to come back to Mr. Oraro. You were in the process of producing this statement to us. Would you wish to produce it formally?

Mr. Oraro: Mr. Chairman, may I formally produce the statement before you and the attachments to those statements from part of my statement to this Committee and supporting evidence which I would like to produce for this Committee. I am at your discretion whether you like me to read it out.

Mr. Chairman: First of all, I think the best thing is to allow Committee Members to look at it. Mr. Idewa, you will mark as PSC Ouko 42.

Mr. Idewa: Yes.

Mr. Chairman: Thank you. We are grateful for your generosity because we are used to making these copies ourselves but apparently we have enough copies here. I do believe you have made a statement before to investigators?

Mr. Oraro: Not at all, Mr. Chairman. The only statement I made was to Mr. Troon and to the CID during the Commission. I have not been approached nor notified of any issue by any member of this Committee, the investigating division.

Mr. Chairman: Then I think the best way to proceed is that since you have given us a voluminous statement here with attachments is to allow you to read your statement up to the end of it and then give the Committee time to go through it so that they can ask questions because the Committee may be ambushed with some of the issues that are raising that may be new to them. Proceed!

Mr. Oraro: Mr. Chairman, my statement reads:-

> "Mr. Chairman and members of the Committee, I appreciate this opportunity to appear and testify before your Committee. As you know, I formally requested that I be allowed to come early this year. However, I regret that a similar opportunity has not been granted to cross-examine the witnesses who have given evidence as far back---

Mr. Chairman: Are we now not going into the field of prejudice?

Mr. Oraro: No, Mr. Chairman, that is just the only comment. I am not addressing the issue. It is a very short statement.

Mr. Chairman: Well, I believe your statement is only four pages long. Is it not?'

Mr. Oraro: Yes.

Mr. Chairman: Then proceed to read it. We owe you this opportunity really to say something because some things have been said about you that may not be so palatable to many people. Please proceed. This is Parliament; this is your House!

Mr. Oraro: Thank you Mr. Chairman.

> "Cross-examining the witness who have given evidence adverse to me and whose truth has never been tested as a result. That notwithstanding, in deference to this Committee, I have nonetheless come. As no statement has been recorded from me, I have taken the liberty to prepare one. I wish to present it after which I will be happy to be cross-examined both by the Committee or on behalf and any of the persons who gave evidence against me.

Now, my statement is as follows:

> "I am an advocate of the High Court of Kenya practising under the firm name of Oraro and Company Advocates together with my other partners. At all times, hon. Dr. Robert John Ouko deceased was my client and a friend. After his death, I continued to act for his family and, indeed, represented the family at the Judicial Commission led by the current Chief Justice E. Gicheru. The last time I saw Dr. Ouko was on 5th February 1990 when he called in my offices at about 11.00 a.m. He had just come from the State

House to present the Canadian High Commissioner. This was reported in the daily newspapers the following days. Copies are attached hereto and marked "A". Before the Gicheru Commission, Ambassador Bethuel Kiplagat produced a copy of the programme of the day before they went to State House, that was the day they arrived from the US in which Dr. Ouko had indicated in his handwriting that they would be required to visit the State House the following day for that purpose. Attached hereto and marked "B". The purpose of Dr. Ouko's visit to my office was to follow up on a transaction which I was handling on his behalf, which included the incorporation of a company and a transfer of land to that company to be financed by Agricultural Finance Corporation (AFC). The documents are available if you require them. While in my office, I asked him about his trip to the United States from which he had recently returned. The only significant comment he made was that the United States was concerned about corruption in the Government, particulary by those close to the then President. He made no mention of any threat to his life nor did he deposit or leave any money with me or my firm as Mbajah suggested before this Committee. It has been alleged by Mbajah and two other witnesses that they were told that I was in two disparate groups which picked up Dr. Ouko on the morning he had disappeared on the 13th February 1990. This is unmitigated lie.

On the 12th February 1990, I was in my office and worked the whole day. I left my office at 7.30 p.m. or thereabouts and went to a gym known as Natilas. I personally booked myself in the gym and left at around 8.30 p.m. for my house. I was there until the next morning when I came to work. An extract from the register of the club where I and other persons who had attended the gym that evening recorded in each person's handwriting is attached hereto and marked "C". The original can easily be traced from the gym. Mr. Mbaja did not appear before the Gicheru Commission or in any of the investigations but has taken the opportunity to appear before you to repeat the false and malicious allegations knowing well that I had not only sued him but obtained damages and an injunction restraining him from repeating the defamation against me. Attached hereto is a copy of the judgement which I have obtained in that case marked "D". Mbajah's statements are false in their entirety and they have been fully dealt with in the case HCC No.85 of 1992. Regrettably, he has continued to repeat the same enjoying your privilege and in defiance of the court order which specifically prohibits him from repeating the obvious lies.

To show beyond any doubt that Mbajah is a liar without boundaries, I attach hereto a statement made by Eston Barack Mbajah to the Scotland Yard and duly signed by him on 31st March 1990 over one year before the affidavit in which he implicates me. In it, he states at page 298 that he did not speak to the late Dr. Ouko either personally or by telephone during this time and the last time he spoke to him was before he went to America. The statement is marked "E". Yet before you he claims that Dr. Ouko went to see him from my office on 5th February 1990. Up to now, I have not been approached by any of your investigators to record my account of my movements at that time. Such spurious and false allegations have been entertained. Had that been done, the truth would have been easily ascertained.

According to press reports of the proceedings of this Committee, it was falsely alleged by one., Daniel Mburu Mukhwana that the son of Dr. Ouko's watchman one, Amos Agalo now deceased, had made a statement to the Scotland Yard to the effect that his father Zablon Obonyo Agalo had told him that I was one of the persons who picked up Dr. Ouko from his home and that it was because Obonyo was denying this fact that he was charged with perjury. The fact is that at the Gicheru Commission I was the person who cross-examined Amos Ogalo, which showed that he neither knew that the Minister had left in the morning he disappeared nor talked to his father about it. It is needless to say he conceded that he was lying. Further, it was through my cross-examination that the many lies by the watchman were exposed which led to his being charged with perjury. Copies of their evidence and my cross-examination, both Amos Ogalo and Obonyo are attached here and marked "E". Long and short, is that Mukhwana was another unmitigated liar this time relying on hearsay. Mr. Mukhwana has also stated that he had been told that Dr. Ouko's chief campaigner, Mr. James K'Oyoo and I lured Dr. Ouko to his killers.

In light of what I have said, this was also a tissue of lies. The same Mukhwana later returned to this Committee and falsely alleged that I had promised to bribe him and for that reason he came to me in the company of one, K'Oyoo and swore a false affidavit. Mukhwana's own conduct should show you what kind of witness he is. Attached hereto is an affidavit from the advocate who interviewed him and confirmed that what he wanted to state was duly reduced in writing and after it had been read back to him and he confirmed its accuracy, he signed it. A further affidavit by Mr. Mukhwana through his own advocate is also attached. He did not disclose to the Committee the existence of its contents. That is all I wish to state in connection with the information I have read concerning me from this Committee. Thank you".

Mr. Chairman: Thank you, Mr. Oraro. Any comments from any of the Members?

Mr. Khamisi: I think for just record purposes, I would like Mr. Oraro to just confirm two issues here. First of all, the location of his offices and secondly, the location of this club Notilas.

Mr. Oraro: My offices at that time were at Jubilee Place at that time and Notilas is in Industrial Area near South B in Nairobi.

Mr. Oriri-Onyango: Can you confirm to this Committee that besides this statement you have made on your own voluntarily as you say nobody came to ask you to record a statement, you also recorded a statement with Troon during the initial investigation of the disappearance and death of Dr. Ouko? Do you know the number of statements you recorded?

Mr. Oraro: One.

Mr. Chairman: Mr. Oriri, I thought we agreed that we will sit on these documents since we will need to look at the attachments so that Members can have some questions to ask.

Mr. Oriri-Onyango: Mr. Chairman, I just wanted to confirm if he recorded any other statements so that when we are looking a long way into this one, you can take them into totality.

Mr. Chairman: Any other comments of a similar nature before we release Mr. Oraro? Well, I think Members have generally agreed that we will take the statement as part of the record. It is on HANSARD and I think the Press will give it equal prominence as they gave those allegations against you so that they can even out. The Committee intends to adjourn until we can then look through this. Is it possible for us to meet tomorrow either here or at County Hall at 10.00 a.m. if it is convenient for you?

Mr. Oraro: Mr. Chairman, I do not have my diary here but all I can say is that if I have any engagement I will adjourn it. The only disadvantage which you might have is that I might be slightly delayed but I will be here.

Mr. Chairman: 10.00 a.m. is a reasonable time because that will allow you to go to court and maybe put off some your engagements.

Mr. Oraro: My learned friends here are telling me 10.30 a.m. will be reasonable.

Mr. Chairman: That is fine. As you saw there is always some delay. I mean we are more than willing to bend over backwards so that we can accommodate you knowing that you are also busy. So, I think we can adjourn until tomorrow. Thank you very much for coming. May God bless you.

Mr. Oraro: Thank you, Mr. Chairman. We are grateful.
I think we have another witness, Mr. Khwatenge. We have not adjourned yet.

Mr. Chairman: Hon. Members, we have a witness, Mr. James Lando Khwatenge Is that your name?

Mr. Khwatenge: That is my name.

(The Chairman introduced himself and Members of his Committee)

(Mr. James Lando Khwatenge sworn in)

Mr. Chairman: Thank you and take your seat. We shall straightaway go to the questions. I will start from hon. Wanjala to lead you in your evidence.

Mr. Wanjala: Thank you, Mr. Chairman. What are your full names?

Mr. Khwatenge: My full names are James Lando Khwatenge.

Mr. Wanjala: What do you do for a living?

Mr. Khwatenge: I am an ex-Inspector of the Police formerly in the Special Branch.

Mr. Wanjala: Have you retired?

Mr. Khwatenge: No, I was dismissed from the force.

Mr. Wanjala: When were you dismissed?

Mr. Khwatenge: I was dismissed in December 1992 for stating that hon. Mwai Kibaki was a better President than hon. Daniel Toroitich arap Moi. Those were the circumstances that led to my dismissal from the police force.

Mr. Chairman: You are not serious. At that time, was Moi the President of the Republic?

Mr. Khwatenge: At that time, the Head of State was Daniel Toroitich arap Moi. He was standing for presidential elections on a KANU ticket and hon. Emilio Mwai---

Mr. Chairman: What you meant was that hon. Mwai Kibaki would make a better President than moi?

Mr. Khwatenge: Yes, I expressed those sentiments and they are the ones which led to my dismissal from the force.

Mr. Wanjala: Publicly?

Mr. Khwatenge: It was at the police canteen at Kasarani Police Lines in Nakuru.

Mr. Wanjala: Under what circumstances?

Mr. Khwatenge: I was not sober and---

(Laughter)

I thought we were just discussing something over a drink with two other inspectors. One was quiet and he did not talk but one was shouting: *"Moi Juu. KANU juu"*. I was supporting: *"DP Juu. Kibaki Juu.* So, this one who was not talking left and rung my bosses.

Mr. Kiema Kilonzo: So, we could also assume that your judgement was influenced by the drink you were taking?

(Laughter)

Mr. Khwatenge: Yes, remembering the past, when I used to get drunk I used to be forceful in my discussions and whatever but thanks God I stopped drinking alcohol on 4th April 1994.

END B.

Mr. Wanjala: When were you recruited into the police force?

Mr. Kwatenge: I went to Kiganjo on 27th November, 1982 as a recruit constable. I stayed there for six months and passed out on 27th May, 1983.

Mr. Wanjala: Now, after your initial training in the police force, where were you posted?

Mr. Kwatenge: I was posted to West Pokot. But before going to West Pokot, I had to undergo GSU training at Magadi. It was a paramilitary orientation course.

Mr. Wanjala: When did you join the Special Branch, which is now known as the NSIS?

Mr. Kwatenge: I joined the Special Branch on 1st September, 1984.

Mr. Wanjala: When were you promoted to the rank of Inspector of Police in the Special Branch?

Mr. Kwatenge: I underwent an Inspectors' course from around 20th February, 1988 up to 18th June, 1988. On 1st July, 1988 I was appointed Acting Inspector of Police and sometime in 1990 while working in Mandera, I was confirmed as an Inspector of Police.

Mr. Wanjala: In August, 1991, where were you working and as what?

Mr. Kwatenge: In August, 1991, I was transferred from the DSIO's Office in Eldoret to the one in Nakuru.

Mr. Wanjala: As what?

Mr. Kwatenge: As an Inspector of police.

Mr. Wanjala: Now, in your statement in page 2, the first paragraph, you talk of a party in Nakuru. Can you tell the Committee what type of party it was and what might have transpired during the course of the said party?

Mr. Kwatenge: During the said party--- This was a farewell party in honour of Senior Superintendent Sang. He was leaving Nakuru for Kakamega as the Deputy Provincial Security Intelligence Officer. His Deputy who was a Superintendent, but whom I have forgotten his name, was being transferred to Kisii as the DSIO. In their place, we had Superintended Frederick Kibet Rono who was coming in as the DSIO, and I was also going in as an Inspector of Police. So, being an Inspector of Police I could not become Mr. Rono's deputy. One of the chief inspectors in Nakuru by the name Kerich was elevated to be the Deputy DSIO.

Mr. Chairman: You have not answered the question. What transpired at the party?

Mr. Kwatenge: Sorry, I did not get you. During the party---

Mr. Wanjala: And what type of party was that?

Mr. Kwatenge: It was a farewell party for Mr. Sang. During that party the guest of honour was to be Mr. Jonah Anguka, the then District Commissioner of Nakuru. He did not turn up but was represented by John Abduba, the then DO 1, Nakuru. During the party, normal speeches were given. When it came to the turn of Mr. Sang to talk, he noted that Mr. John Anguka was not present. So, he turned to Mr. Abduba who was seated next to him and told him: "I notice that the DC has not come. *Labda ni ile maneno watu wanazungumza juu yake."* At that time there was a lot of information that Mr. Anguka was connected to the death of hon. Ouko. Then he went on and told Mr. Abduba: "Go and tell him not to worry because I have already---" I cannot put it in the exact words, but it was sort of reassuring him that he had covered Mr. Anguka properly. Then he added by saying: *"Si unajua mimi ni nani?"* He said that statement in Kiswahili.

Mr. Wanjala: From that speech of Mr. Sang to Mr. Abduba, what did you conclude in relation to your intelligence reports?

Mr. Kwatenge: I found it odd because Mr. Sang was not just that rookie intelligence officer or anything. He was a cream, and our training was that you do not volunteer such information. So, I saw something fishy. Incidentally, Nakuru is one of the busiest stations in intelligence. I was assigned duties to assist the DSIO in processing intelligence. This gave me a chance to go through intelligence reports in the district. I used that opportunity to try and find out *amemkinga namna gani,* if I may use swahili words. He had assured him that we as going to cover him.

Mr. Wanjala: So?

Mr. Kwatenge: So, when I went through the intelligence reports, I found three unique kinds of intelligence which do not just happen. There were these---

w: You may refer to your statement on page 2.

Mr. Kwatenge: I found three types of intelligence reports which were unique. The first one was saying that a group of prominent luo personalities have been allocated special duties by the former President and the two names I can recall were Jonah Anguka and Mr. Ezekiah Oyugi. The operation was: *Kwenda kuondoa madoadoa* in the luo community, which was perceived to be a clean one, except one or two dirty ones which was made by the late Dr. Robert Ouko. During that time, the proper english word is McArthurism. During that time there was a lot of McArthurism and if they wanted to remove you, they would tell people from your area: Area *hiyo ni safi lakini ile madoadoa ya uchafu---* You understand for swahili, if your shirt is clean and *ina madoadoa.* So, *madoadoa* is Kwatenge and So-and-so, for example. So, *enda ondoa tu hiyo peke yake.*

Mr. Chairman: We understand what you mean. He is talking about the era of McArthur at the time when Communism was a crime in the United States of America. If you were pointed as a Communist, then you would be hounded out of office and so on. It happened in Kenya, and we understand. Please, proceed.

Mr. Kwatenge: Mr. Anguka knew that Dr. Ouko would be eliminated and he did not want to be party to his killing, knowing that the killers could be known later. He, therefore, pretended to be having an urgent matter which he had to attend to personally. But, he could not annoy Mr. Moi and the other people who were to carry out the elimination. He gave his official car, a driver and bodyguard to proceed to Kisumu and report to Mr. Ezekiah Oyugi. As the Oyugi group were preparing to eliminate Dr. Ouko, he approached the same group to intervene and convince the President that he was as bad as he was being made to believe. So, on the day they picked him up at--- What I am trying to say before I continue reading is that Dr. Ouko was trying to get to the President according to those reports and the President had switched him off. So, Dr. Ouko picked a few prominent luos and told them: "You go and tell Mzee that the reports he is getting--- He is being misadvised." He did not know that these people were able agents. They were assuring him: *Tunaenda kuambia Mzee.* But at the same time they had other missions which were contrary to what Dr. Ouko may have thought. So, on the day they---

Mr. Chairman: Do you have any of those people's names?

Mr. Kwatenge: I can only remember two people.

Mr. Chairman: The ones you have named?

Mr. Kwatenge: Yes, Mr. Chairman, Sir.

Mr. Chairman: Well, proceed.

Mr. Kwatenge: So, on the day they picked him at his Koru farm, he was supposed to have dismissed everybody. Let me put it in verbatim here. Dr. Ouko wanted these prominent luos to approach the President. These prominent luos told Ouko that--- You know during those days, if Kwatenge was marked, for example, even being seen with him was a crime. So, these people told Dr. Ouko that, "we do not want to be seen with you because if were seen with you, by the time we reach State House it will have been known that we are also blacklist and we cannot reach there." So, they told him: "The day we will make consultations with you, we do not want people to see us, because even your workers could be paid-up agents." That is why according to those reports, Dr. Ouko dismissed his workers on that evening. The told them: Now you can go. He gave them some money plus *ingine kidogo ya chai.* But one lady called Selina--- You know, we Africans when we have money *tunasherehekea sana.* So, that time he called a few friends and then they tried to make a small gathering. When she went out is when she saw a white-like looking vehicle. According to those reports, it is only by God's grace that--- *Mkubwa wako akikuambia*, "you go", you cannot just remain. It is an order. So, she was around and that is why she found out that a white vehicle had come. On Anguka's part, checked with the records in his office and--- You know, during those days public gatherings and meetings used to be licensed by the DC. So, it was Anguka's office that used to give these public licences and whatever. He knew where certain public meetings were on that evening. According to those reports is that, he made a lap of honour. He went to one meeting at around 9 p.m. and then went to another one at 3 p.m. and then went to a third one at around 3 a.m.

Mr. Chairman: Mr. Kwatenge, are these serious intelligence reports, because we have evidence that Mr. Anguka had gone to see the former MP, Eric Bommet in Ongata Rongai area?

Mr. Kwatenge: That is why I said I found three types of funny intelligence reports. After I finish this paragraph, I will assess it as an intelligence officer for *makosa ile ilikuweko* and whatever. You will find that the assurances that Mr. Sang was assuring--- That is, the re-assurance that he had given.

Mr. Oriri-Onyango: Mr. Chairman, Sir, just before the witness goes further, as an intelligence officer had you an access to these intelligence reports in that office at your rank? You can also tell the Committee if you knew how these intelligence reports were compiled.

Mr. Kwatenge: During Kenyatta's and Moi's time Nakuru could be called the capital of intelligence gathering. That is political activities in that place. Two, if you look at the number of intelligence officers who were in Nakuru during Kenyatta's and Moi's time, comparing that number--- Sorry, I cannot say how many they were because I think that is a classified information. But if you compare that number, it may be equal to two or three different districts. What I am trying to say is that in Nakuru there was so much gathering of intelligence and whatever, and when it comes to the processing of intelligence, that is the duty of a DSIO and Deputy DSIO. But within the Special Branch, any person from Acting Inspector and above could be allocated those duties, and it happened so in Nakuru, because the DSIO has so many officers. So, when he processed the reports he had to appoint one of the inspectors to assist him and the deputy DSIO. That person happened to be me. So, I had access to all files except one. This file was the one which was dealing with staff matters; leave transfers, discipline and whatever. But I could ask for any other file within the office and peruse it without raising any eyebrows.

Mr. Oriri-Onyango: So, there was file dealing with Dr. Ouko's disappearance?

Mr. Kwatenge: No. In intelligence, many people think that there is a file on specific people and whatever. There are just files which are given different classifications. Depending on the seriousness of the matter, I could place you in the secret or top secret file, for example. But there was no file on a particular person.

Mr. Wanjala: Please, continue.

Mr. Kwatenge: These reports that were trying to exonerate Mr. Anguka were suspicious because, one, almost all were in the usual IR file. There is a file that you just fill in and write. It was in the usual file. There is a book called SB Directive which shows the intelligence on how to perform. It is like the Police Force Standing Orders.

Mr. Chairman: If you are going into an area which might compromise our security system, I will rule you out of order. You do not have to explain in that much detail, because this is a country which needs protection. So, just limit yourself to the facts rather than the methods of operation.

Mr. Kwatenge: I am aware of that. I am talking of an organisation that is defunct.

Mr. Chairman: Since you never joined the new one, you do not know whether those things are still going on or not. So, what I am saying as a son of this country is that we do not want to know how intelligence works in details in public, because that might compromise our security. You know we are leaving in a dangerous world these days. Proceed, please.

Mr. Kwatenge: I stand corrected. But, the classification of the report of a member of Provincial Administration in his area of jurisdiction; a PC and DC, used to be graded differently from the way this one was graded. It was given in a normal report file instead of being given a higher---

Mr. Chairman: In order words, almost everybody had access to it.

Mr. Kwatenge: Even a constable could get that file if he wanted to, which was not usual.

Mr. Chairman: And that meant, of course, that they wanted everybody to know so that they could pass the rumour around that Mr. Anguka was not involved?

Mr. Kwatenge: It could be. Why was it that, that day intelligence agents were placed in all strategic places? There are those situation, for example, where people are meeting because of a barrier or whatever. You do not need to take there and agent to go and listen to the way those people will--- That is not of security interest. But why place an agent there who is going to say: "I saw the DC there?."

END C

Mr. Kwatenge: And then between the time when they--- I will skip some of the topics as a result of the Chairman's advice.

Mr. Chairman: What you need to tell us is the manner in which Dr. Ouko was removed from his home and who did so according to the intelligence reports.

Mr. Kwatenge: That I think I have covered.

Mr. Chairman: No, you have not told us up to the end. Look at the last part of the first paragraph on page three.

Mr. Kwatenge: Mr. Chairman, Sir, you know when you are on this seat you become nervous. I will read on:

> "On Mr. Anguka's part, he checked the records in his office and he knew that those who had been licensed to have public functions that night when Dr. Ouko was to be picked up and made sure that he visited functions and parties to build up his alibi. If you were ever mentioned in the matter he could easily refer to the parties and the functions he attended during that night and no one could associate him with the elimination group. In actual fact he did not have an urgent matter to attend to as he had indicated just to avoid the elimination group in case they were found out. In the farm, Dr. Ouko went in, but found strangers and it is then that he realised that all was not well. He tried to run away but they caught up with him. That is actually the commotion that arose Ms. Selina's attention."

Mr. Chairman: So, how accurate were these reports and where would you think they were gathered?

Mr. Kwatenge: I noticed that there was a deliberate move to cover up Mr. Anguka. However, this is the only part about covering Mr. Anguka that I can say was suspect. I cannot comment on it because of the sensitivity of the matter.

Mr. Wanjala: We want to hear everything from you as evidence. There is nothing sensitive here and that is why we have invited you.

Mr. Kwatenge: Mr. Chairman, Sir, as I said earlier on, a DC in his area of jurisdiction, had a special file which was of higher grading and could not be handled by anyone in the office. If I were the DSIO at that time, I would have referred the file there. However, it was kept in the ordinary way and it was unprocedural. Secondly, why write a report about a DC when only goes to a place to say *Habari yenu?* If there was a meeting and whatever was discussed was of no interest, there is no need of using stationery to report that. However, all that was being written. Thirdly, the reports were taking longer. An intelligence officer has to indicate when he received the information and the time of writing the report. There is a provision for that. However, the reports were taking longer, for instance, a report could take two or more weeks from the time the intelligence was gathered.

[Mr. Kwatenge]

You will find that at one time I thought that the intelligence officer was sick or anything. Some where in the middle I found out that he had received the intelligence reports and he had already processed them.

Mr. Chairman: That is understandable. It was like an afterthought. Please proceed and tell us if the intelligence reports indicated whoever picked Dr. Ouko and how and using what vehicles.

Mr. Kwatenge: In my statement, I have talked about Dr. Ouko being picked twice. I will talk about the second time he was picked later on because I gathered much more proof when I was at the Provincial headquarters.

Mr. Wanjala: Now, when you were transferred to the PSIO office in Nakuru as a desk officer, please, detail to us the nature of your duties there.

Mr. Kwatenge: The nearest example I can give about a desk officer is like in journalism. The PSIO receives intelligence from a wide area and we are given each of us a topic. The PSIO cannot handle all the intelligence. The desk office handles various topics. When I was in Nakuru, I would handle criminal intelligence. I was the liaison officer with the CID. Mhe. Moroto may know because there are some crimes that are political in nature and others normal. We also used to be duty officers on a rotational basis. We could conduct morning call-ups from the districts. I was an inspector. At one time we found that when we had problems with some of the DSIOs we could tell the desk officers who were SSPs to talk to them. One time I tried to talk to Supt. Jared Kobunga. I told him that I had a problem with Supt. Francis Omwenga, the then DSIO, Iten. If I had gone to the Deputy Commissioner to report, it would not look good. So, I would talk to his peer to approach him and tell him where he was failing.

When I approached Supt. Kobunga with the view that he should talk to Supt. Omwenga, he refused. He told us that Supt. Omwenga was trying to recruit him to spy at the Provincial Headquarters. That was after he had given evidence at the Gicheru Commission. We really had problems communicating with DSIO, Supt. Francis Omwenga.

I know how he was transferred and I do not know if this Committee would want to know.

Mr. Wanjala: Of course yes. That will form part of the circumstantial evidence we need.

Mr. Kwatenge: He was transferred out of Kisumu because he was connected to Dr. Ouko's death and his continued being there was prejudicial to his safety. He was transferred to Nyahururu as the DSIO. However, as it is normal with the police force, you may be transferred and before you go several transfers take place. So by the time he was handing over in Kisumu, he was told to go to Nakuru as a desk officer. He did not like being on the desk because it involved full-time paper work *na DC hawezi kukupatia kaplot.* So, he wanted a district of his own. He approached the Deputy PSIO who was called Mr. Okemwa. They usually talked in more languages than some of us. They could tune in to another channel.

Mr. Chairman: Just say that they were both Kisii and we will understand.

Mr. Kwatenge: He wanted a district for himself and all the DSIOs in Rift Valley Province were gazetted officers. So, there was only one who was a chief Inspector in Iten. So, he was taken to Iten and that is how he ended up there.

Mr. Oriri-Onyango: Mr. Chairman, Sir, the witnesses has just attributed Mr. Omwenga to the death of Dr. Ouko. In your intelligence collection, what part did he play in the death of Dr. Ouko?

Mr. Kwatenge: It is in my statement and I am coming to that. When I told Supt. Kobunga that Mr. Omwenga is becoming difficult to handle it would look improper for an inspector to report a superintendent to the Deputy Commissioner of police, he said that he been approached by Mr. Omwenga to monitor issues connected to the Dr. Ouko's death. So, Supt. Jared Kobunga told me that Mr. Omwenga told him that he cannot associate with suspected luo murderers. He told Mr. Kobunga to go cleanse himself of Dr. Ouko's death and then report back to him (Mr. Omwenga). He made approaches to several other desk officers and later he approached me.

Mr. Omwenga once worked in one station with my father, Supt. Japheth Lando Kwatenge. He used that opportunity to get me. He would call me *kijana ya rafiki yangu.* One day when I was talking to him he told me, *"Kijana ya rafiki yangu jaribu unisikizie kama mambo yanazungumzwa hapo katika mkoa kuhusu kifo cha Ouko."* I promised him that I would assist him. I have to comment something at this juncture. I referred to someone called Barnabas Lubisya. He at that time was working in Kisumu in the Intelligence. It was in the course of this year that I met him and he is my relative. His mother is from our family, but I had never met him. So, I told him that I would assist him because of Mr. Baranabas Lubisya.

Mr. Chairman: How is Baranabas Lubisya connected to Mr. Omwenga?

Mr. Kwatenge: In the Press, it was reported that Mr. Baranabas Lubisya and another communication expert from Nyati House had been found in Justice Gicheru's room in one of the hotels in Kisumu. So, I was using Mr. Lubisya's name to try and gain Mr. Omwenga's confidence.

Mr. Chairman: Do you mean that Mr. Baranabas Lubisya is the dog handler who took Mr. Njoka, a communication expert from Nyati House?

Mr. Kwatenge: We had a section in Nyati House that was doing dirty tricks and it once came to Nakuru to mishandle some two MPs that is, hon. Muite and hon. M. Kariuki of Nakuru. What they used to do is to come to your station. They knew that if they went town they would be lynched. So, they would carry one of the intelligence officers to show them around. Mr. Lubisya, being a resident of Kisumu would tell others that those were his colleagues from the headquarters. So, I mentioned his name because I thought that would be more serious than mentioning my father.

Mr. Chairman: How did you use his name?

Mr. Kwatenge: I told Mr. Omwenga that I wanted to monitor the whole thing because I wanted to know how my cousin--- I later discovered that he is my nephew. I told him that I wanted to save my cousin.

Mr. Chairman: What did you discover?

Mr. Kwatenge: One time, a kikuyu fellow in Lugari used to extort money from people in Kisumu using a white vehicle. That time I talked to Mr. Omwenga using the radio telephone. I told him that: *Afande, nasikia kwamba wale watu ambao walikuwa kwenye ile gari ilichukuwa Ouko wanatafutwa.* I talked of the white vehicle because of two things. When I was still at the district, I read that Mr. Anguka's vehicle was the one which was used. Secondly, I expected four people to pick him up, that is, the driver, the inspector and two heavies to make sure that he does not jump out of the vehicle. So, when I told Mr. Omwenga that those four people are being sought, you could sense it that he was shaking and worried from the other side of the phone. He told me: *Hii Serikali ni mbaya sana. Hata ukiifanyia kazi inakuruka."*

Mr. Chairman: Did he not say, "You mean they are coming for us?"

Mr. Kwatenge: No, he told me: *"Hii Serikali ni mbaya sana. Hata ukiifanyia kazi, inakuruka.* Then, there is a time he asked me, I stand to be corrected though, *unasema tunatafutwa?* Mine was a quick one. I knew if you take longer you may not catch him. So, I said: *Ndio, mnatafutwa.* That is when he said: *"Hii Serikali ni mbaya sana. Hata ukiifanyia kazi, inakuruka.* He told me that I should continue monitoring the situation so that when he will be about to be arrested I can tell him in advance so that he takes his personal effects to Kisii. He said: *Afadhali wakute nimepeleka bibi, watoto na vitu nyumbani na wanishike pekee yangu.* Later, I was transferred from the PSIO's office to Iten as the Deputy DSIO. That was in early July, 1992. On arrival, I learnt that Mr. Omwenga had gone to Kakamega on cross-transfer and Supt. Nyakoye, a desk officer at Kakamega PSIO's office--- I came to learn that after giving evidence at the Judicial Inquiry in Kisumu, Mr. Omwenga had developed a funny behaviour. Those are the investigations I did in Iten. I use to ask my members of staff. Remember, I inheritted his staff only that I went there as a deputy. He never left the police line. At Iten, the police station is about one or two kilometres before reaching the town. His house was within the compound. He never left the police compound and from the time he left Kisumu after giving evidence.

Mr. Chairman: Even at night?

Mr. Kwatenge: He is a social person who loves interacting with people. But at that time he avoided social places. He only assigned duties to his deputy, Insp. Daniel Poghisio.

END D.

[Mr. Kwatenge]

He developed a funny behaviour; he never left the police line in which his house was located. Whenever there was a telephone call in the office, he could not pick it up, but went to the office of the sub-ordinate, Constable Ndiema to pick it. When Constable Ndiema picked up the phone and says: "Afande Kwatenge, ni wewe." Then, he would know that Mr. Kwatenge is among his good friends. He would fake his voice and sometimes say: "Nimeingia saa hii na nimekuta simu." However, when phones used to come in from people whose loyalty he was not sure, he would wink at Constable Ndiema who would tell the person that: "Mkubwa hayuko, could you leave a message?"

Mr. Chairman: Is this the same Constable Ndiema, who was in charge of the Koru intelligence office at the time of Dr. Ouko's death, under Kisumu District where Mr. Omwenga was the DSIO?

Mr. Kwatenge: Mr. Chairman, Sir, I am not sure.

Mr. Chairman: Do you know his second name?

Mr. Kwatenge: Mr. Chairman, Sir, it seems I have forgotten his christian name since this is a case dating back to 1992.

If the caller was somebody he could not trust, he would tell the sub-ordinate officer that he was not in. I also learnt from members of the public that was being protected by Mr. Biwott. I was told by Mr. Nyakoe that, that was not true.

Mr. Chairman: What do you mean by that? I do not understand that statement. What are you implying?

Mr. Kwatenge: Mr. Chairman, Sir, what I am trying to imply in this statement is that there was a belief that he was posted to Iten to be working near his god-father. Mr. Nyakoe told me that he believed that Mr. Biwott was connected to Dr. Ouko's death and he believed that Mr. Biwott must have dealt with senior intelligence officers at Nyati House. To him, a DSIO was a very junior person to deal with. So, for him to have been taken to be under somebody's wing does not apply.

Mr. Chairman: I still do not understand you at all. What do you mean when you say it does not apply to Mr. Omwenga?

Mr. Kwatenge: Mr. Chairman, Sir, there was a belief at that time that when Mr. Omwenga was taken out of Kisumu, he was taken to Iten to be near his god-father, Mr. Biwott.

Mr. Chairman: But, was that true?

Mr. Kwatenge: Mr. Chairman, Sir, that was not true. I have just said he was transferred to Nyahururu and before he was taken there, he was taken to the desk where he was not comfortable. He wanted a district. He was told that the only district that had a member of the Inspectorate was Iten District. When you are a DSIO, you have a vote. This had something to do with getting *kitu kidogo* from politicians, the DC and the vote you are allocated. When you are at the desk, you do not get those favours. At the desk, you just go to your office, work on your papers and leave that place. So, he did not want that kind of atmosphere.

Mr. Chairman: Now that you have explained that issue, could you proceed?

Mr. Oriri-Onyango: Mr. Chairman, Sir, if I could get some clarification. Mr. Kwatenge, you said that you learnt from Mr. Nyakoe that when Mr. Omwenga was taken to Iten, he was not taken there to be protected by Mr. Biwott. That is what you learnt from Mr. Nyakoe?

Mr. Kwatenge: Mr. Chairman Sir it was coincidental that he ended up there.

Mr. Oriri-Onyango Now, from your own intelligence collection, imagine moving somebody from Kisumu, which is a big city to Iten. Did he have any connections with Mr. Biwott?

Mr. Kwatenge: Mr. Chairman, Sir, from the intelligence information that I collected, because this question was quite "hot", if I may use that word, he was transferred from Kisumu to Nyahururu because he was connected to Dr. Ouko's death. Before he went to Nyahururu; it is normal with the police force that you are transferred and even before you hand over, two or more transfers--- So, he ended up at the desk in Nakuru, Rift Valley Province. He worked in Nakuru for over a year, but as I have said, a desk officer just concerns himself with paper work. He wanted a place where he was comfortable; a place where he had a vote, vehicle and other facilities---

Mr. Chairman: Mr. Kwatenge, I think you have explained that sufficiently. Please, let us proceed. We are running out of time. Go to question No.13.

Mr. Wanjala: Now, while in Iten, did you learn of the death of Mr. Masinde Muliro as an Intelligence Officer? There were rumours of his death. Could you tell the Committee the intelligence information you collected over these rumours?

Mr. Kwatenge: Mr. Chairman, Sir, while I was at Iten as the Deputy DSIO, members of the Bukusu sub-tribe started avoiding me. They accused me of working for the Government that had killed Mr. Pius Masinde Muliro. In some professionals, for example, politicians are sometimes assassinated. In fact, when a politician dies, people say *ameuawa*. So, initially I took it to be that. However, these rumours were very common. So, I had to seek permission from Mr. Nyakoe to go to the province for my personal problems. I was given permission and went to Nakuru. There I met a Desk Officer by the name Inspector Clement Masitsa. Inspector Masitsa is one of those people who used to torture people at Nyayo House. So, we used to see them like from the GSU. We also used to collect information from them because they had more access to inner information than we did. I told him that

were I was working there were rumours that Mr. Muliro had been killed. While in Iten Mr. Muliro had died on arrival from an overseas trip.

Mr. Chairman: You are now going backwards! Start from the issue of Inspector Masitsa. What did he tell you when you asked him about the rumours regarding the death of Mr. Muliro?

Mr. Kwatenge: Mr. Chairman, Sir, when I asked him about the rumour, being a fellow Intelligence Officer, he told me anything could have been possible because Mr. Muliro had been rung by a former Intelligence Officer by the name Mr. Wajakoya, whose conversation had been intercepted by Intelligence Officers prompting them to send an under cover agent to follow Mr. Muliro to London. Mr. Masitsa told me that the secret agent had monitored the conversation between Mr. Muliro and Mr. Wajakoya and learnt that if Mr. Muliro could come back with that information, it could bring down the Government. Mr. Wajakoya is a former Intelligence Officer who, during his time with the Intelligence Department was deployed to Music Room. The Music Room was used to tap people's phone calls. What happened here was that personnel used to be given two lists of people. They were told to tap people's phones. They were given another list because it was possible for people between these two lists to talk to each other. So, the instructions were to or not to tap any communication from the list they were advised. So, when Mr. Wajakoya was working in the Music Room; he was a young man, about 26 years old. At one time he decided to monitor a phone call between former President Moi and Mr. Biwott. Whatever they discussed had to do with the death of Dr. Ouko. This was tapped. There is a provision in the police force that a Chief Inspector and below can resign from the police force within 24 hours. So, he resigned and was given an honourable discharge. He went with that tape to the British High Commission at Bruce House, then. He gave it to personnel there seeking for political asylum in Britain. He was given a political attache, who listened to the tape and Mr. Wajakoya was immediately taken to London where he stayed. What NARC did recently is what the original FORD would have done in 1992. It reached somewhere where FORD was about to break up and Mr. Muliro offered himself to mediate between the two groups. Now, when he offered to do so, Mr. Wajakoya picked that up, took a risk and rung Mr. Muliro. When he rung Mr. Muliro he told him whom he was. You know, you cannot just call a prominent person aside and say: *Mheshimiwa kuja hapa*. He had to conduct his own investigations. So, that was tapped. When Mr. Muliro tried to find out who Mr. Wajakoya was, some how this information leaked. That is when an agent was sent with express instructions that: "Go trail him; shadow him. If you find that the information may bring down the Government then, make sure he does not come back."

Mr. Chairman: Do you know the name of this Intelligence Officer?

Mr. Kwatenge: Mr. Chairman, Sir, the name was never provided to me.

Mr. Chairman: But, you got this information from Inspector Masitsa?

Mr. Kwatenge: Mr. Chairman, Sir, yes.

Mr. Chairman: And, was he telling the truth?

Mr. Kwatenge: Mr. Chairman, Sir, I trust him because at the time he was telling me this, he believed that it would have ended there.

Mr. Chairman: But, you are telling this Committee that this information was so serious that it resulted in the death of Mr. Muliro?

Mr. Kwatenge: Mr. Chairman, Sir, yes.

Mr. Chairman: So, you are now telling this Committee that the death of Mr. Muliro was some how connected to the death of Dr. Ouko?

Mr. Kwatenge: Mr. Chairman, Sir, I am telling this Committee that this Intelligence Officer who accompanied Mr. Muliro is the one who is responsible for his death. Even after writing this statement, I met somebody who saw Mr. Muliro collapsing and dying.

Mr. Oriri-Onyango: Mr. Kwatenge, which information was this, which could have brought the Government down?

Mr. Kwatenge: Mr. Chairman, Sir, if the voters were to be told one day before the General Elections that the Government then in power killed a popular politician, it would have lost votes.

Mr. Chairman: And, who in that Government killed this popular politician?

Mr. Kwatenge: Dr. Robert Ouko!

Mr. Chairman: And, who in Government killed him according to the information you got?

Mr. Kwatenge: Mr. Chairman, Sir, when I was in Nakuru at the district headquarters, I used to freely discuss with fellow inspectors and those under them. There was a rumour that Dr. Ouko died within the compound in State House. I used to talk to these people; intelligence officers were free to say anything within the office. I used to find that when I used to talk to these people, they would seem very worried. I used to ask them: Why can you not write these reports? They used to feel that Mr. Sang was a spy for Mr. Biwott. So, no intelligence report could be written in the district without the DSIO knowing. I tend to believe what they told me because one could see from the way they were talking that they were worried. I used to sympathise with them because when you come to that topic they could even follow me two to three later and tell me: "*Bw. Kwatenge, mambo hayo tuliongea, tafadhali, usionge kwa ndoto*". I would even ask them if it was true that "Total Man" is the one who pulled the trigger on Dr. Ouko. When I did this, some of them would even shake as if they had malaria, but in the end they would say: *Ni yeye*.

Mr. Chairman: Could you name those persons who told you that? Give me at least one name? There is no short cut. If you know the name, tell this Committee because that is what we are investigating. We would like to find out the truth.

Mr. Kwatenge: Mr. Chairman, Sir, there was an Inspector Kinyanjui.

Mr. Chairman: What is his other name?

Mr. Kwatenge: Mr. Chairman, Sir, we get used to surnames.

Mr. Chairman: Where was he stationed?

Mr. Kwatenge: Mr. Chairman, Sir, in Nakuru Town.

Mr. Chairman: And, what was his rank?

Mr. Kwatenge: Inspector!

Mr. Chairman: Within the district office or the provincial office?

Mr. Kwatenge: Mr. Chairman, Sir, within the district office.

Mr. Chairman: Was he some how attached to State House?

Mr. Kwatenge: Mr. Chairman, Sir, he was an Intelligence Officer in Nakuru Town.

Mr. Chairman: So, how did he get this information that somebody pulled a trigger on Dr. Ouko at State House, Nakuru?

Mr. Kwatenge: Mr. Chairman, Sir, there was another officer called Inspector Wekesa.

Mr. Chairman: How did they get this information? Did they ever tell you how?

Mr. Kwatenge: Mr. Chairman, Sir, we used to collect information from State House Intelligence Officers. The only place we were not allowed to collect intelligence information from was military camps because we had military intelligence cops. So, we were supposed to know what was happening in State House because a cook may try to poison the President. There was a driver, a Mr. Kemboi, the DSIO's driver who said that on the day Dr. Ouko died, around that time, Mr. Sang looked concerned and worried. There were times he would tell them *"Twende kwa rada"*. He was not himself until a few days after that.

Mr. Chairman: You believe that Mr. Sang may have witnessed the killing of Dr. Ouko?

Mr. Kwatenge: Mr. Chairman, Sir, I believe that.

Mr. Chairman: Could you give us his full names?

Mr. Kwatenge: Mr. Chairman, Sir, when I was going to work in Nakuru, he was leaving. There is only one son who was in Nakuru for about six to eight years as a DSIO. He is somebody who can be traced. He was there from 1978 to around that time.

Mr. Chairman: Who else was at State House when this incident took place?

Mr. Kwatenge: Mr. Chairman, Sir, when these intelligence officers told me about what was supposed to have happened in State House, they were very worried. They were not conversing the way we are at the moment. It is not the way we are talking. You could find that they were uncomfortable. They did not even want me to discuss the topic, but you could sense from the way they were talking that this was something that was causing them a lot of worry.

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Mr. Chairman: I want to know whether you were ever told who else was at State House at the time?

Kwatenge: No, Mr. Chairman.

Mr. Chairman: Take your time.

Mr. Kwatenge: Let us continue. I am not worried about my security. I am secure, but that is exactly what I know, Mr. Chairman.

Mr. Chairman: I need to know who else was at State House. We are looking for evidence, so that we can nail these people down. What happened was terrible. So, if there is any way in which we can get the people involved, including names, we will go for those people.

Mr. Kwatenge: Mr. Chairman, there was a name that used to crop up, but it was not a name of an individual. When talking to fellow intelligence officers, you would be told "KISS" is coming around, and we wanted to know what "KISS" means. The letter "K" stands for a collection of tribes, and "I" stands for internal security service. So, these people had their own ways of collecting information. An intelligence officer who is not from the "KISS" would talk to you about what was happening. When he saw somebody from a certain tribe, he would stop or change the topic altogether. When you wrote a report of what was happening, the President would receive it earlier than everybody else. There were so many prominent leaders who had their own gatherings. So, I was lucky to have been trusted by those people. They were open to me to some extent, but they could not be as open as I would have wanted.

Mr. Chairman: Just explain what you are talking about, because I only know of KISS 100 FM. Tell us more about KISS. Was it about Kikuyu or Kalenjin or Kiluhya?

Mr. Kwatenge: Mr. Chairman, I have forgotten what the "K" meant, but "I" stood for internal security service. So, you would find that---

Mr. Chairman: Do you mean that, apart from the then Special Branch, there were other internal organisations?

Mr. Kwatenge: Yes, there were some prominent leaders whom I was told--- We had people like Messrs. Ng'ang'a Kihonge, Mulu Mutisya, Barngatuny, Biwott and others, who had their own people within the Special Branch, who would tell them whatever was happening. The information would reach State House within 24 hours. For information to reach the President through Mr. Kanyotu, IT would take about a fortnight. However, there were people who would ensure that information reached the President within 24 hours.

Mr. Chairman: I do not think you are telling us the truth. I know for certain that intelligence reports reach State House overnight, and on the following morning, the President is briefed on it. So, it could not be a fortnight for information to reach the President, unless it was not serious intelligence.

Mr. Kwatenge: Mr. Chairman, if it was serious intelligence, like death of Dr. Ouko, the Director of Intelligence and his deputy were told about it within four hours. I am talking about marctheism and whatever. During that time, in every town, there would be two prominent leaders. For instance, among my Bukusu community, we had Masinde Muliro and Nathan Waliaula Munoko. So, if Masinde Muliro joked around, Nathan Munoko would pop-up. These people had their own people in the Special Branch, who would give them information. So, one would ring State House and inform the President on the other. These are things which we regarded as normal intelligence which was supposed to reach Nyati House after a fortnight. However, intelligence on exchange of words between politicians at garden parties would reach the Director of Intelligence and his deputy within six hours.

Mr. Chairman: Tell us about these politicians. What were you saying about them?

Mr. Kwatenge: I was saying that they had their own people within the intelligence service.

Mr. Chairman: What is the import of that in relation to this inquiry?.

Mr. Kwatenge: Mr. Chairman, I am saying that the presence of "KISS" brought about fear amongst intelligence officers. They were free with me because I was newly posted there from the North Eastern Province, and it was as if I had just come from another country. In the intelligence service, if anything happens and you write a report about it, by the time it reaches the provincial headquarters, your colleague has given the information to somebody else. So, intelligence officers were not free to tell me what may have transpired at State House on that day.

Mr. Chairman: So, you were operating under fear?

Mr. Kwatenge: They were operating under fear, Mr. Chairman.

Mr. Chairman: Do you have any information that is relevant to this inquiry? Do you have any information regarding Dr. Ouko's death, which can lead us home? We want to conclude this matter.

Mr. Kwatenge: Mr. Chairman, it was hard to get the information. When I joined the Special Branch, I found that intelligence gathering was very thorough. If this Committee were to write to the Director of Intelligence, asking him to produce all the intelligence reports relating on Dr. Ouko's death, just as the commission that investigated the tribal clashes in the country did, it would not be given those reports. I recall that intelligence reports on tribal clashes in Kenya were handed over to the Akiwumi Commission on request. In this case, the reports have already been shredded. If they had not been shredded, Nairobi, Kisumu and Nakuru would supply you with intelligence reports, which would make your work easier. However, when the Government changed, NARC did not take over everything. I am aware that there was interference in a lot of things, including an attempt to dismantle the Nyayo House underground cells. If those reports were to be kept, they would have supplied this Committee with a lot of---

Mr. Chairman: We will find a way of going around that, but what we want is evidence from you. Do you know the people who were on the scene when Dr. Ouko was murdered. You have mentioned Mr. Sang. You appear to have had first hand information. You have also named a Mr. Kinyanjui and a Mr. Wekesa. Do you know of any other person who was at the scene? We are going to find these people and ask them questions.

Mr. Kwatenge: I do not know of any other person, Mr. Chairman.

Mr. Chairman: From your intelligence, could you tell us how and who transported Dr. Ouko from his Koru home to Nakuru State House?

Mr. Wanjala: And how was he returned to Got Alila after he was killed at State House, Nakuru?

Mr. Kwatenge: Mr. Chairman, I have not accessed that information. What I know is that in Dr. Ouko's death, and other subsequent deaths, in my own investigation, I found a lot of similarities, which I will bring to your attention. Dr. Ouko's murder could be compared to those of Bishop Kipsang Muge, the person who was declared a Member of Parliament posthumously, and Father John Kaiser. These people had a lot in common. Apart from Dr. Ouko, these other people were anti-establishment. Secondly, each of them had annoyed a prominent leader. For instance, former President Moi was not happy with Dr. Ouko. According to the intelligence I had read from files in Nakuru, two schools of thought were being brought up as to the cause of his death. One school of thought was that Dr. Ouko was trying to take over the leadership of the country. At the same time, Moi was a populist leader. He was farmer number one, and everything else. So, when you become politician number one, you do not please. The late Habenga Okondo was unhappy with Muge. The late Masinde had annoyed KANU when he changed his party. He had said that he was going to quit KANU, and it was believed that he was "seen".

Mr. Chairman: Without interrupting your trend of thoughts, what do you mean by "seen"? Do you mean that he had been given something "small"?

Mr. Kwetenge: Yes, Sir. So, Masinde had annoyed the powers that be. KANU knew that it would be a walk over for them if he would have stepped down. Father Kaiser had annoyed my agemate, namely, "Baba Denis". Thirdly, all of them were involved in road accidents. Dr. Ouko had an accident on the Kericho-Kisumu Road. Bishop Muge had an accident at Kipkaren Trading Centre. Masinde had an accident at the City Mortuary. Father Kaiser had an accident in Naivasha. He had to drive his double cabin vehicle into somebody's compound, and he went to a petrol station, where he removed the bumper of his car. They were slightly injured, and did not die immediately. Dr. Ouko had to be carried by a good samaritan out of the scene of the accident. Bishop Muge died instantly. You know, the intention of these accidents was for you to die. So, when you die, or maybe, his "shadow" was even faster. I hope you understand what I mean by "shadow". Somebody follows you closely, so that when you get hurt, he comes and finishes you in whatever way he has been instructed.

Mr. Masinde was photographed bleeding and sitting on tarmac. After the accident, he came out of the vehicle and sat down on tarmac, and one of the passersby photographed him. He

had a small wound that was bleeding. He was still conscious at the scene of the accident, but he died within minutes. Father Kaiser never showed any injuries. At, or near, the scene of the accident, there was a depression. Between Kisumu and Kericho, there is a depression. The intention, if I may clarify, was to ensure that his car rolled, so that one would say: "Oh, it was a bad accident."

All of them had expressed fear for their lives a few days before they died. Each of them had told somebody that his life was in danger. They had consulted people concerning their lives. Ouko consulted with prominent Luo leaders, who happened to be double-agents, also working to get him. Bishop Muge had consulted with Bishop Okul of Kisumu. Father Kaiser had consulted with his fellow priests at the Bishop's house, at Ngong. They died within days of the accidents.

While working in Kapenguria District, my DC was one Peter Kibiegon Lagat. He is a nephew to former President Moi. So, if it is true that Dr. Ouko approached him, this was a desperate move. Apart from sending prominent Luo leaders to talk to the former President, he also used a nephew of the former President to do the same.

Mr. Chairman: Do you mean the meeting in Kericho on the night before the accident?

Mr. Kwatenge: Yes, Mr. Chairman.

Mr. Chairman: Would you say that, that man would also have been a position to arrange that accident?

Mr. Kwatenge: Mr. Chairman, let me tell you how these accidents are arranged, because there is no bigger sin than murder. A vehicle is assigned to move parallel to yours. The people in that vehicle hoot and make a lot funny signs at you, like showing you the middle finger. They annoy and irritate you. It is said that we are all mad, but the degree of madness varies from one person to another. We are all paranoid, but our degree of paranoia varies from one person to another. If the expert from Nyayo House would have wanted to monitor Gicheru's bedroom at the hotel, he would do that, but this deliberate---

Mr. Chairman: Please, complete your sentences. You were saying, if they wanted to monitor Gicheru, they would have done so without him knowing but, in this case, they went and monitored him openly, deliberately, and what did they create?

Mr. Kwatenge: They wanted Justice Gicheru to become paranoid, Mr. Chairman.

Mr. Chairman: They wanted him to know that he was being bugged, so that he could react and resign or something like that?

Mr. Kwatenge: Yes. You know, as a human being, if you feel that you are being tailed, you get worried. That is why I said, all of us are paranoid, but the degree is different.

Mr. Chairman: Tell us about the accidents. What would they do?

Mr. Kwatenge: Mr. Chairman, they would joke around with you, and with your mind. The intention is to make you cause an accident, so that somebody would come to you with an handkerchief. First, idlers are always there. Every time such an accident happens, it is reported that "a good samaritan carried the victim. That is why somebody made the "mistake" of taking Dr. Ouko away from the accident scene. Had he not been removed from the accident scene, he would not have survived that day.

Mr. Chairman: We know that a Mr. Kirui, who picked up Dr. Ouko from the scene, died soon thereafter. You said that he made a "mistake". What do you mean by "mistake"?

Mr. Kwatenge: He made the "mistake" of removing Dr. Ouko from the scene of the accident. His mistake was that he picked up Dr. Ouko and took him to the hospital. If someone had gone to the scene with a "laced" handkerchief, Dr. Ouko would not have survived that accident. In an accident, you do not monitor who is saving who. In the case of Mr. Masinde, he was just normal, as seen on the newspaper photograph, but he died within hours. So, everybody knows that this is an accident.

Mr. Chairman: What do you mean by "a laced handkerchief"?

Mr. Kwatenge: Just that, Mr. Chairman.

Mr. Chairman: You mean, laced with chemicals or vapours to kill?

Mr. Kwatenge: Exactly, Mr Chairman.

Mr. Chairman: We are now talking about methods of assassination?

Mr. Kwatenge: There are plenty of those methods. I could take weeks or even months to explain them all. My interest in this case is that in Kenya assassination used to be used a political tool before. I want it to be stopped. There is a saying which goes: Ask not what your country has done for you, but what you have done for your country. If my small contribution can put political assassination in the books of history, then hallelujah! If all political assassination attempts had succeeded, we may have had a different Head of State from the one we are having. Some people have died in mysterious circumstances.

I do not remember you introducing hon. Nick Salat. His brother died in circumstances hon. Salat would want to know. We received a report that a prominent politician, who is now a nominated Member of Parliament, and who is an Assistant Minister, had hired--- At the time, he was a Minister of State, Office of the President. We received reports from Bomet that he had bought guns from Uganda, and that he was going to assassinate---

Mr. Chairman: Please, let us stay within the subject of this inquiry. Otherwise, we will be going too far. I just want to know about the Ouko accident? Do you think this was something that was stage-managed to get an opportunity to kill Dr. Ouko? Is that your evidence?

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Mr. Kwatenge: By the time one dies, they have brushed with death so many times. We do not know how many other instances that Dr. Ouko may have missed death. However, it was intended for him to die at that place. Were it not for the tractor man, the official version would have been that he died through a road accident between Kisumu and Kericho.

Mr. Oriri-Onyango: I just want to seek a clarification on this assassination. You were an intelligence officer who was collecting information in this country before you were relieved of your duties. You know that a number of witnesses who were involved in this murder, from the beginning have been involved in mysterious deaths which have not been explained until today.

Mr. Kwatenge: Before I answer you, let me refer you to CKRC who had seminar near the Hotel Intercontinental about the same time that the late hon. Dr. Ouko's sister died. Somebody commented on that and I said that those deaths were not natural. Two things happened when I left the service. During the Webuye by-election Clement Masisa, along Nayunge Road, asked me if I knew anything to do with Dr. Ouko's deaths. I told him that the only thing I knew about Ouko's death was what he had told me in his office. Then he told me that within the intelligence fraternity, people were being looked for as witnesses to Dr. Ouko's murder. I told him that I knew nothing to do with what he was talking about. During the 1997 general election, I met some two intelligence officers at Ndohio Bar at Giathatika, Tumutumu area, which is where my mother was born, brought up and is buried. When I was in that bar, the two officers asked me if I knew anything about Dr. Ouko's death. I told them that when Dr. Ouko was dying, I was in Mandera. They repeated to me that witnesses were being looked for and it had come to the notice of the DSI that some witnesses had assumed new names and taken cover. So, they were looking for a way of proving who was dead and who was not dead.

Mr. Chainman: Who was looking for these people and for what purpose?

Mr. Kwatenge: They did not mention the people who were being looked for, but we can assume it was the killers who were being looked for.

Mr. Chairman: It was the intelligence committee looking for them. Was it not?

Mr. Kwatenga: Yes. I believe that the two instances when I was being asked if I knew anything, maybe they wanted to know if I knew anything to do with the murder. If they knew that I knew anything, I would not have been here.

Mr. Chairman: Could we proceed further now. What you are saying is that the Intelligence may have been involved in the Dr. Ouko murder because of the manner they were trailed and the manner in which the accident occurred and the way in which the cover up was effected.

Mr. Kwatenge: No doubt about it. When Masinde Muliro arrived at the airport, there are five people who witnessed his landing. One of them was an intelligence officer, superintendent Makau. Incidentally, when Muliro was going abroad Makau saw him and also when he came back. He said that he was standing two metres away from Muliro when he died. When he wrote that, it led to his sacking. So, the behaviour of the intelligence surrounding this matter is suspect.

Mr. Chairman: You have not told us the information which Mr. Wanjakoya had which may have caused the collapse of the Kenyan Government then. Could you tell us what information it was? If it was a conversation between Biwott and Moi, what was the nature of the conversation? What did it conclude and what did it say?

Mr. Kwatenge: I have never been told about the nature of that conversation but it was in a tape form. He recorded the conversation between these two *wazees* in an audio cassette. After recording it, the next thing he did was to resign from the Police Force. When he resigned, he went to the British High Commission, then at Bruce House, and said that he wanted political asylum.

Mr. Chairman: You have told us about that. Let us now go to the next one. Do you have any other things which you may want to tell the Committee? The nature of your evidence is sensitive, but somehow it does not flow well. Can you tell us what you need to tell us.

Mr. Oriri-Onyango: Could you tell us the names of people from the Intelligence whom you believe may have participated in the murder of Dr. Ouko? Maybe Kinyanjui, IP Wekesa, DSIO Sang. From your intelligence, did you find out which part each of them played?

Mr. Kwatenge: Maybe, you did not get me well. I am saying that both Inspector Kinyanjui and Inspector Wekesa were--- In fact, I was reluctant to say their names in the first instance. But, they are the people who told me what is believed to have transpired. They did not take part in it.

Mr. Chainman: But, what was their location? Were they located at State House on the night in question? If not, did they have informers and if they did who are they?

Mr. Kwatenga: The Official Secrets Act does not allow me to talk about my informers. But, they were stationed in Nakuru Town and their area of jurisdiction included State House.

Mr. Chairman: I will correct one thing. In this Committee, there is nothing like the Official Secrets Act. Everything is subject to Parliament. What we can do for you is to go into camera so that it is not covered by the press. The only thing there is a limit on is the military, about which we can get permission from His Excellency the President. I am talking about the Military only, and not the police, GSU or Special Branch. We are the ones who make the laws on these things. We can change them if necessary. But, for the sake of things, if it is not important you do not have to tell it.

Mr. Kwatenge: These two officers, Kinyanjui and Wekesa are the people who told me what happened. They did not participate in the murder; they only knew what was happening. Maybe, that is a correction.

Mr. Oriri-Onyango: Can you tell the Committee what they told you about the murder?

Mr. Kwatenga: There was a driver called Kemboi. These two officers believed that the late Dr. Ouko's place of death was at State House. I even asked them whether he was brought in by helicopter and they said that they did not know what happened. But even that time, an intelligence officer could sense that something serious was happening.

Mr. Chairman: So, Ouko had been named to be missing and you were in Mandera at that time?

Mr. Kwatenga: Yes, I was telling them that he had died at State House and they would say "ilitendeka". They would ask me "ilitendeka aje" and they would tell me that Sang or "Simba" appeared to be absent-minded and they said they could sense something bad had happened. I remember asking them about the story about Dr. Ouko's body being brought in a helicopter and they said that in State House, helicopters fly in and out regularly. You cannot know if that helicopter is the one which brought the body. But, generally, they believed that Dr. Ouko lost his life at State House.

Mr. Chairman: Can you now tell us how he was removed from there after being killed?

Mr. Kwatennga: They did not tell me that.

Mr. Chairman: There was no helicopter used?

Mr. Kwatenga: I had heard a rumour that a helicopter had been used. When I asked, "inasemekana kwamba helicopter ilitumika," they said that in State House, helicopters go there regularly.

Mr. Chairman: What about the rumour that the body was taken to Nakuru hospital and then to the mortuary?

Mr. Kwatenge: They told me that he lost his life within the compound of State House.

Mr. Oriri-Onyango: How? By what means? If it was by shooting, then who pulled the trigger?

Mr. Kwatenge: They believed that he lost his life there and hon. Biwott played more than a casual role.

Mr. Chairman: You are being very careful with your words. Why can you not tell us the role he played?

Mr. Kwatenge: I cannot afford a lawyer.

Mr. Chairman: Before this Committee, you do not need a lawyer. Although you can have one if you want. Whatever you say here is privileged. Nobody can take you to court over it.

Mr. Kwatenge: They believed that the trigger was pulled by hon. Kipyator Nicholas Kiprono Biwott.

Mr. Chairman: That is just a rumour. We want to see if we can get the facts right. Rumours cannot help us here. Although they can help us in indicating the truth, we need some proof.

Mr. Kwatenge: Exactly. Because if proof was there, it would be in a report. For the intelligence, a report is that people like Biwott were subject to being mentioned. But, Mr. Josiah Sang, the then Deputy Director of Intelligence barred people from making reports on President's family and friends.

Mr. Chairman: Josiah Sang or Rono?

Mr. Kwatenge: Josiah Rono who was the Deputy Director of Intelligence. He stopped the intelligence officers from making reports on Presidents close friends and family. So, the only thing which could have happened is that we could go for the reports, but, they were not there because people had been stopped from writing them. There was also fear that if Mr. Sang, the DSIO, could have got the information he would have passed it to hon. Biwott.

Mr. Chairman: We welcome you to tell us if there is anything else you can tell us to help in this investigation.

Mr. Kwatenge: No.

Mr. Oriri-Onyango: Does he know where Wanjakoya is now?

Mr. Chairman: I think we can handle that ourselves. We have his contacts.

Very well, Mr. Kwatenge. I take this opportunity to thank you for coming to Parliament. The information you have given us is useful and we will look into it to get further evidence which will help us settle this matter.

Committee adjourned at 5.30 p.m.

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RECORD OF EVIDENCE GIVEN BEFORE THE PARLIAMENTARY SELECT COMMITTEE ON THE DEATH OF DR. OUKO HELD ON TUESDAY, 8TH MARCH, 2005, AT COUNTY HALL

IN ATTENDANCE

The Hon. G. Sungu, MP - Chairman

The Hon. K. Kilonzo, MP - The Hon. J.M. Khamisi, MP
The Hon. Prof. C. Mango, MP

NATIONAL ASSEMBLY

Mrs. S. Kioko	-	Second Clerk Assistant
Mr. N. Emejen	-	Third Clerk Assistant

POLICE INVESTIGATORS

Mr. M. Amata	-	Senior Assistant Commissioner of Police
Mr. G. Mbuvi	-	Senior Superintendent of Police
Mr. C. Ndewa	-	Superintendent of Police
Mr. Kagiri	-	Chief Inspector of Police

COUNSEL

Mr. Oriri-Onyango	-	Senior Assistant Deputy Prosecutor

(The Committee assembled at 11.00 a.m.)

(The Chairman introduced himself and Members of the Committee)

Mr. Chairman: Order, hon. Members. Let us have a meeting before we start taking evidence from the witness. I want to start by thanking the hon. Members who are present and also apologise that some of us were a bit delayed. We want to make this very short, so that we can agree on the procedures to follow and the way forward. A number of issues have arisen since we sat together. The first issue relates to the security of the hon. Members and the second issue relates to some press reports attributed to those who have appeared before this Committee and also the hon. Members of this Committee. Finally, we need to also look at our impending trip to Mombasa to write our report. I am saying this in view of the fact that we have to note that we have yet to complete taking evidence. I hope and pray that we will finish taking evidence today, but with the question of taking evidence, you never know because it depends on two parties; us and the witness. So, we may have even to make further changes, but I pray that we finish today.

[Mr. Chairman]

I want to open the field by asking us to talk about the security for hon. Members, not just hon. Members of this Committee, but even the Clerks Department and the police officers. Mr. Wanjala, I want to ask you to kick off, but try to summarise so that we have it on record with regard to the threat on your life. Then I will brief you on mine.

Mr. Wanjala: Mr. Chairman, Sir, when I was leaving here on Friday night, on reaching the Haile Selasie Round About, a car was trying to follow me. A sixth sense made me drive faster. My car is fast and so I drove very fast. They also tried to drive very fast following me, but they could not match me. When I reached the first gate, I went round the estate to confuse them and that is how I ended up to my gate and it was opened. Yesterday, five minutes after I briefed the Press, they sent me an SMS telling to take care because they will finish me with my family and my beautiful girlfriends. Yesterday, I had to leave very early. By 6.30 p.m., I was in my house. I am threatened and I cannot move.

Mr. Chairman: Have you reported this to the police?

Mr. Wanjala: I did, straight away. After getting that SMS, I tried reaching these people immediately, including other hon. Members who were there. I tried calling the number, but it was on the answering machine. I reported to Parliament Police Station and the CID Department and they said that are going to investigate. I believe that the number they used to SMS me might have been bought and after being used, it was thrown away. Once you call, there is a telephone code number that can be used to trace the caller.

Mr. Chairman: The phone could also be stolen. Is there any other hon. Member who has received any threat?

Mr. K. Kilonzo: Mr. Chairman, Sir, on the issue of security, I have nothing tangible to report on, only that, of course, there are phone calls which have been coming through my phone which bear numbers that I do not know and when I call back, they just go to the answering machine. I cannot single out any conversation to the effect that it has been a direct threat. It is obvious that any threat to any hon. Member of this Committee is a threat to the entire Committee. The issue of security has been paramount and now that we are homing in on the culprits, it is imperative that security should be stepped up and both marked and unmarked security should be provided to the team which is now concluding the work of this Committee. It is not only the team, but the team and its families.

Prof. Mango: Mr. Chairman, Sir, so far, I have not received any threat, but sometimes last week on Tuesday, my water was disconnected under the guise that I owed Kshs14,000. The next morning I put up the Kshs14,000 and I went to the water office at the City Hall to see whether my water could be reconnected. As we speak, my water has not been reconnected. I have talked to a Water Engineer, Mr. Chelule, and I am just wondering whether this has anything to do with this. A whole week without water is as inconveniencing as it can be. I want to take this opportunity to encourage hon. Members who have received threats. This is meant to destabilise and scare us from finishing this work. Let us take courage and finish this work. We have come so far and we have no choice but to finish the work up.

Mr. K. Kilonzo: Mr. Chairman, Sir, now that Prof. Mango has talked about her water supply having been disconnected, two weeks ago, my house telephone line was disconnected--- I do not want to call this under very mysterious circumstances, but we have reported and nobody seems to know where the problem is. When she mentioned about the disconnection of her water supply, I thought it is also important for me to mention that my house telephone line is not working at the moment. We have reported and nothing is being done. So, I do not know whether that has any bearing with what we are doing and given that there are threats, we do not want to take any give anything to chance.

Mr. Chairman: I just want to brief the hon. Members that the Chairman received a threat. The information came to me when I was sitting at the Committee. There were so many missed calls from my security staff in the constituency. When we finished, I called them and I intended to go to Kisumu that same evening and they told me that they had received information that a gang has been hired to finish me the moment I arrived in Kisumu and they were just trying to inquire when I was going to be available in Kisumu. I did not go to Kisumu that night. I went the following morning to confuse them. When I went, I got precise details and I interviewed the people who had got the information. I reported this matter to the OCPD, Kisumu, who took action by sending a man to investigate. Further to that, the direct evidence has now been obtained. The man who heard talking about these plans is now known. He is also known to be closely associated with Mr. Nicolas Biwott whom we are investigating. He was involved in the KANU campaigns. The man in question is a former Senior Sergeant with the Prisons Department. He was sacked because of involvement in crime using guns. He was involved in armed robberies and car jackings. He is a man with a criminal record and a dangerous man because even guns have been unearthed in his residence. I believe the matter is in the capable hands of the police. When I was in Kisumu, I also received a message from one of my people who over heard a former hon. Member of Parliament, Mr. Obondo, who as you know, has been closely involved in what has been going on in this Committee. I am sure even now he is out there because I met him going to park in the Commissioners parking which even hon. Members are not allowed to park in. This man was busy inquiring as to how he could find me, my telephone number and where I live. The person who over heard this reported to my people who reported to me and the matter again is in the hands of the police. I am leaving the matter to the hands of the police.

As you all know, I am a Christian, and although I may not be the best of a Christian, I went to church to make this known because I believed and I still believe now that when Dr. Ouko was under threat, he went to church on 11th February, 1990, in Koru to preach about the Book of Job without telling the people what the nature of his problem was. I believe that if he had come out and said that his life was in danger, perhaps, he would still be alive up to now. I had to go, ask for prayer and divine guidance. That is as it is now. I believe the police are taking care of the matter.

Prof. Mango: Mr. Chairman, Sir, while I was at home over the weekend, somebody called me who I do not know how he found my telephone number. He called me under the guise that he works for an NGO in Siaya and he wanted to come and help my constituency. He added that he was going to Mombasa and he understood that the Ouko Committee will be in Mombasa and he would like to meet me. This may not have a bearing, but since we are thinking of threats, I thought I should mention it here.

Mr. Chairman: We want the Clerk's advice on how we should proceed. This is obviously something which is extraneous of the Committee, but it is coming out of the work of this Committee as so. Even when I talked to Dr. Oburu, he said that any threat that is directed to the Chairman is directed to the other hon. Members of the Committee. These people are operating in Nairobi where we live. Mr. Clerk, if you have any comment on advice to give, please give us. Let us go to Mr. Amata first. Mr. Amata, you are the security man here. You are in charge of the investigations and a Senior CID officer. Perhaps, you can advise the Committee or make comments to your satisfaction.

Mr. Amata: Mr. Chairman, Sir, police officers have not received any threats. We learnt of the threats issued to the hon. Members. Threats should not be taken lightly, whether verbally or in written form. They should be reported to the police and you should state the nature of the threat, namely, how the threat came to you and the possible suspects that you think could have done it, so that the police can know where to start from. For now, that can be my advice. Later on, I wish to request you to give me time again to talk about our trip to Mombasa.

Mr. Chairman: We will come to that later. The late Mr. Apollo Jakaiti, who was a very senior officer, was killed in circumstances which are yet not satisfactorily explained as to whether the killing was to do with this Committee or not. Recently, we saw in press reports that, that Mr. Kibunja said that it was done by a professional gang, which is well trained and that it is suspected that there is more than met the eye. Could you tell us what the position of the police on this matter? That might be part of this. Anything that happens to any member of this Committee, inclusive from the Clerk's Department, must form part of our work because we are dealing with a very sensitive matter.

Mr. Amata: Mr. Chairman, Sir, with regard to Mr. Jakaiti's matter, you remember very well that you wrote a letter to the Director of the CID to state to you whether this shooting was a normal crime or it had a bearing with what Mr. Jakaiti was doing. The Director has not given a reply and I would not wish to prejudice his reply being my boss. But the wonder is that Mr. Jakaiti had stayed in that area not for about five years and that was his style of going home. So, one wonders why this happened on this fateful evening. You will remember that this criminal had just come out of jail under the Presidential pardon. So, there are many factors to it and I cannot draw an inference when the Director has not given you a reply.

Mr. Werunga: Mr. Chairman, Sir, we all share the views and the feelings of the hon. Members about the threats that have been reported. I want to say that you and Mr. Wanjala have taken the right steps in reporting to the police about those threats. Later on after this meeting, now that I have got the full brief, I will discuss the matter with the Clerk of the National Assembly, so that the Sergeant At Arms can take up the necessary steps in collaboration with the National Security Intelligence Service (NSIS). After I spoke to you, I have given instructions that no vehicles should be parked in the parking behind, except for the hon. Members, and any stranger who brings his vehicle under whatever guise, should not be allowed to park his vehicle there. That is being observed from today.

On our part, I have not heard from my colleagues if they have received any threats. As we go on, I cannot rule out the possibility of this. Mr. Amata and his team know that some of

these threats may be so satre and you may not even take it as a threat, as Prof. Mango has said. Even myself when I came from London, I found that my water supply had been disconnected. I spent the whole day between City Hall and Karen and finally, they found that I had over paid them. So, I do not know if it is also part of harassment. These are some of the things that we should take note of. We are together in this and I want to assure you that the office of the Clerk is fully behind this Committee. We shall do our best to ensure that we produce a report as it is expected of us. Perhaps, when we talk about our trip to Mombasa, we will also say a few things which we have prepared.

Mr. Chairman: Let us finish this very quickly. When we started, the first person we called was the Minister for National Security. He came in person and assured us of extra security. We also know that hon. Members are allowed one security officer from the Government, but because of the sensitive nature of the work of this Committee, one extra security officer was allowed, which to my knowledge, has not been changed. I have taken the liberty to write to the Commissioner of Police and the Commandant of the General Service Unit (GSU), but particularly to the Commandant Administration Police Unit. Most hon. Members have their own personal body guards, per the Parliamentary Procedures and Rules, but hon. Members are requesting that they have armed security guards at their homes. I have written to the Commandant and I want it to be on record that we have asked him to do so. I think we should take this further. The matter of life is very important. We need 30 minutes of non other than the Commissioner of Police to come here and tell us in very short terms, what he can do for this Committee. What we are doing here is for posterity. If he can be accompanied by a person from the Administration Police so that they can confirm to the hon. Members about this issue. This is a Parliamentary Committee and we do not want to extend our work. We want to finish our work. If they can give us an assurance personally, that will be good.

We had also asked the Director of the NSIS to come to this Committee, but because we are running out of time, we had forgotten about it. I know that my telephone has been bugged. I also know that some of these telephone calls that you are receiving from strange people are actually ranging calls. The moment I arrived from London together with Mr. Werunga, they first call I got was from unknown number and the caller did not talk. In other words, somebody from the Special Branch was confirming that I was already in the country. They have means of telling where you are and whether you are within reach. They spy, which is sometimes normal. We need some answers from the NSIS that they are after our security and not after giving this information to people who could be detrimental to us. Mr. Wanjala has taken the right steps and I am with him on that. I want to say that if your telephone line is disconnected in your home, let us make it a public issue because that is what happened to Dr. Ouko.

Prof. Mango, I know you can be harassed with things like water, but I can help because the General Manager water is my neighbour in Mountain View Estate. So, I can take time to go there. We should not make a big issue out of this.

END A

[Mr. Chairman]

With regard to Mr. Jakaiti, I wrote to the Commissioner of Police because he died when serving this Committee. In our report, we must have a report from the CID as to their current status of investigation and what they think caused the death of Jakaiti so that we can put it down in the report. Even if it is not concluded we must say it is not concluded and we need an investigation whether it is do with this Committee or not. Now, I think we are running out of time you can take care of it. Just say that the Committee wants and not you personally. I know he is the boss and you have procedures but the Chairman is running out of time and we cannot do much.

Mr. Amatta: (Inaudible).

Mr. Chairman: He will do that but we want ourselves to do that job. I think we should now go and conclude that you will allow Mr. Chairman to brief the Press because these matters are now there. However, I will brief them not in great detail but in general that the police are taking care. I for one know that the police even gave me additional security. I want to urge hon. Members here that any time you feel under threat, the police in Kenya is now different from what we had in the past. They will give you additional security even in your constituency. They will give you if you complain.

Mr. Wanjala: Mr. Chairman, I do not stay here with my family and the way these people wrote their SMS, they are targeting me and my family. So, could my home be protected?

Mr. Chairman: I have already written to the police. What I need from each Member here is where they want that security from the nearest unit. I am going to talk to the Commandant. He is now at SVB so that you can be given that security. We had agreed on that. If you have a bodyguard you are entitled to one more security of the type you want. So, if you want to travel with two bodyguards that is fine. If you want one at your home, that is fine. I know at one stage because of the problems we had in Parliament with the Minister in charge of national security this matter was now being looked at differently but we know these Ministers have all those security personnel and the security of the Members is my personal concern. Mr. Wanjala, if anything happens to you, I feel I am the cause of it because I exposed you because I brought you to this Committee. So, I will do everything possible. The Clerk has assured us that the National Assembly will also take care because it is their duty to protect us. Believe me or not, whatever small problems you may have, the first priority of the Clerk and the Speaker is to protect you and they will do that job effectively. Mr. Clerk, I think I have said the right thing there.

Mr. Wanjala: I also wanted us to take exception of the utterances of hon. Samuel Moroto who has---

Mr. Chairman: Order! We are coming to that. Let us do it logically. I had written down what you wanted to talk about and I think the next area---

Mr. Werunga: Mr. Chairman, perhaps while still winding up on the issue of security, while we were discussing we have been in touch with the Deputy Commissioner of Police, Mr. Kimaiyo and his view is that this Committee is sufficiently covered and he also has said and maybe the hon. Kiema Kilonzo can confirm that in particular we asked about hon. Kiema Kilonzo and he said that hon. K. Kilonzo has sufficient security at his home and for himself. That is what he has said but maybe we can confirm and then we can go back to it.

Mr. Chairman: Mr. Clerk, let us leave the mechanics of individual's concerns out of the record. We can now take it up as we leave this place. However, let me tell you that the police are also funny. When I went to them and my men who were investigating on my behalf got the information and got these people who are (inaudible) because the guy they are dealing with is a criminal, they still went on and put the people I suspect are also monitoring in the constituency who are police officers and who have been there for so long and some of them come from Keiyo. So, do not take things for granted. We will take on these people. If it is Kimaiyo who comes here, we will take on him on one and then he will take personal responsibility. I am not going to accept anybody saying that somebody has got sufficient security and when somebody is dead he will not be responsible. So, please make sure that we have the Commissioner of Police and the NSIS here just to discuss those issues even for a short time up to six O'clock so that we can clear this matter because I am worried. Mr. Werunga, I am also worried about you because it was my brainchild. I fell responsible. If anything happens I do not know how I will live with my conscience because that is how I am and I have never really come to terms with the death of Jakaiti. The Commissioner of Police cannot talk to Parliament the way he wants to talk. This is the Parliament of the Republic of Kenya. He must come here and explain to us however busy he is and I think that should be taken care off. Let us go to this question of press reports. Hon. Members, I know you are all aware that there have been press reports whereby some people come before this Committee and make reports. Generally the rule of Parliament is that we must not import the debate which is inside the House outside the premises of Parliament. Some of us who are Members of this Committee have also been guilty and we have to accept that but when somebody directly comments on evidence that we are receiving here, it is tantamount to first of all denying Parliament and its procedures and he is also holding this Committee in contempt. We have run out of time and we cannot take it but I think these are issues we must revisit when we are writing our report. However, let us also start with the Members of this Committee. Members of this Committee are privileged. Any matters that are of concern here, you should raise it here so that if you have a difference with the Chairman you tell him off here and there and it is recorded that the Members disagreed with the Chairman. You remember in London I had ruled that we leave out extraneous matters. I had said that when Ms. Brinner was giving us evidence would want to mention people like Raila and Sungu, I said that is out of order because we want evidence regarding Dr. Ouko's death and you hon. Members overruled me on a sound basis that we never know what could be relevant to the death of Dr. Ouko. So, we allowed that to happen and you saw what the press did. Instead of relying on the evidence we had been looking at, they just homed in on this alleged exaggeration of affairs of the former President.

Mr. Wanjala: Mr. Chairman, but that was important.

Mr. Chairman: Well, it was important but you see the press also took advantage. You know you people overruled me. Now, Mr. Moroto as a Member of this Committee must come to this Committee and explain some things. He has talked about several things. One, that Mr. Chairman caused the resignation of Dr. Ali. I personally can report to this Committee that Dr. Ali talked to me in the Members Chamber that: "Mr. Chairman, I am a straightforward person. I am embarrassed. I am now the chief campaigner of hon. Biwott in North Eastern. In fact, I am the point man and I find it difficult for me to be a Member of this Committee because I largely find this Committee to be about Biwott. So, I have to resign." That is what he told me. Up to now, I have asked the Clerk of the National Assembly to give me a copy of the resignation letter without fail but he resigned on his own volition because he saw conflict of interest.

Secondly, the resignation of other hon. Members have been for various reasons and not because of the way we run this Committee. Some were committee like Ms. Njoki Ndung'u and others. Some were appointed to the Cabinet or as Assistant Ministers and they cannot be Members because this is a probe Committee because we will be going to report to the Executive. However, the resignation of Mr. Muite was on matters of principle as a lawyer. We differed because he himself and Members of this Committee had ruled that there would be no cross-examination and the HANSARD will prove me that Mr. Muite was very adamant of that but when it came to the issue of cross-examining Oraro and others when things started becoming difficult, I saw that he changed his mind on that issue. Now, that will be decided when we look at the HANSARD and we can make a report on that. I really do not want to take it upon you because hon. Members are here and even you are free to resign if you so wish but I believe you are doing the right job because if we were to replicate the job of the High Court, we will never get anywhere. We will go on for ever and ever. However, with respect to Moroto attacking the Chairman, I feel he should be called here to explain to us. If he does that then he should keep quiet. If he goes on and starts attacking the Chair, I think that is irrational.

For one, hon. Moroto hardly ever attends the proceedings of this Committee. So, whatever decisions we make here now and he is not there, he cannot challenge them because he is not there and he does not know. Secondly, he exhibits such deep ignorance of the procedures of Parliament even the basis tenets of investigation and what is going on in this Committee to the extent that I am in great doubt as to whether he really understands what is going in here. So, when he goes out to make a statement I am really flabbergasted because he is not willing to attack any Member of this Committee because each hon. Member was elected by his people because he or she was capable of being a Member of Parliament and should be able to contribute. By the way, committees of Parliament must reflect the face of Parliament from all parties, angles, levels of education and so on. Hon. Members, you can comment on that briefly so that we can proceed on what to do.

Mr. K. Kilonzo: Mr. Chairman, I hope it is going to be brief because we are running out of time. I hope you have noticed what hon. Moroto said about the issues you have very ably elaborated on. We do not want to be sucked into conflicts at this crucial stage of report writing we have noted and discussed as a Committee certain things in house. I think we just need to caution our colleague and then we carry him along. All of us have our own different weaknesses. At times there should be tolerance.

Prof. Mango: Mr. Chairman, hon. Moroto seems to be very unhappy when we left London and so I am not surprised at his utterances. However, he is one Member of the Committee, let us tolerate him and carry him alone. He can chose to defect but let it be on his own volition and not that the Chairman has chased him out.

Mr. Chairman: Could I suggest that Mr. Chairman be allowed that if Mr. Moroto has any concerns about the way the Committee is being run, he is a Member and he is free to come here and voice those concerns. We can debate it and if necessary even vote on it and then proceed. Can we be allowed to do that?

Mr. K. Kilonzo: Mr. Chairman, before the Clerk recommends because these are issues of hon. Members, I have a different opinion from yours. To get into issues of discussing matters of the past like why so and so resigned, why we summoned His Excellency the former President, then it is obvious that our colleague is talking from a point of lack of information because he was not there when we made that decision. So, if we go back we might find ourselves getting our eyes out of the crystal ball and lose valuable time and also animosity creep in. I suggest we sweep that under the carpet and we continue.

Mr. Chairman: We are not going to challenge him on anything. We are just going to tell him that if he has any concerns let him come and do it in the Committee and not outside there which is also the parliamentary procedure.

Mr. Werunga: Mr. Chairman, perhaps, I would advise that we try and follow that hon. K. Kilonzo has said. Secondly, issues arising among Members of this Committee I would advise that they be discussed in the in the presence of the Members themselves. Thirdly, I would advise that you do not raise this issue with the press today or you inform them unless you are going to allow question and answer so that you will be responding to a question. But for now, since you have not had hon. Moroto here, maybe he will say he was misquoted. So, perhaps I will give him the benefit of doubt that you wait for him, discuss with him in-house and then leave it there. Finally, if you should go into reasons why some of your colleagues resigned, the press will focus on that in their report. They will want to show there are divisions in this Committee. So, I would advise strongly that we do not do that. I am saying so because I have in my possession some information which I will soon be making available to you which will also explain why I am taking this line of advise.

Mr. Chairman: Hon. Members, I think we can take that advise and proceed and leave that one out unless somebody raises it. The final question that we need to discuss with respect to these press reports is the reaction of Mr. Mutula Kilonzo. He has appeared before us and instead of facing this Committee he has gone out. For one, when he came to give that affidavit it was signed by him and not Mr. Moi and he wanted to give evidence on behalf of Mr. Moi which is not allowed. Secondly, he went on his own. We did not sent him packing. We said we will not hear him now but we will receive the next witness and there was nothing to prevent him from sitting here to hear what he had to say. He went on to talk about us.

Mr. Deputy Clerk and hon. Members, I want you to be very careful about this. The note I read in *Kenya Times* he called Members of this Committee extortionists. In other words, we are trying to get money from some of this witnesses and that is why we are being so

tough on them. So, I think this matter must be rectified. It in the *Kenya Times*. I think I left it in Mr. Amatta;s office. It should be gotten. However, the *Kenya Times* of yesterday had that story.

Mr. K. Kilonzo: Mr. Chairman, I read that *Kenya Times* and if I am not wrong I am the one who brought it to your attention. The issues Mr. M. Kilonzo talked of include saying that we are incompetent, corrupt and extortionists and he was to prove that the following day because he had received a fax from Ms. Brinner-Martien. I am very reluctant to get involved in this issue because I see it as an attempt to derail us because Mutula Kilonzo has never been our witness. Anytime we engage him and mostly through the media, we give credence maybe to his allegations. I am saying that since we have got less than a week, we should treat that with contempt. We should not even dignify it with a comment and do our final report. However, when you start dealing with Mutula Kilonzo or looking at issues of what hon. Moroto has said or any other party, we are running out of time and we as a Committee must be very careful.

Mr. Chairman: Hon. Members, if we agree with Mr. K. Kilonzo's submission, I think we should proceed and agree that is the right path to tread on.

Mr. Werunga: Mr. Chairman, in agreeing with what the hon. Member is proposing, let us keep these at the back of our minds when we write our report.

Mr. Chairman: That is better. The last issue which we want to look at is the issue of our Mombasa trip and our forward. Now, hon. Members, we are running out of time and I must apologise to Members that I was not able to turn up yesterday. I had to write a statement with the police. I did not take lightly the threats. Also, there was another programme in Kisumu. There was no mid-day flight so I could not make it. So, we have only today and then we go to Mombasa. Let us discuss how we want to proceed so that if it is possible to go to Mombasa, we look at the logistics so that we can go. If it is not possible, let us decide on that now. On this score, I want to ask the Clerk of the National Assembly to just brief us on what his plans.

Mr. Werunga: Mr. Chairman, we have made arrangements at the venue that you had authorised which is the Nyali Beach Hotel in Mombasa for 21 persons who include nine Members of this Committee, four colleagues, the counsel Mr. Oriri-Onyango and six members of the staff of the National Assembly. I think it comes to 21 persons unless my arithmetic is wrong.

Mr. Chairman: Just before you proceed, we have eight members and not nine Members because hon. Munya is not a Member as far as I am concerned. Also, we were embarrassed in Kisumu when members of the police department were not given any stipend.

Mr. Werunga: Mr. Chairman, I was coming to that. The arrangements for that have been made. The Supplies Officer is liaising with the hotel. They will make payments. We have also made arrangements for Members sitting allowance and also the subsistence for the police, counsel and our staff at the rate authorised by the Parliamentary Service

[Mr. Werunga]

Commission which is Kshs1,666 per day. That money will be available in Mombasa. So, everybody will get what is their due.

Mr. Chairman: Including the staff of the National Assembly?

Mr. Werunga: Yes, Mr. Chairman.

Mr. Chairman: Any comment, Mr. Amatta?

Mr. Amatta: Mr. Chairman, to be very brief on this, we discussed and we also took the matter to the Director of CID. The contract we had was to come and work here and if Parliament is taking us out of Nairobi, they have to give us *per diem*. Now, we agreed that this time if *per diem* is not there, then we are not going and if it is there, we would like to receive it because we would not liked to be tricked like last time by being told to go there since somebody was carrying it for us and then it was not there. If it is there this time, we will not mind that rate but we also want the one of Kisumu so that we put the two in our pockets and we proceed to Mombasa. If it is not there, then go there without the police because our contract was to work here in Parliament in Nairobi and taking us to Mombasa is out of our contract.

Mr. Chairman: Mr. Amatta, I agree with you entirely and I am happy that you have accepted that rate. That rate also applies to the staff of the National Assembly including Mr. Werunga who is a very senior officer. I want to assure you that this Committee resolved that you must be paid your allowances for Kisumu. Let us not connect it with Mombasa. If this Committee will not pay you your allowances for Kisumu, Mr. Chairman will take it upon himself to pay you from his pocket. In the National Assembly when one thing is confirmed, it is so and nobody will change it. This money will be availed to you in Mombasa. If there is a problem, Mr. Chairman will give you your allowances since he is paid more than the other Members so that you can have your subsistence allowance but I am satisfied that the Clerk will give you the necessary money. Let us not mix Kisumu with Mombasa. We will take it up separately. Mr. Deputy Clerk, you know what happened in Kisumu was a shame to us and Parliament. When an officer goes out of station, he should be paid some allowance. I think it was a mistake since somebody became a bit difficult. We want to finish on a good note and I think you can take up this matter so that it can be sorted out before these officers leave Parliament. If it is possible to do it in Mombasa, fine but if it is not possible, then it is not possible then we are going to take it up when we are in Mombasa. If you are not paid your allowances, I will fight it out that you are paid that money.

END B.

Mr. Chairman: You and I have come a long way and I want you to understand it from me. For local trips, we are given money at the destination. When we are going out, we are given money in advance because you have to take foreign exchange. Just accept it as that. I have given you a personal assurance. I know this Parliament how it works.

Mr. Amata, once a precedence is created you cannot go over it. This is a legal institution and we follow the law. I will take it up upon myself, I am sure Committee members and even Mr. Werunga will support me on that. You will paid that money. I have always told you that, you will be paid that money.

Mr. Amata: Let me take your word Mr. Chairman, Sir. But we had agreed with my director that if you people cannot give us money, we have no business going to Mombasa.

Mr. K. Kilonzo: It is okay. I think we have heard you. Please, let us move on for the interest of time.

Mr. Chairman: Yes, let us not raise issues.

Mr. Werunga: But, perhaps, I want to assure Mr. Amata that those arrangements have been made and duly approved by the Clerk of the National Assembly. So, for the Mombasa trip, you will receive your money in Mombasa. Not tonight, but perhaps tomorrow. The previous ones, that we shall now follow up. Let us not mix the Kisumu and the Mombasa trips. Please, let us proceed with the Mombasa trip as it is, and then we finish it.

Mr. Chairman: I think Mr. Amata, I am sure the assurance that we have given you, and I never go on my words, and what Mr. Werunga has said speaks volumes because he is talking on behalf--- Let us leave it at that. This money is money that you are bigger than. So, I am sure it will be done. Let us keep it at that and be happy because we want to conclude this thing. We are sacrificing. In fact, the sacrifice you have made to this Committee, even the money you are being given is not enough. It is a sacrifice you have for this country and posterity. So, please, just take as that and proceed.

Hon. Members, I think with that, unless there is anything else, I want us now to call the Press, brief them before we call Mr. Biwott.

As we are on, I want to confirm now I have received a letter of resignation from Mr. Abdulahi Ali. He did not say why he resigned but he told me personally. Being a christian, I will always tell the truth. I think it was his right to resign. We cannot take him--- Yes! And he was a straight forward man, unlike may be others who may not have been so straight. So, I think we should not take those matters---.

Also, I want to confirm to hon. Members - and you will see this copy - that on 8th, March, which is today, the Clerk of the National Assembly has written to the Permanent Secretary, Internal Security. The letter that I am writing is just going to re-enforce. It is all there. I think the Clerk is taking care of your security.

[Mr. Chairman]

Hon. Members, can we now call in the Press, so that we proceed? Members of the Press, please, come in. We want to start.

(Members of the Press were called in)

Members of the Press, we already have convened as a Committee. We have been consulting and I want to say that we want to give you a briefing of what we have discussed in view of the light of what has been going on in the recent past. Of course, after that, we will call the witness so that we can proceed.

I want to request the cameraman to leave the witness stand alone. The witness may come in anytime as we are doing the briefing.

Members of the Press and public--- I do hope that members of the public have now been allowed into the galleries. Please, allow the members of public into the galleries.

I want to take this special occasion to thank you for your support to this Committee. You realise that this Committee has been through a lot of problems. There are what we call in Kenya, the ups and downs of politics and any given situation. It could be in work and so on. You stood with us all the way. Through you, we have been able to get to the to the public of Kenya. I believe that, the public is well aware of what is going on in terms of this inquiry.

I want to address a few issues that have come before us of late. The first one is on the security of members. We have discussed in details the threats that have been levelled at members of this Committee. Specifically, all members have received threats in one way or the other. However, the ones that have been reported to the police are the threats that have been levelled against the hon. Raphael Wanjala, details of which are already with you. Also the threats levelled against the Chairman which was implied to include other members of this Committee which prompted Mr. Chairman, who is a christian and believes in divine intervention, to ask for God's support and protection in the house of God. Those details are already with the Press.

I want to say that this Committee is concerned about the recent developments with regard to security of members, not just of the Committee, but those officers attached to this Committee and witnesses. The Committee has decided that they will ask the Commissioner of Police and the Director of National Security Intelligence should attend the Committee as soon as possible, so that we discuss matters with them on person to person basis given the fact that they have the apparatus to look after the lives of members and all Kenyans in general. I also want to say that those are not going to be grilling questions, but to seek assurance of what measures they are taking.

Members, you will realise that the work that we are doing is really honourous indeed, and that we want to finish it as soon as possible. In fact, now we are running out of time and that, this is very sensitive. We as a committee, believe that, we are doing this work for Kenyans, not just for today but our children, grandchildren and posterity that nobody shall

be allowed to commit a crime and get away with it, without being investigated. If the Executive arm of the Government would not do that kind of investigation and carry it out do its logic conclusion, maybe, by the fact that the security organs, at that time, are under their command before we change the Constitution to make the police department independent under their own commission, then Parliament must carry out its rightful role. I believe this role is very necessary to do and that these members are taking a great risk to their lives.

I will not forget to mention that, one senior officer, the late Apollo Jakaiti, was killed while serving this Committee in yet un-explained circumstances. This has been referred to in the Press of late and it has been stated that it had everything to do with his work in this Committee. The Committee will not take any position on that until we get a report from the Director of CID. This was one of his senior officers and we expect a report from the Director of CID before we write our report to Parliament, so that these matters come to the fore. I want to assure you that, the Police Department at various levels have given members extra security and that, the matter of talking to the Commissioner of Police and arms of the police department and security apparatus are as a matter of routine, so that this are for the record.

I also want to say that, the Clerk of the National Assembly has in fact, written to the Commissioner of Police in regard to this matter. So Parliament is not taking this matter lightly and I can assure you that we are grateful for the support of Parliament.

I do not what to go into many details, but I want just to say now that, we as a Committee expect to wind up today. If God gives us the power and grace to finish today, the Committee will proceed to Mombasa either tonight or tomorrow morning to write its report. The reason is that Parliament opens next week. We must write our report for submission to Parliament before it opens because the life of this Committee will expire when Parliament opens and we shall not be able to sit as a Committee. So, we will necessarily try to home in on various facts and when Mr. Biwott comes, we will try to be as business-like as possible.

I think that is all I wanted to give you. It is not always usual but if there is one or two questions Mr. Chairman or any other member will answer that. But, that is as far as it goes.

I am giving you a special occasion to raise any clarification if you have or remain silent. You are not supposed to ask questions to members of this Committee but we have looked over backwards because of the fact that the issues raised are of such significance. You never know whether tomorrow I will be able to answer the same questions because of these threats.

Mr. Makori: Mr. Chairman, Sir, my name is Makori from Kenya Television Network (KTN). You made a statement or some expressions in Kisumu that, the people who are threatening you in one way or another are linked to those adversely mentioned before this Committee. On what basis did say that?

Mr. Chairman: I do not want to go into the details because we believe we will compromise the police investigations. But, I have not doubt in my mind that the threats to various members of this Committee have everything to do with the work they are doing here, and that can only come from those who have mentioned adversely. Note that, anybody who is not mentioned adversely would have no interest whatsoever in trying to threaten the life of a member o this Committee. However, we will not go into names.

Very well, I think we will ask the witness to come in, so that we can start.

END C

(Mr. Biwott in the witness box)

Mr. Chairman: Hon. Members, we are ready to start. Mr. Biwott, I would like to welcome you to this select Committee. Please, introduce your team for purposes of record.

Mr. Biwott: Mr. Chairman, Sir, I would like to introduce Mr. Oyatsi, my Counsel and Mr. Asendi.

Mr. Chairman: Before we move on, let me remind you for the record that you are still on oath. Could you accept or deny that?

Mr. Biwott: Mr. Chairman, Sir, I accept.

Mr. Chairman: You are still on oath?

Mr. Biwott: Yes, Mr. Chairman, Sir

Mr. Chairman: The Committee is running late. I would like to apologise to you because we were not able to sit yesterday for various reasons. As hon. Members of Parliament, we owe you that apology because you have been consistent and punctual. Today, because of yesterday's events we took some time to organise ourselves. Please, accept our apologies.

Mr. Biwott: Mr. Chairman, Sir, I accept your apologies. I came here yesterday and found that the Committee was not sitting. I am happy to see you here today. In fact, I saw you in church---

Mr. Chairman: Mr. Biwott, let us leave extraneous matters out. I would like to state that today we will give you as much time as possible to go through the entire evidence. Since we are starting late, we might go beyond the normal hours. However, if God allows and time is on our side, we would like to finish with you today if possible. If it is not possible, we will do justice to you and adjourn an early meeting tomorrow because we have to write our report before Parliament reconvenes otherwise we will be out of time. So, I hope you understand. I pray and hope to God that we will not have any altercation because when things are hot, that is when they show up. The Chair does not want that to be the case.

We will start with a few questions from Mr. K. Kilonzo. If you could answer them in the best manner you can. Try to be as brief as possible so that we can do justice to time.

Mr. Biwott: Mr. Chairman, Sir, before we do that, I would like to remind the Chair of the promise he gave that at some stage you will allow me to read my statement before I complete giving my testimony. It is my wish today that you grant me that permission. However, before I move further, I would like Mr. Oyatsi to clarify a point.

Mr. Chairman: Mr. Biwott, we agreed, and this is what we did with other witnesses, that really technically, we had allowed you to read your signed statement. Now, after that statement you wanted to proceed to the evidence to which we said, "no" because we wanted

to ask you questions on the same. That is how it happened. However, this Committee will be more than willing to bend over backwards because we have allowed other witnesses that at the end of the evidence we will ask you: "Is there anything else you would like to say that may not have been covered?" Then, you can do justice to your side. We need to hear everything that you have to say about this matter. That is how we should proceed. I will now give Mr. Oyatsi the opportunity to say what he wanted to.

Mr. Oyatsi: Mr. Chairman, Sir, my client stands in a slightly different position from other witnesses. In this respect, I would like to refer you to your own rules, specifically Rule 7 which talks about implicated and concerned persons. My client falls in that category of implicated persons. Rule 10 says:-

> "Any person who is in any way implicated or concerned in any matter under investigation may adduce material evidence on his behalf in connection with the matter under investigation."

Mr. Chairman, Sir, Rule 9 says:-

> "The Counsel assisting the select Committee will cross-examine any person implicated or concerned in any matter under investigation and any witness summoned by the select Committee."

Mr. Chairman, Sir, unlike other witnesses who have appeared before you, my client comes here in a different category as an implicated person. Therefore, he has a right under your own rules to adduce his evidence and to be cross-examined on that evidence. That is the procedure that we thought you could adopt today so that we can move fast. In that respect, the introductory statement which we gave, indeed, was merely an introductory statement and not evidence. The evidence we are talking about is what we have already tendered to you. All we want to do is take you through that evidence. If you have any questions either as we go along, you could cross-examine or wait until he has finished giving his testimony then you could cross-examine him.

Mr. Chairman: Mr. Oyatsi, you are a learned gentleman. The rules of procedure are here, you have a copy and, in fact, you have correctly referred to them. Let me just take you through Rule 9 says:-

> "The Members of the select Committee will cross-examine any person implicated or concerned in any matter under investigation and any witness summoned by the select Committee."

I would like to remind you that this Committee has a mandate from Parliament. That mandate says:-

> "We are mandated to investigate the circumstances leading to the disappearance and subsequent death of the late Dr. (hon). Ouko, MP."

So, we are an investigating panel. The first rule is that we will ask questions by way of

cross-examination. Now, even if you look at the rules and prioritise them, your witness can then adduce any evidence that we shall also ask him questions on. However, as of now, for the sake of expediency, because we have received a lot of evidence from many people and your client has been mentioned, we obviously have questions to ask. So, I would like to tell you that in line with my previous ruling, let us go with Rule 9 and do cross-examination. Mr. Biwott, if it is necessary for us to sit up to mid night, I am ready to do so.

Now, recently somebody raised the issue of quorum. In this Committee, once we have a quorum of three hon. Members, we can go on. If any hon. Member of the Committee raises the issue of quorum then, we will stop if we are not three. Otherwise the Chair will assume that there is quorum and we will proceed. So, the Chair is ready to sit with you up to mid night to allow you to satisfy the provisions of Rule 10. So, could we proceed. Let us do this quickly so that we can allow you enough time to do everything else. We have talked about adducing of evidence. That is what he wanted to say in his own defence. We will allow that. My only request is that when he is about to do that, let him give us copies of the same so that we can follow because sometimes it is not easy to know what is going on if you do not have something in writing.

So, could we move on the basis of what I have said?

Mr. Oyatsi: Mr. Chairman, Sir, just a brief clarification. You referred to Rule 9, but what I have seems to read different from what you have referred to. Mine says:-

"The Counsel assisting the select Committee will cross-examine---".

If I heard you well, you said, "The Committee will cross-examine". So, I do not know if I am reading the right rule.

Mr. Chairman: Sorry, Mr. Oyatsi. We are referring to revised rules of procedure dated March, 2004. If you do not have a copy, I will ensure one is availed to you by the Clerk's department. Rule 8 says that the Counsel assisting will present evidence related to the investigation. However, this has since been overtaken by events. This is a Parliamentary Select Committee and we do not want to replicate what goes on in the courts. We cannot ask a non hon. Member of Parliament to lead. The Assisting Counsel prepares these things for us and advise us accordingly. We will interject where there is something which is not coming out clearly in view of what has been prepared. This is a hon. Members' Committee. They are the ones who ask questions. That is why Rule 9 is being verified. That is something which is not in your interest. So, I will adjourn for five minutes to allow you have a copy of these rules.

Mr. Biwott: Mr. Chairman, Sir, before you adjourn, I would like to be very clear on this issue. I am a hon. Member, but there were other non. hon. Members of Parliament who have adduced evidence here. They were allowed to read their evidence uninterrupted. In some cases, they were interrupted to allow questions to be asked. They completed their submissions before they were cross-examined. I am hon. Member of Parliament and I would like to be entitled to the full rights of the rules so that I will present my evidence to the end then, you can interrupt or ask questions at the very end. If we follow the procedure

of asking questions, and some of questions are raised on issues which have not even been given as evidence then, it will be extremely unfair. So, I would like to read my statement. You mentioned earlier on that I read my statement up to point where I signed. It is true that I read up to that point, but in that introductory part I was only saying that I will do this and that. When I began my testimony, you stopped me. I would like to be allowed to read right through and then you can cross-examine me.

Mr. Chairman: Mr. Biwott, let me advise you. We have adopted the right procedure. You are actually doing injustice to yourself. Hon. Members, members of the public and Press are looking at what you have presented to us. Why are you insisting on doing this when we know we have started on a procedure which will allow you present all the evidence? The problem is, nobody had ever mentioned adversely other witnesses who have appeared before us. In your case, we have people who have mentioned you; some inaccurately others falsely, but we have to ask you questions, so that you are allowed to rebut them on the basis of that evidence. That is why we have questions for you. When these witnesses came, they were allowed to go through parts of their evidence and then we asked questions based on some allegations that we were making that, in fact, we did proper examination of. We were not aware of some facts. However, in your case, we are aware of a lot of facts. I can mention at least 10 witnesses who have mentioned you adversely, including those who saw you allegedly in the Ouko home. So, we will ask you that question and you will have a chance to deny or accept. That is what we are trying to do; we are trying to carry out an investigation. That is all. So, I would like to plead with you. We have gone through this before. You are a hon. Member of Parliament, please, accept the fact that this Committee is empowered to make its own resolutions. I could also refer you to page 16, Standing Order, No.161. It says:-

> "Save as to the extent to which the Chairman may in his discretion otherwise direct for the purpose of facilitating full consideration and discussion of the matter referred to the Committee, the procedure in a select Committee shall be as nearly as possible the same as that in the Committee of the Whole House."

Now, you must realise that the Chair is elected by hon. Members under a mandate given by Parliament. Even if you refer to Rule 1, the Chair is acting like Mr. Speaker in this Committee and it is, therefore, a Committee of the Whole House. So, you know the procedures. You have been a hon. Member of Parliament long enough. You cannot really take us back on that. That is very clear. Let us proceed on the basis of which we have gone on so that we finish this matter.

Mr. Oyatsi: Mr. Chairman, Sir, with your permission, I have now looked at Rule 9. It says:-

"A Member of the Select Committee will cross-examine---"

You can only cross-examine a witness on evidence that he or she has given. Cross-examining is a way of testing someone's evidence. So, if my client has not given evidence,. there is nothing for him to be cross-examined on. We are asking you to give us an

opportunity to give our evidence then test it through cross-examination in the normal manner as you have provided in your own rules. We are not departing from your rules.

Mr. Chairman: Mr. Oyatsi, I have said here before, and I do not know why it becomes necessary to repeat it over and over again. I believe you understand where the Chair is coming from. We are carrying out an investigation. Whether it is examination-in-chief or cross-examination, let us not replicate the court process. This is not a court of law. This Committee does not have penal powers; we cannot say: "Take so and so to prison" We will not make that decision. All the Committee will do is on the basis of information we receive from this investigation which is carried out by question and answer basis. We will then make a recommendation to Parliament to which your client will be privy and able to discuss and say all the things he thinks are necessary to say then. When he does so, Parliament may accept or even reject our report if we have not followed the right procedure. However, let us just collect evidence. We are now taking time. We do not want to cut you short. Mr. Oyatsi, we have gone through this with you and your client. The precedent had been set and, therefore, accordingly I rule that we proceed on this basis. That is we will ask questions and you will answer them. If you have any objections, we will have no alternative but to adjourn and ask you to refer this matter to Mr. Speaker.

Mr. Biwott: Mr. Chairman, Sir, you will not take away my rights! I am a hon. Member of Parliament. You have mentioned as close as possible what obtains to Committees in Parliament. Every Committee in Parliament deals with a subject or substance of which there is a document which is followed. In this case, you have mentioned statements which have not been provided to me. You have also mentioned that there is one which mentions me being in Dr. Ouko's home. I have never been in the late Ouko's home. I do not know the motive of such a statement. You have not provided us with those statements. How can I be subjected to questions on something I have not even been provided with? Mr. Oraro, who was also mentioned adversely was given permission to read all his statements and ask questions. Ms. Brinner also went through a whole book and you even allowed her to testify in England. I am willing to help you and give evidence that I have, but it looks like you do not want that evidence from me. I would like to give you evidence of what I know then you can ask questions on that; you can cross-examine because I am available. However, I will not be ambushed and cross-examined on evidence that I have not seen and which has not been tested. You also mentioned the issue of copies of the statement which I am about to read, if you allow me. My statements are already with you; they were provided to you. They include issues relating to the Molasses Plant, the Washington trip, among others. However, you will not tell me that my introduction was enough. I have to rebut that everybody has said. It is for the Chair to decide.

Mr. Wanjala: Mr. Chairman, Sir, with all due respect, I would like to tell the witness that this is an investigating Committee. It is not a court as has rightly been put by the Chair. We do not want you to read statements to us. We have been with this witness for the last four days. I am surprised that all over sudden the witness is trying to change the manner in which we want to conduct our investigations. We do not want our Committee to be bogged down in the last minute. This might be one of the ways of bogging down this Committee. Therefore, I urge the Chair to make a ruling. This is how we have also handled other

witness through investigation. We should continue with our witness in the normal manner; we ask him questions which he responds to. If he has any evidence, he will give it as the Chair had ruled. Since we do not have much time, I would like to ask you to make a ruling so that we proceed.

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Mr. Chairman: Order, Mr. Biwott!

Mr. K. Kilonzo: Mr. Chairman, Sir, I am further taken aback by the witness because for the last three or four days, the issue of how he is going to give evidence in this Committee has come up and he has acceded to giving evidence in a way of asking questions. We assured the witness that after he has answered our questions, we are going to give him an opportunity to go through any statement which he has. I believe we have not reneged on that as yet. I do not know why hon. Biwott now feels that the little time left would make any difference to change the rules of the game midway.

Mr. Biwott: Mr. Chairman, Sir, if you allow me---

Mr. Chairman: Mr. Biwott, before you say anything else, can I ask a simple question. We started these hearings with you on Wednesday last week and proceeded through Thursday and Friday. Can you tell us in very simple words what has happened in between to make you change your mind? Is it because of the adverse publicity or is it because you were unable to answer questions and that is why you now want us to change the rules in the middle of the game?

Mr. Biwott: Mr. Chairman, Sir, why play to the gallery? I never accepted that ruling; you impose it on and I obliged because you promised to let me ready my statement later. I am now asking for that right in view of the fact that you just want to close this sitting. But let me draw your attention to your Hansard of 22nd---

Mr. K. Kilonzo: Mr. Biwott, just before you draw our attention to that Hansard which, indeed, you are going to do, you have just stated very clearly that we promised to give you an opportunity to read your statement. What makes you think we have changed our minds?

Mr. Biwott: Mr. Chairman, Sir, I am not relating it to change of mind. The way you are beginning is the way it will end. You want me to continue answering questions on evidence which I have not adduced. You have not allowed me to give mine so that you progress. As the Chairman said, I am not doing this because of any adverse publicity. I am doing it as a matter of right because you have denied me this opportunity. Let me draw your attention to what you did for Ms. Brinner in the Hansard of 22nd---

Mr. Chairman: Mr. Biwott, we have those Hansards and we will refer to them when the time comes.

Mr. Biwott: You are trying to stop me so that the truth does not come out. Let me just read you your own ruling because it is pertinent to the issue. Paragraph 10 on page three reads:

> "Mr. Chairman: I gather that since your evidence is in Nairobi, a number of things have occurred which have necessitated you to come before this Committee and I now wish to give you an opportunity to give us the new evidence that you may have. I am aware that you have written a statement.

Maybe you, first of all, present that statement to us so that as we go along, we can follow up and ask the relevant questions.

Ms. Brinner: So, I give you the one which was signed yesterday.

Mr. Chairman: Could you produce one before this Committee?

Ms. Brinner: Yes, Sir.

Mr. Chairman: You already have given us a copy of the statement. All you need is one for yourself so that you can go through it and if you have several others you could help us. Otherwise, we may have to photocopy this one. You have now given us a paper which we have put in our records as having been submitted before this Committee. I now wish you proceed and go through the document and hon. Members are free to interrupt at any time to seek clarifications and ask questions so that we can finish quickly. Please, proceed."

So, this is all I am asking, that I go through my document and you seek clarifications or ask questions so that we have one rule for all.

Mr. Chairman: Mr. Biwott, I just want to take you on what you have just said. You have purportedly read my ruling which I do not have a copy. In fact the National Assembly must make sure that this Committee has the HANSARD because the witness has the HANSARD which we do not have and that is not very nice. You are saying that I made a ruling. What you have read now is with regard to a statement and not evidence. Secondly, you must recall that Ms. Brinner had given evidence in Kenya and that was a follow up to what she said she could not give us in Kenya because of security reasons. Now, you gave us this statement headed, "Parliamentary Select Committee to Investigate on the circumstances leading to the death of Dr. Ouko." Then you went on for five pages. You have signed it here. If you had made a summary of all that evidence, then you could go into details. Now, you want us to go into the evidence. It is for us to adduce the evidence for question and answer and not you imposing on us what you want to tell this Committee without giving us a chance to ask questions. Look at what you have submitted. If you go through all these papers, how would we do that investigation. Do you want us to believe that you want us to find the truth or you want us to be bombarded by all that information so that we are not able to ask you any questions and you get away scot-free without any answers to this Committees. This Chair has ruled that we must now proceed. If you have any further objections---

Mr. Werunga: Mr. Chairman, Sir, hon. Members, I have listened to the exchange between you and Mr. Biwott and I would like to advice that the rules that you made and revised on the 10th March, 2004 sufficiently allow the a hon. Member to give his evidence to his satisfaction. I would suggest that we go by rule no.9 because the evidence you are going to ask the Mr. Biwott has already been circulated to him through the HANSARD. So, you are just seeking clarifications on aspects of that evidence. Therefore, it is not new because

his lawyer sat through all the proceedings where those allegations were made. Therefore, in my view I would advice the Committee that we proceed that way and then after that I would want to urge the Committee that the hon. Member be given sufficient time to cover areas which he believes has not been covered sufficiently in his responses.

Mr. Chairman: Mr. Clerk, the Chairman has said that he is willing to sit here until midnight and even if it means deferring to go and write our report then we could sit tomorrow to allow you enough time to put whatever you have to the Committee for consideration. We have said that. I do not know why you want to take us backwards. The procedure for an investigating body, is that you must lay ground on information and ask the witnesses why this or that is there. In the case of this Parliamentary Select Committee, the grounds for asking you to come here could only be based on what we have heard and that can only be done through questions and answers. Let us look at the kind of witnesses that we have. There are two kinds. There are those who have come here to give information in which they have not been adversely mentioned and they give us information. Some of them may not have any grounds for being acceptable to this Committee. We are not record for having said that we would not accept that we hear as the gospel truth. We would question them and cross-examine. You are now in a different category of witness because you have been mentioned adversely. We want to give you the chance to depart those allegations made against you by asking you questions based on the HANSARD that the Deputy Clerk has referred to. If you want to set your own rules, for this Committee then I must rule out of order and ask us to proceed on basis that we would ask you questions and that you would answer them. If you do not wish to do that then you may make a complaint directly to the Speaker and withdraw from the Committee. Otherwise, I rule that we must now proceed because you are eating into the time that we need to take you through the evidence that we want. I do not see why you should be afraid to answer some of these questions. We are not getting them out of nowhere. We are getting them out of things that have even been reported in the press and the Hansard that you have access to and even in some circumstances, your advocate has been there in person to take note and know what has been said against you. I have ruled.

Mr. Biwott: Mr. Chairman, Sir, you will not deny me my constitutional right. I am Member of Parliament and I came here voluntarily and I supported this Committee because I felt I must give you my side of the story. The statement you showed that I read and signed is only an introduction and then it follows on to rebut any adverse evidence or alleged evidence by others. The Clerk says that I have that evidence through the Hansard. I have not got it. Nobody has told me that so and so has adversely mentioned me on this and that. Incidentally, I just got this Hansard the other day. You are complaining that you have not even looked at it, and it is you who ordered that we be given this one. But let me put it on record. I am not afraid of any questions. I am not asking to read all those documents, if you are intimidated by them. If I read about ten pages and the rest are still remaining, you cannot say that I have read that document. So, I am really firm on my right and I will now accept to be intimidated or side-tracked. I am here to assist this Committee. You ruled that I give evidence first and you promised that you will grant me my right. I am now demanding that I get that right to read and then you ask me questions.

Mr. Wanjala: Mr. Biwott, where were you on 7th February, 1990?

Mr. Biwott: Mr. Chairman, Sir, you are now ambushing me. I want to be given my right to first of all read all my statement and then you can come with all those questions and I will be ready to answer. But I must go through my statement first.

Mr. Chairman: Order, Mr. Biwott! You will not be allowed to dictate to this Committee. The procedures of this Committee are entirely upon it and its Chairman to lay on the table and we have done it. We have told you that you will be allowed to present any statement and any evidence after we finish our questions that we want to put to you. Now, if you do not want to recognise the ruling of the Chair, then you are free to do what you can. I can see now that you are challenging the Chair. The Chair has repeatedly made a ruling on that and we will stick to it. We are not going backwards. We do not think that we are denying you your right. Now, if you will not abide by the Chair's ruling, then I will adjourn these proceedings. Please, Mr. K. Kilonzo, proceed with the questions.

Mr. Biwott: Mr. Chairman, Sir, you cannot---

Mr. Chairman: I have made a ruling, Mr. Biwott. I have already made a ruling after consultation with Members of this Committee and the Clerk. So, we will proceed on that basis. But if you so wish to withdraw, you may do so.

Mr. Biwott: Mr. Chairman, Sir, I am not going to withdraw. I am here only to insist on my right. If you are going to allow me to read my statement later on, why not allow me now?

Mr. Chairman: We will allow you after we have asked you all the questions. That is the procedure.

Mr. K. Kilonzo: We are laying the foundation.

Mr. Biwott: No, no. You are discriminating against me. You are not giving me the right the way you have given others who have read their own statements.

Mr. Chairman: Mr. Biwott, you are not know to have given people their rights anywhere in this country. So, let us proceed.

Mr. K. Kilonzo: Mr. Biwott, where were you on the 7th February, 1990?

Mr. Biwott: Mr. Chairman, Sir, you are bulldozing me. I want to read my statement and then you can ask me those questions. In fact, I have answered many of those questions before. But I would like you to allow me my right to read my own statement on the Molasses---

Mr. K. Kilonzo: Please, my colleague, hon. Biwott, who makes decisions here? Is it the Committee and the Chair or is it you?

End E

Mr. Biwott: The Committee cannot---

Mr. K. Kilonzo: All right, fine.

Mr. Biwott: No, no, no---

Mr. K. Kilonzo: Listen to my question. Just listen to my question. I think we are doing well. The Committee makes the rules, so if you do not agree with those rules, what do you do?

Mr. Biwott: The Committee makes the rules, but we expect the Committee to apply those rules equally. But in this case, you are not applying them equally.

Mr. K. Kilonzo: So, are you saying---

Mr. Biwott: You are not giving me the right to read my statement, because this statement will help you more and it will also shed more light---

Mr. K. Kilonzo: I agree with you, hon. Biwott.

Mr. Biwott: But you are denying me that chance. Why are you afraid of me reading my statement first?

Mr. K. Kilonzo: Not at all! On the contrary, hon. Biwott, we have been through that; you and the Committee. The Chairman has made a ruling that we proceed the way we have been proceeding and later on, we are going to give you an opportunity to read that report you have. So, instead of us playing to the gallery here, you make a decision if you want us to proceed. If you feel that you do not want us to proceed that way, then you know what to do. You are an hon. Member of Parliament and you have been here longer than I have.

Mr. Biwott: But Mr. Chairman, Sir---

Mr. Wanjala: But Mr. Biwott, if it is you who wrote this statement, what is so difficult for you answering questions from us?

Mr. Biwott: No, Mr. Chairman, Sir, why do you want to cross examine me or ask me questions on documents that you have not provided me with? Why do you want to ask me questions before I present my own document? Why is it? Why are you putting the horse before the cart?

Prof. Mango: Mr. Biwott, when you first came here, why did you not read the statement? You had the opportunity to read it then. Why do you want to read it midstream now? You had ample time to do that.

Mr. Biwott: Mr. Chairman, Sir, you remember the acrimony we started with; that, I was refused the opportunity to read that statement. I was only--- It is not only one statement,

mark you, there are many statements that go one after the other on the subject. But I read the first one up to the point where I was going to read you the relevant part which would interest you. But you stopped me and you said---

Mr. Chairman: Order, Mr. Biwott! You may not mislead this Committee. I will proceed to display this even to members of the public in the gallery. Page 1 is the introduction, and you have gone through page 2, where you have detailed everything. Then in your testimony on page 3 and then, in page 4, you went through some of those details. In page 5, you have finished and signed. Now, in my own understanding of things, in ordinary matters, really, once you sign, that is the end of that, because you have not signed the other pages. So, it means that you are not signing every page. That is the end of that!

Now, the last word you are saying is: "Now, let me turn to the details of the Washington D.C. trip". That, in my own opinion, is going to give evidence, for which we want to ask you questions on, on a question and answer basis. That is how we collect evidence. Now, Mr. Biwott, I am now inclined to rule you out of order and rule that we must proceed as we have been proceeding. I will not entertain any further questions. If you want to withdraw, you can withdraw. If you refuse to recognize the Chair's ruling, then we will rule that you do not want to continue giving evidence in this Committee and we will then adjourn and then, go and write our report on the basis of what we already have.

Proceed, Mr. K. Kilonzo!

Mr. Biwott: All right, Mr. Chairman, Sir--- No, Mr. Chairman, Sir, please-

Mr. K. Kilonzo: Hon. Biwott, actually, who gives the permission for people to talk here? It is the Chairman. So, the Chairman has asked me to proceed. Are you willing now to answer questions? Where were you on the 7th of February, 1990?

Mr. Biwott: Please, Mr. Chairman, Sir, do not force me on your way. This is how you cut me short in the other--- I will appeal to you---

Mr. Chairman: Are you now threatening me? Are you threatening this Committee now? Are you threatening us now?

Mr. Biwott: Well, everybody is here to see.

Mr. Chairman: Yes, are you threatening this Committee now? Are you ordering this Committee? Tell this Chair that you are ordering this Committee and we will adjourn right now!

Mr. Biwott: Mr. Chairman, Sir, I am not---

Mr. Chairman: You will listen to the Chair of this Committee! Mr. Biwott, as an hon. Member of Parliament, this is conduct unbecoming! You must listen to the ruling of the Chair and respect it, and by the way, you always have a recourse first, to the Speaker of

the National Assembly and then, of course, to the House itself, because this report is going to be discussed in the National Assembly. You may raise these issues there, but right now, the Chair has ruled and, I believe I am right, and we must proceed. If you will insist on interceding any further, I am going to adjourn these proceedings.

Mr. Biwott: Yes, Mr. Chairman, Sir. Refer to that document; read it to the--- Read it now, so that everybody would know what exactly I read. Because I have not---

Mr. Chairman: Order! I think, hon. Members, now we have to adjourn these proceedings.

Mr. Biwott: Because that was only---

Mr. Chairman: I think the proceedings are adjourned!

Mr. Biwott: That was only an introductory part. If you read it, I had not even begun reading my evidence, and it will continue. Are you shutting me out?

(The Committee adjourned at 12.55 p.m.)

END F.

APPENDIX EIGHT

LIST OF THE SECRETARIAT

KENYA NATIONAL ASSEMBLY

1.	Mr. Murumba Werunga	-	Deputy Clerk
2.	Mrs. Serah Kioko	-	Second Clerk Assistant
3.	Mr. Rana Tiampati	-	Third Clerk Assistant
4.	Mr. Emejen Nicholas	-	Third Clerk Assistant
5.	Miss Beatrice A. Auma	-	Secretary
6.	Miss Alice Nanyama	-	Secretary

OFFICE OF THE ATTORNEY GENERAL

7.	Mr. Oriri Onyango	-	Assistant Deputy Public Prosecutor

POLICE DEPARTMENT

8.	Mr. Maurice Amatta	-	SACP - Investigation Officer
9.	Mr. Gabriel Mbuvi	-	SSP - Investigation Officer
10.	Mr. Clement Olema	-	SP - Investigation Officer
11.	Mr. Samuel Kagiri	-	CI - Investigation Officer