

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 14th April, 2004

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.005

RECONSTRUCTION OF BITUNDUGUSI PRIMARY SCHOOL ROOF

Mr. Mwancha asked the Minister for Education, Science and Technology:-

(a) whether he is aware that a section of a roof of Bitundugusi Primary School in Manga Division of Kitutu Masaba Constituency has been blown off by the wind, causing the collapse of the classrooms; and,

(b) what immediate steps he is taking to re-construct the school whose pupils are learning under trees.

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that two classrooms of Bitundugusi Primary School were blown off by strong winds on 13th November, 2003.

(b) Under the Free Primary Education Programme, the Ministry has sent a total of Kshs10,070 for repairs, maintenance and improvements, while the local community has raised Kshs12,000 through a mini-*Harambee* that was held on 5th December, 2003, towards repair of the classrooms. As of now, the reconstruction of the roofs is complete and the pupils are back in their classrooms.

Mr. Mwancha: Mr. Deputy Speaker, Sir, the answer the Assistant Minister has given is not correct because the pupils have not yet gone back into the two classrooms. As you have heard, only Kshs10,070 was given for renovations. The roofs of those classrooms were blown off by strong winds, which is a natural calamity. Could the Assistant Minister consider assisting that needy school?

Mrs. Mugo: Mr. Deputy Speaker, Sir, we have considered that. What is still remaining are the doors and the windows which are yet to be done. The money that was allocated in the last Budget was used up in similar disasters. We are waiting for the Supplementary Estimates. When those Estimates are passed by this House, that school will receive priority.

Mr. Deputy Speaker: Mrs. Mugo, just before I give a chance to hon. Members to pursue this Question further, I remember last time when a Question on blown roofs was raised, the Ministry said that it was going to issue a policy. Is it the policy of the Ministry to repair and provide funds for those classrooms? We should really have a policy because Members are raising such Questions very

often. Is there a policy on the way?

Mrs. Mugo: Yes, Mr. Deputy Speaker Sir. We will bring that policy in due course. However, the policy in the past has been that we have been giving Kshs100,000 for such repairs. However, that money has been exhausted. That is why I have just said that, as soon as we get the Supplementary Estimates approved, we shall definitely consider that school as a priority.

Mr. Deputy Speaker, Sir, as far as the policy is concerned, we are still working on it. We hope that we shall be able to bring it very soon. But it still remains the responsibility of both the Ministry, the community and stakeholders to support one another in repairing schools when something like that happens.

Mr. Karaba: Mr. Deputy Speaker, Sir, I think what you have asked is very pertinent to what we are trying to pursue here. The Ministry of Education, Science and Technology should come up with that policy. If a school is affected by a natural calamity, what is the role of the parents with regard to reconstruction? The parents believe that, with the Free Primary Education Programme, the Government is supposed to do everything. Could the Assistant Minister make that clear?

Mrs. Mugo: Mr. Deputy Speaker, Sir, in the past, we have made it quite clear that, until such a time when the Government will be able to absorb all the costs, the responsibility will be of the community, the parents and the Ministry. That is why we have been giving up to Kshs100,000. That money is not enough in some cases. Our hope is that we should be able to absorb as much as possible. It will depend on the money that we will get in the Supplementary Estimates. This will determine how much money we will allocate to each particular case. But a policy is being worked on even now.

Mr. Rotino: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that the Ministry gave Kshs10,070, and the parents raised Kshs12,000 for the reconstruction of Bitundugusi Primary School.

Mr. Temporary Deputy Speaker, Sir, is she satisfied that Kshs22,070 is enough to repair those classes?

Mrs. Mugo: Mr. Deputy Speaker, Sir, I think I was very clear. I said that, that money was not enough. We gave what was available. We have put a request in the Supplementary Estimates and, once the Minister brings them here and they are passed, we shall allocate more funds. That is what I said.

Mr. Omamba: Mr. Deputy Speaker, Sir, the Assistant Minister is not serious. Everywhere in Kenya, the floods are killing people, the wind blowing off roofs of classrooms and children are learning under trees. This Question should be deferred to give her time to work out the figures required, because cases of wind is blowing off roofs of classrooms are common.

Mr. Deputy Speaker: Mr. Omamba, do you have a question or you just want the Question to be deferred? What is your question?

Mr. Omamba: Mr. Deputy Speaker, Sir, I am requesting you to defer the Question.

Mr. Deputy Speaker: Order! Order!

Mr. Mwanicha: Mr. Deputy Speaker, Sir, that part of Kisii District is currently receiving a very heavy rainfall, and many schools are faced with this problem. Out of the Kshs100,000 that the Assistant Minister said will be forthcoming, could she consider availing part of it immediately to enable the pupils of that school get back into the classroom?

Mrs. Mugo: Mr. Deputy Speaker, Sir, I sympathise with the situation, but we can only give what we have. We give what this House votes for education. The Vote Head for education is exhausted. There is no other Vote Head to which we can charge those funds currently.

Our prayer is that the House will pass the Supplementary Estimates immediately they are brought here, so that we can have a little money to give to such cases. I am very serious about this

matter. I am not joking!

Mr. Deputy Speaker: That is why a policy is necessary. I think Questions of this nature are very common, and the answers given to them are almost the same. The Ministry should come up with up a policy, so that policy, so that hon. Members can know what to tell parents when such calamities occur.

Mr. Wanjala: On a point of order, Mr. Deputy Speaker, Sir. The Question has raised a disaster issue. The Office of the President has a department which deals with disaster-related issues. It is currently raining. As pupils learn under trees, their books get wet. What effort has the Ministry made to get that money from the disaster management kitty of the Office of the President to address these problems? The Office of the President has always assured us that it always has some funds for disaster management.

Mr. Deputy Speaker: Mr. Wanjala, I have listened very keenly with a view to determining the point of order you may be raising and I have not found any. That is simply a question. We do not allow that one.

Next Question, Mr. Obwocha!

Question No.008

BENEFICIARIES OF HELB

Mr. Obwocha asked the Minister for Education, Science and Technology:-

- (a) how many Kenyans and how much they have benefited from the Higher Education Loans Board (HELB) since the inception of the scheme in 1975; and,
- (b) how much is outstanding as at the end of December, 2003.

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Deputy Speaker, Sir, I beg to reply.

(a) A total of 188,000 students have benefitted from the loans disbursed by the HELB since its inception in 1973, and not 1975. The Board has spent a total of Kshs15.2 billion on student loans since 1973.

(b) A total of Kshs3 billion has been recovered as at the end of December, 2003. The outstanding balance is, therefore, Kshs12.2 billion.

Mr. Obwocha: Mr. Deputy Speaker, Sir, I do not expect the Professor to make a mistake, but his reply that the HELB was started in 1973 is incorrect. I finished my university education in 1973. The students who joined the university in the subsequent academic year started benefiting from the scheme. So, that part of the reply is incorrect. However, the current maximum disbursement to students is Kshs42,000.

Mr. Deputy Speaker, Sir, the Ministry gives grants to the universities, which also get money from the HELB. Could the Minister give us the current requirements of the universities and whether he could consider to increase the maximum amount disburseable to each student from Kshs42,000 to Kshs60,000?

Prof. Saitoti: Mr. Deputy Speaker, Sir, I think the most relevant point which has been raised by the hon. Member is whether the current level of disbursement by the HELB can be increased. I sympathise with the students in that regard. I hope that my Ministry will make a case for additional allocation on that score in the next financial year.

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, I would like the Minister to clarify whether students studying under the university parallel programme are also eligible for those loans.

Prof. Saitoti: Mr. Deputy Speaker, Sir, because of the limited financial resources available,

the scheme has not yet been extended to the parallel students. However, as I have said, it is my desire to seek additional resources in the next financial year to cover all the deserving university students.

Mr. Mganga: Mr. Deputy Speaker, Sir, we are aware that the system that prevails at the universities today has pushed many of our students into very serious hardships. The situation is so bad that some female students are found in funny places, like Koinange Street, trying to make ends meet. As the Minister looks for ways and means of raising additional funds, could he consider reviewing the whole cost-sharing system at the universities, so that all the students who join public universities could be assured of three basic things, namely; automatic book, food and accommodation allowances?

Prof. Saitoti: Mr. Deputy Speaker, Sir, first of all, it is important to disabuse the notion that all the university students, especially girls, are found at Koinange Street. It is important that we treat our university students with some respect. That allegation was made by a newspaper and it did not divulge the details of the university students who are involved. We should be fair to female university students. It is absolutely misleading to state publicly that our female university students are involved in prostitution. Having said that, I wish to inform this House that it is our desire in the Ministry to ensure that those three fundamental provisions are availed to students. We will be making a case for them. Everything will largely depend on availability of funds.

Mr. Kagwe: Mr. Deputy Speaker, Sir, one of the reasons for the shortage of funds to be lent out to students is failure by the HELB to recover money it previously lent out to students. What is the Minister doing to ensure that those who benefited from the HELB, particularly those of us in the House, repay their loans, so that the money can be lent to deserving students?

Prof. Saitoti: Mr. Deputy Speaker, Sir, I know that the hon. Member himself is repaying his loan because he is being paid some money. We are doing our best to find out where former public university graduates are attached and ensure that they are in a position to repay their loans.

Mr. Deputy Speaker, Sir, I think it is important to understand that during the last five years to the last general election, the economy was in a recession. There were no employment opportunities. So, a large number of university graduates did not have jobs and those who had jobs were retrenched. So, they did not have the resources with which to repay their loans. As the economy picks up, and the signals are there, there is no doubt that the quantum of loan repayment will grow.

Mr. ole Metito: Mr. Deputy Speaker, Sir, the Minister has just said that students doing parallel courses in the university are not benefitting from the Higher Education Loans Board (HELB). Why are they not entitled to those facilities and yet students in private universities are benefitting from HELB?

Prof. Saitoti: Mr. Deputy Speaker, Sir, let me just take the last tail of that; why the students in private universities are themselves actually benefitting from the loans of the Higher Education Loans Board. Clearly, we do not want to differentiate between the students who are in public universities and those who are in private universities.

Mr. Deputy Speaker, Sir, as far as the case of parallel degree course students are concerned, I do own up to the fact that, indeed, there is some inequity. However, that has been brought about by lack of resources, and we are going to be looking for those resources.

Hon. Members: Mr. Masanya!

Mr. Deputy Speaker: Mr. Masanya!

Mr. Masanya: Thank you, Mr. Deputy Speaker, Sir. I am happy because my colleagues here have campaigned for me. I am happy I have got the chance. What I wanted to know from the Minister is the criteria for students to get loans. This is because many students have come to me

asking me to assist them get these loans. Is the criteria automatic or is it supposed to be negotiated?

Prof. Saitoti: Mr. Deputy Speaker, Sir, to the best of my knowledge, there are no negotiation conditionalities at all. But the Higher Education Loans Board has a very clear-cut criteria for setting the levels at which the applicant gets a loan. That is dependent on the ability of the parents to be able to raise the money.

Mr. Obwocha: Mr. Deputy Speaker, Sir, one of the reasons why these issues have not been properly handled is because, upon the departure of the then Secretary, Prof. Chacha Nyaigoti Chacha, there was an irregular appointment of the Secretary to the Board. Although right now I believe the Secretary is doing a good job, he was appointed irregularly. Could the Minister ensure that he streamlines the running of the Higher Education Loans Board?

Mr. Sirma: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, hon. Sirma! The hon. Member has asked a question, which was directed to the Minister for Education, Science and Technology, and he is right here. So, let the Minister answer the question.

Mr. Sirma: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Mr. Sirma!

Hon. Members: Out!

Prof. Saitoti: Mr. Deputy Speaker, Sir, I think there are really two parts of the question here. The first part is the allegation that the current Secretary was appointed irregularly. I am not aware of that. I have to say that clearly.

Mr. Deputy Speaker, Sir, secondly, with regard to the Board, we are going to make sure that the Board does its work properly.

Mr. Deputy Speaker: Next Question!

Question No.015

BREAKDOWN OF SCHOLARSHIPS AWARDED BY EDUCATION MINISTRY

Mr. Marende asked the Minister for Education, Science and Technology:-

(a) how many scholarships to pursue further education for both university undergraduate and post-graduate training overseas have been awarded by the Ministry from its resources and otherwise since the month of January 2003;

(b) why the availability of the aforesaid scholarships has not been advertised in the mass media so as to ensure public accessibility and competitiveness in the award thereto; and,

(c) whether he could give numerical breakdown, particularizing how many of these scholarships were awarded district by district.

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Deputy Speaker, Sir, I would like to seek the indulgence of the House to be able to bring the answer to this Question much later, because I think there is quite a lot of data, which I have actually tried to dig up, and I felt that I did not want to bring the answer in the manner in which it was formulated.

Mr. Deputy Speaker: Mr. Marende, is that okay?

Mr. Marende: Mr. Deputy Speaker, Sir, I am a bit concerned over the period that the Minister requires to answer this Question. Initially, this Question was forwarded to the Minister in October last year. If the Minister then wants to be accommodated, could he indicate exactly when he will answer the Question?

Prof. Saitoti: Mr. Deputy Speaker, Sir, I had already talked with the hon. Member and intimated to him that, indeed, next Tuesday would be convenient, and he did agree to that. So, next

Tuesday, I will bring a comprehensive answer!

Mr. Deputy Speaker: He is not asking for too much, Mr. Marende! Tuesday next week and you will get the right answer!

Mr. Marende: Mr. Deputy Speaker, Sir, I accept that.

Mr. Deputy Speaker: Very well! Question deferred to next Tuesday.

(Question deferred)

Question No.014

MEASURES TO END WRANGLING IN KFF

Mr. Owino asked the Minister for Gender, Sports, Culture and Social Services:-

(a) why there exists two parallel premier leagues in Kenya today;

(b) with the existence of the two premier leagues, which clubs will represent the country in international competitions, especially that of Mandela Cup and Champions Club Tournament; and,

(c) what the Ministry is doing to end the wrangles in KFF, in order to stop the endless squabbles, so that the standard of football, which is now at its lowest ebb, can improve.

The Minister for Gender, Sports, Culture and Social Services (Mr. Balala): Mr. Deputy Speaker, Sir, I beg to reply.

(a) There is only one premier league that is recognized by FIFA, and that is the KFF Premier League. The second league that is in existence, of the Kenya Premier League Group, is not officially recognized by CAF or by FIFA.

(b) In order for a club to represent the country in international competitions, it must have the approval of the local federation that is recognized by FIFA. Under the current circumstances, therefore, if a premier league club had qualified to participate in either the Mandela Cup or any championship tournament, they have to be entered by the local federation. Clubs under the KFF Premier League would, therefore, be the ones satisfying the qualifying criteria.

(c) My Ministry tries very hard to handle the wrangles in the KFF, which have arisen due to lack of transparency and accountability in the organization as well as exceeding of tenure of office as required by the existing KFF Constitution.

Mr. Deputy Speaker, Sir, you are aware that my Ministry has appointed a transitional committee to look after the affairs of the KFF as the term of KFF officials was over on 24th March, 2004. Therefore, we appointed a stakeholders transitional committee to take over for three months, so that they can conduct elections and put a proper constitution in place.

Thank you.

Mr. Owino: Mr. Deputy Speaker, Sir, for the last four years, football management in this country has been wanting because of various dissolutions by the previous Minister, because of various scandals involving members of the KFF. Last year, this led to an investigation into the scandals in the KFF. I do not remember reading anywhere the results of the investigations. Could the Minister tell the House what became of those investigations?

Mr. Balala: Mr. Deputy Speaker, Sir, unfortunately, previous Ministers have tried to dissolve KFF, but I want to make it very clear that I have not dissolved the KFF. The KFF's term of office has come to an end. There was a vacuum and that was why I installed a committee to take over. Unfortunately, there are quite a number of allegations of corruption and mismanagement

in KFF. I think its officials have known how to manoeuvre their way around, but we have not got a report from the Anti-Corruption Police Unit.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, could the Minister assure this House that his activities against the Kenya Football Federation (KFF) will not lead to Kenya being stripped off its affiliation to the Federation of International Football Associations (FIFA)?

Mr. Balala: Mr. Deputy Speaker, Sir, I cannot mislead this House by saying that there is a guarantee that Kenya will not be banned by FIFA. The FIFA officials came into the country without appointment. We wrote to them confirming that we will not be around during the Easter holidays. We requested their flight details, so that we can receive them officially, meet with them and discuss the problems of football in this country.

Mr. Deputy Speaker, Sir, the FIFA officials came on a Saturday. It was during the Easter holidays and people were in church. They were actually reading to us the "riot act", that, if we do not reverse what we have done, we shall be banned. It is unfortunate that, as a Government, a people and a country, we cannot streamline our own sectors and, instead, we are directed by international federations. I believe there is still dialogue and we are still open. We shall be more than willing to discuss the issues and resolve the problems.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I would like to say that, in the past few years, the problem in our sports, particularly soccer, has been the proliferation of companies running or sponsoring their own teams, to such an extent that the Government is even sponsoring teams to play in the league. I will give an example of Kenya Pipeline Company, which is even investing Kshs130 million to build a sports complex. Could the Minister assure this House that he will commit himself to reforming the sports sector in such a way that companies will be limited to sponsoring existing teams, and not participating in the leagues?

Mr. Balala: Mr. Deputy Speaker, Sir, the social responsibilities of the private sector and companies depends on their brands and ways they can use to market their products. If they want to use football to sell their products, that is the case. We cannot restrict a company from sponsoring soccer or any other sporting activity.

Mr. Deputy Speaker, Sir, I will lay on the Table a Sports Bill that will streamline sports in this country, and I will seek the support of all hon. Members.

Mr. Muriungi: Mr. Deputy Speaker, Sir, could the Minister tell us the status of the officials who were elected as KFF officials on 20th, March? That is because they used their money, people campaigned and they were elected. What is the status of those people?

Mr. Balala: Mr. Deputy Speaker, Sir, no election took place. The purported election that took place was illegal! Only last Thursday, the court ruled on the issue and said any election held before 24th, March, 2004 was null and void. I believe that we are going to announce an election programme in the next two weeks. The country should be prepared for that election.

Mr. Deputy Speaker: Last question, Mr. Owino!

Mr. Owino: Mr. Deputy Speaker, Sir, I am sure the Minister is aware of the looming FIFA penalty because of the new caretaker committee that he has put in place. We support that, but how soon are the elections going to be held to avoid the penalty? Is he further aware that the KFF removed the clauses that required them to submit to the jurisdiction of the Kenya National Sports Council (KNSC)? They only adhere to Resolution 60 of FIFA which requires that FIFA members, football clubs and leagues only submit to courts as the final arbitrator.

(Loud consultations)

Mr. Deputy Speaker: Order! Mr. Minister, could you reply?

Mr. Balala: Mr. Deputy Speaker, Sir, the hon. Member is confused about this issue. He read a statement instead of asking a question. But, nevertheless, I want to assure him that we are fastening our belts. We are going to crash, but nobody is going to die. At the same time, all sporting federations need to subscribe to the KNSC, so that there is some way of coordination. I think it is advisable for sports federations, KFF included, to subscribe to KNSC.

Mr. Deputy Speaker: Very well. Next Question by Mr. Kamotho!

QUESTION BY PRIVATE NOTICE

ATTACK ON HON. KAMOTHO BY
POLITICAL THUGS

Mr. Kamotho: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President the following Question by Private Notice. I am asking it for the third time.

(a) Is the Minister aware that on Saturday 20th March, 2004 at 11.00 a.m., an organised group of thugs from Nairobi and Kora Sub-Location of Mathioya Constituency attacked me and my wife and prevented the public launch of Mathioya Constituency AIDS Control Committee (CACC) to take place?

(b) What action has the Government taken to apprehend those involved in the planning and execution of that heinous crime as they are known by the public and the police?

(c) What has the Minister done to ensure that political and other forms of violence stop once and for all?

(Loud consultations)

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, may I know what that means?

Mr. Deputy Speaker: Order! Address the Chair and answer the Question, Mr. Tarus!

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the hon. Member was attacked by a crowd in his Mathioya Constituency during the intended launch of the Mathioya CACC. However, investigations so far have not established that the attack was organised by a group of thugs from Nairobi and Kora Sub-Location of Mathioya Constituency as alleged.

(b) The police have already arrested six suspects who have recorded statements and released on bond. Two more suspects who went into hiding are still being sought. A statement has also been recorded from the hon. Member to help in the investigations. The inquiry file was forwarded to the Attorney-General for further direction under Police Force Standing Order, Cap 46 on the Guide to Criminal Investigations Paragraph 39(1)(b)(3).

I am also not aware of any instructions having been given to one councillor in connection with the incident as alleged. Any person who is found to have been involved in the incident will face the full force of the law.

(c) The Office of the President is in the process of re-organising the police force to deal firmly with any forms of violence, whether political or otherwise. Security intelligence within the police force has been strengthened to inform of any possible outbreak of violence, so as to enable the police to advise applicants for public gatherings and deal with the suspects accordingly, before any violence breaks out.

Mr. Kamotho: Mr. Deputy Speaker, Sir, I think the Assistant Minister should either agree

or deny that he has lost the war against criminals. The work they are concentrating on is that of criminalizing civil works and politics. Could the Assistant Minister deny that the release of those six people who were arrested was due to a call from Nairobi, and that the arrest of those boys, who had just been given Kshs50 at the marketplace to throw stones, was an effort to cover up the truth about that incident?

Mr. Tarus: Mr. Deputy Speaker, Sir, I am not aware of any call from Nairobi to anywhere, instructing the police station to release the suspects. The release of the persons who were arrested was as per the regulations that guide incidences of that nature. I also want to say that there was no cover-up. The cases of those who were arrested have been taken up by the police and once investigations are complete, and the Attorney-General advises on the prosecution, they will be prosecuted accordingly.

Mr. Sasura: Mr. Deputy Speaker, Sir, I sympathise with our former KANU Secretary-General, hon. Kamotho, since this is a very sad issue. In the light of what has happened to several Members of Parliament, this is a very important Question and the Assistant Minister should handle it with all the seriousness it deserves.

The Assistant Minister has said that six people have been arrested. He has also said that an inquiry file was opened and it has been sent to the Attorney-General to seek consent to prosecute. Now, could the Assistant Minister tell us what those six people were charged with?

Mr. Tarus: Mr. Deputy Speaker, Sir, the people were arrested and released on bond. They have not been charged yet.

Hon. Members: Why? Why?

Mr. Muite: Mr. Deputy Speaker, Sir, hon. Kamotho must be protected like any other Kenyan, however objectionable his political views and statements might be. I do find his views very objectionable, like many other people, including those in his constituency where this incident took place. Could the Assistant Minister assure this House that he will bring a progress report? We want to know whether those individuals are going to be charged in court.

Mr. Tarus: Mr. Deputy Speaker, Sir, the suspects will be charged once investigations are complete.

Mr. Omingo: Mr. Deputy Speaker, Sir, arising from the numerous Ministerial Statements directed to this particular Ministry, the issue of security raises a serious concern to Members of Parliament as well as the public. Could the Assistant Minister tell this House, in all honesty, under what circumstances are inquiry files opened and the Attorney-General's consent to prosecute sought, as per his statement?

Mr. Tarus: Mr. Deputy Speaker, Sir, the circumstances under which inquiry files are opened are as per the requirements of the cases as considered by the police. If the police find, in their own wisdom, that this is a case that requires the direction of the Attorney-General, they have a right to forward the same file to the Attorney-General.

Mr. Ndolo: Mr. Deputy Speaker, Sir, the master planner of the Mathioya saga is sitting with us in this House. Could he volunteer himself? We know the plan was made in a certain house, somewhere in Huruma Estate and he knows it. Could he volunteer and tell this House why he did that?

*(Several hon. Members stood up
in their places)*

Mr. Deputy Speaker: Order! Order, Members! Mr. Ndolo, I thought you stood to ask the Assistant Minister a question. Now, you just preached to us, gave us theories and you left us

hanging. Could you ask a question? If you have no question, then sit down.

Mr. Ndolo: Mr. Deputy Speaker, Sir, could the hon. Member volunteer himself and tell this House---

Mr. Deputy Speaker: Order! Order!

Mr. Wario: Jambo la nidhamu, Bw. Naibu Spika. Ulimsikia mhe Ndolo akisema kwamba aliyefanya mpango wa kumwangamiza mhe Kamotho yuko na sisi katika hili Bunge. Je, anaweza kumtaja tujue ni nani aliyefanya mpango huo?

(Applause)

Mr. Deputy Speaker: Mr. Ndolo, you have been challenged!

(Loud consultations)

Order! Order, Mr. Ndolo! I want to caution you. This is not a public rally. This is the Kenya National Assembly and you, as you stand there, cannot mention any Member's name unless you bring a substantive Motion, incase you want to impute improper motive. So, you must know the rules of the House. You do not just stand there and do it like you did the other day in Makadara. I want to go on to another Question.

Mr. Lesrima: Mr. Deputy Speaker, Sir, we are now laughing at this matter, but it is a fairly serious matter. I am just wondering what the Assistant Minister will do to make sure that 'a Mathioya' is not visited upon Emgwen Constituency one of these days! What advice is he going to give to the police to protect Members of Parliament in such situations?

Mr. Tarus: Mr. Deputy Speaker, Sir, I have made it clear, more than once, that whenever a public rally is organised, it is important for the hon. Member or persons organising that rally or meeting, to notify the police so that they can be provided with security.

Mr. Omingo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to totally ignore answering my question? In my layman's knowledge of the law, a public inquiry and the involvement of the Attorney-General touches on the state officials. Was there anything to link the state to this matter for a public inquiry file to be opened at the Attorney-General's Chambers?

Mr. Deputy Speaker: Mr. Omingo, that question was answered a long time ago and there have been other Members asking different questions. If you were not satisfied at that time, you should have raised your point immediately.

*(Several hon. Members stood up
in their places)*

Mr. Deputy Speaker: Order! Order! Hon. Members, could you sit down? Mr. Kamotho!

Mr. Kamotho: Mr. Deputy Speaker, Sir, could the Assistant Minister confirm or deny that the use of the Attorney-General is part of the exercise of covering up this particular matter? I know that whenever people are arrested for these kinds of cases, they are charged in court before the matter is ever referred to the Attorney-General.

Mr. Deputy Speaker: Mr. Tarus, I think you should clarify that matter because I think that is the same issue that was raised by Mr. Omingo. Why was Mr. Kamotho's case so special, that it was decided that an inquiry file goes to the Attorney-General when, in fact, people committing such crimes, are arrested and charged immediately?

(Applause)

Mr. Tarus: Mr. Deputy Speaker, Sir, owing to the gravity and seriousness of this matter, not only for hon. Members but for members of the public, the police concerned saw it necessary to seek advice from the Attorney-General's office.

Mr. Deputy Speaker: Mr. Kamotho again!

Mr. Kamotho: Mr. Deputy Speaker, Sir, the arrest of the fifth fellow is just an exercise of covering up the matter. The councillor who was named as the organiser of that particular incident and sent by some politician somewhere has not been arrested as of now.

Hon. Members: Who?

Mr. Kamotho: Mr. Deputy Speaker, Sir, they are just giving excuses that he is not available and he was in Mathioya on Sunday trying to say that he is a very good Christian, very innocent and cannot do that kind of thing and we know that he is a criminal. Could the Assistant Minister tell us the truth about this particular matter?

Mr. Tarus: Mr. Deputy Speaker, Sir, I think we need to trust that our police are going to do a good job. We have said that people have been arrested and others are still being sought by the police. For the alleged councillor, we have also said that the police are looking for him to record a statement. Let us give the police time and it will prove that we are honest. We shall follow this case up to conclusion.

Mr. Deputy Speaker: Just before the next Order, Dr. Galgallo!

POINT OF ORDER

INVASION OF MOYALE CONSTITUENCY BY ETHIOPIAN MILITARY

Dr. Galgallo: Mr. Deputy Speaker, Sir, yesterday I sought a Ministerial Statement from the Minister of State, Office of the President about occupation of part of my constituency by Ethiopian military and he has not said anything. He assured me that he will give it to me this afternoon. To make the situation more serious, they are now holding my District Medical Officer of Health, his driver and their vehicle in Ethiopia. These are civil servants and the vehicle is Government property. I want the Assistant Minister to respond because this is fairly urgent and he promised to do it this afternoon.

Mr. Deputy Speaker: This is a serious matter, indeed. Yesterday a Ministerial Statement was sought on that matter and now you hear that Kenyans have been abducted. We should be more concerned even as hon. Members. Could you say something?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I have been pursuing the same issue since morning and I want to promise the House that we shall be giving an interim Ministerial Statement tomorrow in the afternoon. We are sorry for the delay, but we take the sentiments seriously.

Maj-Gen. Nkaiserry: Mr. Deputy Speaker, Sir, matters regarding national security cannot even wait for a minute; not an hour or a day!

(Applause)

We cannot expect this Government to allow Kenyans to be apprehended by a foreign nation which we have not declared a state of war with yet the Assistant Minister is telling this country that

we are going to wait until tomorrow afternoon. Could the Assistant Minister tell this House and the Kenyan population that they are prepared as a Government to defend our citizens and have them brought back today?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, whereas the matter is of grave concern, we must also take notice that it is good to give diplomatic approach to this issue. However, we have said that tomorrow we shall be able to make a Ministerial Statement on this particular matter.

Mr. Deputy Speaker: I will allow Mr. Mwenje, being the Chairman of the Departmental Committee on Administration, National Security and Local Authorities, to say something on this issue.

Mr. Mwenje: Mr. Deputy Speaker, Sir, as the Chairman of the National Security Committee, I have been to that area. I want to agree with Dr. Galgalo that he needs---

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. This House is being taken for a ride! Mr. Mwenje is introducing himself as the Chairman of the Kenya National Security Committee. When did he become the Chairman?

Mr. Deputy Speaker: He is the Chairman of the Departmental Committee.

Mr. Mwenje: Mr. Deputy Speaker, Sir, we can forgive Dr. Godana; he is getting old.

(Applause)

Mr. Deputy Speaker: But Mr. Mwenje what are you really?

Mr. Mwenje: Mr. Deputy Speaker, Sir, what I am saying is that I have been to that area and I saw the seriousness of this situation. Instead of the Assistant Minister waiting to come and give a Ministerial Statement tomorrow, could we mobilise our forces to go and save our people there? The situation is getting serious. The General Service Unit (GSU) and the police should go and save our people at the Ethiopian border.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, Ethiopia is a friendly country.

Hon. Members: No!

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I have said that we recognise the gravity of the matter. We have said that we shall take the necessary action to address the problem. We have also said that we shall make the interim Ministerial Statement tomorrow because the House deserves to get adequate response on this issue.

Mr. Sasura: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Very well! On that matter; no! Mr. Assistant Minister, you have heard the sentiments of the House. Make sure that you bring a comprehensive Ministerial Statement on that matter tomorrow.

Next Order!

BILLS

First Readings

THE GOVERNMENT FINANCIAL MANAGEMENT BILL
THE PRIVATISATION BILL

(Orders for First Readings read -

*Read the First Time - and ordered
to be committed to the relevant
Departmental Committees)*

Mr. Deputy Speaker: Next order!

MOTION

EXTENSION OF MANDATE
OF SELECT COMMITTEE ON
DEATH OF DR. OUKO

Mr. Sungu: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House resolves that the mandate of the Select Committee appointed by the House to investigate and report on the circumstances which led to the death of the late Dr. the Hon. Robert J. Ouko, E.G.H., M.P., be renewed in order to enable the Committee continue investigations and complete its work.

Mr. Deputy Speaker, Sir, this Committee was given mandate by a resolution of this House on 26th March, 2003. In July, 2003, the House resolved that the proceedings will be held in public.

This Motion seeks to urge the House to extend the mandate of the Committee, which has already expired, to enable it to continue with its work and to report to the House.

Since its inception, this Committee has held 43 sittings. Most of these sittings were deliberative and dwelt on matters of procedure to be used, and also the provisional facilities and expertise to enable the Committee to carry out its mandate. The Committee lost precious time before commencing receipt of evidence. However, the Committee was able to receive evidence with effect from February, this year, when the Government seconded a counsel to the Committee. Since February, this Committee has received evidence from 14 witnesses. The Committee feels that the evidence so far received is crucial in unravelling the mystery surrounding the death of the late Dr. Ouko. The more important aspect is that, we feel that more vital evidence is still forthcoming from a number of key witnesses. Some of these witnesses have relocated overseas and they have been summoned by the National Assembly of Kenya.

In addition, persons who have been mentioned adversely before the Committee are yet to appear before it. In line with the rules of national justice, it is only incumbent upon the House to extend the mandate of this Committee so that it can receive evidence from persons. The Committee intends to summon those witnesses as soon as Parliament renews its mandate. However, I want to hasten to add that there are those who have attempted to impose upon Parliament a schedule within which to call witnesses. They have attempted to command Parliament to do their bidding. May I remind the House that this Committee was appointed by Parliament to do the work which would be difficult to do in this House as a whole. Therefore, this Committee represents Parliament in its collective form. Hence, this Committee is blessed with the use of the National Assembly of Kenya Powers and Privileges Act. Therefore, the Committee cannot be called upon or forced into calling witnesses at the same time. Indeed, it will be very unwieldy and impossible to hear everyone at the same time.

Mr. Deputy Speaker, Sir, the Committee is committed to calling all the witnesses that have been mentioned and all those that may have relevant evidence. However, this must be done in a proper and sequential manner. That is why some people are yet to be summoned. I want to add that the Committee will treat all witnesses without fear or favour. I, as an hon. Member of this House, consider Parliament to be supreme and that it can summon anybody itself, or through a committee.

However, let me also explain that in a committee, such as this, charged with investigating a matter as important as the heinous murder and death of the late Dr. Ouko, there is nobody on trial. There is no one single person who is accused of any crime before the Committee or the House. The Committee is merely charged with the responsibility of investigating the matter, so that we can come to the truth and the bottom of the matter. Therefore, our mandate is to investigate. This involves asking questions to the witnesses and getting answers to the questions. Given the manner of the death of the late Dr. Ouko, some of the questions that this Committee has to ask must be unpleasant. However, it is incumbent upon the Committee to ask these questions. Somebody has to do that work. This Committee has consistently held up the rules of this House; the National Assembly of Kenya, Powers and Privileges Act Cap 6. In fact, I want to refer to Section 16 of the National Assembly Powers and Privileges Act which reads as follows:-

"The National Assembly or any Committee may require that any facts, matters and things related 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 any other person specially appointed by that person, may administer."

Mr. Deputy Speaker, Sir, the Committee has walked backwards and we have HANSARD reports to prove that. Although witnesses appearing before the Committee are allowed to have their advocates, they are not allowed to cross-examine witnesses by the House rules. I understand this has created a hullabaloo amongst some hon. Members. I am saying this now, as the Chairman of this Committee, that this Committee is willing even to walk backwards. If the publicity that is coming up, because this Committee was mandated to receive evidence in public, is what is causing the problem, the Committee is willing to move backwards so that we can even hear evidence in camera; either through a resolution of the House or a decision of the Committee, which are both possible. Therefore, I want to confirm, and it is in our HANSARD reports of the Committee, that all persons who have been mentioned adversely, and all persons with relevant evidence will be given an opportunity to give evidence at an opportune time.

Mr. Deputy Speaker, Sir, there is a need to renew the mandate of this Committee to give those same people a chance to say their side of the story. We are not ready to listen to one side of the story only. The Committee Members have said that we are not necessarily believing everything that is said, and I have HANSARD reports here which I can table before this House, to prove it. We have stated that we do not necessarily believe everything that is said by every witness. The Committee will sit and try to sieve through this evidence so that we can find who is telling the truth and who is not. This Committee is not out to malign the name of anybody or any person, either inside or outside this House. We want to look at this in as fair manner as possible. From the evidence so far collected before the Committee, the manner in which this heinous crime was committed, the manner in which this murder was committed, and the manner in which this crime against humanity was perpetrated and executed; the callousness with which those in authority treated this matter at the time, the false promises made that no stones would be left unturned, the deliberate acts of cover-up---

Mr. Khamasi: On a point of order, Mr. Deputy Speaker, Sir. I hate to interrupt my good friend, but do you not think he has now reached a point where he is reporting to the House the contents of the report of the Committee when we are not yet at that stage?

Mr. Deputy Speaker: Yes, indeed! Mr. Sungu, you are seeking extension of your mandate. Do not pre-empt your report.

Mr. Sungu: Mr. Deputy Speaker, Sir, I would like to thank the hon. Member for raising that

point of order. As I have said here before, I respect the rules of this House, and I will remain committed to them. I wish to apologise to the House for having made these remarks. I got carried away because this is a very serious matter. I hope the House will pass this Motion.

It is important for this Committee to be given an extension to get to the bottom of this matter.

(Applause)

We can only get to the bottom of this matter if this House renews our mandate. I would like to tell this House that the Committee has done a commendable job. In fact, the Chairman and the hon. Members of this Committee have spent endless hours going through evidence and listening to people, some of whom have cried and begged us. It has been an emotional experience for me. I would like to say that quite often when things become difficult; when the target appears unattainable and one appears to be at the end of his or her resolve, is when achievement can be made. Therefore, I urge this House not to give up so that we can resolve the murder of the late Dr. Ouko. I would like to say that commissions have been set up in the past to investigate this murder. The police failed to resolve this murder, and the Ninth Parliament can show its teeth by getting to the bottom of this matter. It is after the House extends the mandate of this Committee that we can resolve this murder.

Mr. Deputy Speaker, Sir, I had a lot to say, but because I have heard the sentiments of hon. Members, I beg to move and ask Mr. Obwocha to second this Motion.

Mr. Obwocha: Mr. Deputy Speaker, Sir, this is a straightforward matter. We are seeking for the extension of the mandate of this Committee. There was a precedent in 1975 when this House set up a Parliamentary Select Committee to investigate the murder of the late J.M. Kariuki.

The Chairman of the Committee has given this House the reasons why we could not move further than we did. One of the reasons he has not given us is that this Parliament was part and parcel of the Bomas circus, which went on throughout the year 2003, and as a result many Committees never worked properly. That is true.

I would like to say that there are certain members of the society who have been maligned or whose names have featured in our Committee's proceedings! We want to give these people a chance so that they can say their bit. Some of them have said that the Members of this Committee are not willing to summon them, or we have not summoned them. In fact, some of these people submitted even memoranda defending themselves when we had not even heard any evidence from anybody. So, we want to give them a chance to clear their names.

I agree with the Chairman when he says that the rules of natural justice demand that anybody who has been mentioned adversely should be given a chance to defend himself or herself. This is why we are seeking leave of the House for the renewal of the mandate of this Committee. I would like to tell this House that reversing the decision the House made on Standing Order No.161 about public hearings would mean that there is something that Parliament wants to hide. Since Parliament had given authority that we hold these proceedings in public, let us continue holding them in public. We will make our recommendations to this House. After that, the House can direct the other arms of the Government what to do or to take over the investigations.

Finally, I would like to plead with hon. Members to pass this Motion because many of us are very passionate about this murder. The late Dr. Ouko was an hon. Member of this House and he was killed in mysterious circumstances. Hon. Members of Parliament should be the last people, indeed, to abandon their colleague, or his family when it wants to find out how he was murdered.

(Applause)

I would like to plead with hon. Members to renew the mandate of this Committee. Hon. Members may have their reasons not to renew the mandate of this Committee, but next time it might be the turn of one or more of them.

Mr. Deputy Speaker, Sir, with those few remarks, I would like to plead with the House to extend the mandate of this Committee. I beg to second.

(Question proposed)

Mr. Biwott: Mr. Deputy Speaker, Sir, I rise to contribute to this Motion. I supported the creation of the Select Committee to investigate the circumstances under which Dr. Ouko died, and everybody in this House knows this. This is because I believe that the true killer or killers of the late Dr. Ouko should be identified. I really mean this because this not a simple matter; it is a serious one. This matter should be taken seriously.

Personally, it is important that the true killers of the late Dr. Ouko are identified because my name has been wrongfully maligned on the basis of demonstratively false and fabricated evidence and theories or motives which are unsustainable. On my part, I sought to co-operate and assist the Select Committee as follows.

On 27th August, last year the Committee placed an advertisement in the Press asking anyone who had evidence relevant to its mandate to come forward and present it to the Committee, with a promise that, that evidence would be made public. My lawyers immediately wrote to the Chairman of the Select Committee asking him when the Committee would start receiving evidence. This is because I wanted to give the Committee evidence which answered all the questions surrounding the molasses project and the Washington trip that Mr. Wetangula had said that they would focus on. When hon. Sungu moved the Motion---

Mr. Muiruri: On a point of order, Mr. Deputy Speaker, Sir. Have you noted that Mr. Biwott is actually reading a written statement?

Mr. Deputy Speaker: What is that, Mr. Biwott?

Mr. Biwott: Mr. Deputy Speaker, Sir, I think I have a right to refresh my memory, especially in respect of what actually appeared in the Press.

(Mr. Samoei was applauded as he entered the Chamber)

Mr. Deputy Speaker: But what we are trying to do here, Mr. Biwott, is to renew the mandate of the Committee.

To me, it is as if---

Mr. Biwott: Mr. Deputy Speaker, Sir, I am about to finish.

Mr. Deputy Speaker: But what is your objective? Is it to counter what was said in the Committee or---

Mr. Biwott: No! No! I am only contributing to the Motion. The hon. Mover has given a history of what happened, and I am giving a history of what began here and hopefully ends where--- I support the renewal of the mandate of this Committee.

I also believe that my evidence will help the Select Committee to focus its attention on those people who might truly be responsible for the death of the late Minister. When, over a month later, I had still not been requested to present my evidence, I instructed my lawyers to file three affidavits

with the Clerk of the National Assembly, who, according to the Press advertisement, had been appointed to receive this kind of evidence.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Are we constituting the Committee on the Floor of the House, so that we can give our views and evidence? Are we supporting or opposing the extension of the mandate of the Committee?

Mr. Deputy Speaker: You see, I have some difficulty in that. That is why I asked Mr. Biwott what was the essence of the statement he is making. I thought we are debating the Motion on the extension of the mandate of the Committee.

Mr. Biwott: But, Mr. Deputy Speaker, Sir, this is only focusing on the extension. I did that because I knew these affidavits will help the Committee Members in their task.

On 3rd November, Mr. Sungu wrote to my lawyers, and I quote:-

"I can confirm that the sworn affidavits tendered by you on behalf of your client, through the Clerk of the National Assembly, have been received by the Committee---

Mr. Khamasi: On a point of order, Mr. Deputy Speaker, Sir. I think you made a ruling. What Mr. Biwott is doing is literally discussing the report which you already stopped hon. Sungu from doing. So, could you, with respect, confine Mr. Biwott to discuss as to whether we can extend the mandate of this Committee, so that he can have time to defend himself or not?

Mr. Deputy Speaker: Mr. Biwott, what is the statement that you are reading? You are reading what appears to me to be a prepared statement. You should address yourself to the issue of whether you want the mandate of the Committee to be extended or not. I think even hon. Members and myself have difficulties to understand what you are doing.

Mr. Biwott: It is coming out very clearly now. It is only one more page and I am coming to it.

Mr. Deputy Speaker, Sir, our position is that when the Committee starts to receive evidence from members of the public, which will be recorded verbatim by the HANSARD, that evidence will go out to the public at that time. Thus, contrary to that promise, the Committee declined to make my evidence public, when it started receiving what it regards as evidence. It is, therefore, clear from the way the committee has conducted itself that, it is not following its own rules and statement. More importantly, it is not following the rules of natural justice.

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. It is abundantly clear that Mr. Biwott is not refreshing his memory from notes! He is reading a prepared statement, word for word and page to page! Is that in order?

Mr. Deputy Speaker: I agree with you, Mr. Muite. Mr. Biwott, refrain now from reading that statement!

Mr. Biwott: Mr. Deputy Speaker, Sir, I am just finishing it! I think it would be wrong---

Hon. Members: No! No!

Mr. Deputy Speaker: Yes, but you stop reading it!

Mr. Biwott: Mr. Deputy Speaker, Sir, that Committee did not act independently. I personally would like to see a Committee which is acting independently, openly and conducting its investigations fairly. It should also comply with the rules of natural justice. It is now time to move away from rumours, gossip, fiction and deal precisely with the matter as it should be dealt with.

It is unfortunate that people have been encouraged to give demonstrative false evidence without being subjected to any challenge or cross-examination. All of that has been at the cost of identifying the true killer or killers of Dr. Ouko.

Mr. Deputy Speaker, Sir, the Mover of the Motion said that the Committee had been following the National Assembly Powers and Privileges Act. But he did not mention that by waiving Section 161, which compels such Committees to receive evidence in camera---

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Is there a time limit on this discussion or is it just endless? I can talk for three days!

Mr. Deputy Speaker: Order, Mr. Angwenyi! We have got time-keepers and rules!

Mr. Biwott: Mr. Deputy Speaker, Sir, I think the Committee made only one single mistake. I support the Committee but the Members made one single mistake by asking for the waiver of Section 161, and started receiving evidence in public. When they started receiving that evidence in public, they received testimonies in complete disregard of the rights of those who were mentioned. They should have followed the rules of natural justice and allowed those who were mentioned adversely to cross-examine those witnesses as soon as possible. A lot of harm is done when somebody is mentioned adversely and he or she is not allowed to defend oneself. You are actually doing gross injustice to that person. If you wait for another month, two months or three months and then allow people to defend themselves, you will have lost the touch. That is actually where the problem has arisen.

Otherwise, I personally support the Committee! I supported it from the beginning and I would like to support it now. But, this time round, they must allow the rules of natural justice to prevail.

(Applause)

They must allow for the recall of those who have already given testimony to be cross-examined. We must also give that waiver, so that those who are adversely mentioned can bring in their lawyers to cross-examine the witnesses. I am okay here because I can speak for myself. What about those who are not in the House? Therefore, we must allow lawyers to come and cross-examine the witnesses.

Mr. Deputy Speaker, Sir, there was also another important issue here that, when a Committee makes a promise, it should fulfil that promise. Otherwise, it will undermine the integrity of this House. For example, the Committee, by promising to make---

Mr. Osundwa: On a point of order, Mr. Deputy Speaker, Sir. We have heard enough explanations from Mr. Biwott.

Mr. Deputy Speaker: But you see, there is no time limit! You can only ask him to hurry up, but you cannot stop him.

Mr. Osundwa: But, Mr. Deputy Speaker, Sir, what I am saying is that---

Mr. Deputy Speaker: Order, Mr. Osundwa! Under what order now?

Mr. Biwott: I am not surprised because Mr. Osundwa, having been a chief in Mumias, is used to speaking like a chief.

Mr. Deputy Speaker, Sir, I would like to say this: I would like to read my final statement.

Mr. Deputy Speaker: No, Mr. Biwott! We do not allow the reading of the statement. The Chair ruled against the reading of the statement and, therefore, you must abide by the ruling of the Chair.

Mr. Biwott: Mr. Deputy Speaker, Sir, let me, therefore, conclude by saying that I support the extension of the mandate of the Committee.

(Applause)

I urge this House to ensure that the conduct of the Select Committee will, henceforth, be in accordance with the rules of natural justice where the Chairman is not the chief witness, the lead counsel and the presiding judge.

With those few remarks, I beg to support

*(Several hon. Members stood up
in their places)*

Mr. Deputy Speaker: Order, hon. Members! What is it, Mr. Osundwa?

Mr. Osundwa: On a point of order, Mr. Speaker. We have heard enough from Mr. Biwott and the Mover. Therefore, would I be in order to call upon the Mover to reply?

Hon. Members: No! No!

Mr. Deputy Speaker: Order now! Mr. Osundwa is entitled to move his request, but the Chair takes the view that the matter has not been debated exhaustively and, therefore, it is rejected.

So, Mr. Khamisi, please, proceed!

Mr. Khamisi: Thank you, Mr. Deputy Speaker, Sir. I stand to fully support this Motion for the extension of the mandate of this Committee. As it has been said, we are not dealing with an ordinary murder here. We are dealing with a very important person's (VIP) murder, so to speak.

Since the work of this Committee started last year, a lot has happened. There were a lot of hurdles placed in front of the Committee. There was the Bomas of Kenya Constitutional Conference as has been mentioned, and it was not possible for us to start receiving evidence until this year. Since we started receiving evidence, we have had 13 witnesses, and we have something like 50 more witnesses to go. I believe that an opportunity should be given to this Committee to complete its work so that the truth can be known.

With those few remarks, I fully support the extension of the mandate of the Select Committee.

The Minister for Roads, Public Works and Housing (Mr. Raila): Thank you, Mr. Deputy Speaker, Sir, for the opportunity. This is a very serious matter, indeed. One can say that this was a murder most foul. That a Member of Parliament and a Minister had to die this way is a black spot in the history of this country. Since the Independence of this country, we have had several murders or assassinations. We started with Pio Gama Pinto, Tom Mboya, J.M. Kariuki, Dr. Robert Ouko, and recently we have had Prof. Crispin Odhiambo Mbai.

Mr. Deputy Speaker, Sir, at least, we should go on record as a Government that facilitated a thorough investigation of a political murder. That is the reason why we are very grateful to the Mover of the Motion and the Members of the Committee for the work that they have so far done.

(Applause)

Mr. Deputy Speaker, Sir, every Member who has already spoken here supports the work that has been done by the Committee and I am sure that every Member of this House would like the truth to come out at the end of any investigation to be carried out. That is the reason why we believe that it is necessary that the rules of natural justice be applied so that people who are adversely mentioned be given ample opportunity to defend themselves and also to be able to interrogate people who have brought evidence against them.

(Applause)

This is important and that is the reason why, while supporting part of this Motion, I would like to propose an amendment. The amendment I want to propose is in order to enable us eventually to come out with something that is concrete about the murder that the Committee is investigating. This is because the way in which we do our work in the Committees of the House will enable us to

receive some information, but only that. It will not enable us to get to the root cause of this matter. That is why I believe that another process is called for if this House is to facilitate unearthing of the truth about this matter.

Mr. Deputy Speaker, Sir, we all know that there was a Judicial Commission of Inquiry set up immediately after the death of the late Dr. Robert Ouko, and this was the Gicheru Commission of Inquiry consisting of Justice Gicheru who is now the Chief Justice; Justice Kwach, and Justice Akiwumi. That Commission did a lot of work. A lot of evidence was already taken under this important Commission. Some of the witnesses who appeared before that Commission have since died, some of them mysteriously. However, fortunately, most of that information is on record in the HANSARD. So, it is information that can be retrieved and made use of.

(Applause)

Mr. Deputy Speaker, Sir, secondly, there are other witnesses who have appeared before the Committee right now but they have not been cross-examined, and we want to establish a process through which those witnesses will be examined. That is the reason why, instead of us saying that we go back and now apply Standing Order No.161, where evidence is going to be in camera, I think we need to follow another route. This is because we all know that even when the Committees of the House sit in camera, like the Public Accounts Committee (PAC) and the Public Investments Committee (PIC), that information is always available in the HANSARD and there is no way that we are going to prevent the media from accessing that information and publicising it.

Mr. Deputy Speaker, Sir, that is the reason why I would like to move the following amendment. That we delete all the words from the word "That" in the first line to the end and in place thereof insert the following words:-

"THAT, a Judicial Commission of Inquiry be appointed and that the proceedings of the Select Committee appointed to investigate and report on the circumstances which led to the death of the late Dr. Hon. Robert J. Ouko be availed to the said Commission which will inquire into the matter."

(Applause)

Mr. Deputy Speaker, Sir, the effects of this is going to be that the Committee which has already done a good job and has already investigated a lot of people, will complete its report and then make it available to a Commission of Inquiry which is going to be appointed by the President under the Commissions of Inquiry Act.

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir. With due respect to my very good friend and political mentor, his proposed amendment is substantially different and goes beyond the original Motion. Therefore, if that amendment has been proposed, then an entirely new Motion must be moved before this House, otherwise we will not be following the rules of this House.

(Applause)

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Deputy Speaker, Sir, the intention of the proposed amended Motion is to find the killers of the late Dr. Robert Ouko. So, it is not negating in any way the intention of the original Motion. It is advancing the intention of that Motion but creating a much more effective mechanism through which to achieve that objective.

(Applause)

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. The rules of the House demand that you make a decision on the point of order raised by hon. Sungu and, in fact, this proposed amendment to the Motion by hon. Raila is completely different from the Motion that we have. Apply the rules of the House the way they should.

Mr. Deputy Speaker: Order, Mr. Angwenyi! Mr. Sungu did raise a point of order and I was in the process of replying. I think you just want to hammer what Mr. Sungu said. The position is that this Committee which we are trying to extend its life is not there. Take it right now that there is no Committee. It is not there because its mandate expired. Now, as it has been stated, I see nothing contrary of the proposed amendment to the original Motion's aim.

(Applause)

Therefore, it is quite in order as far as I am concerned. Mr. Raila, could you finish so that I get a Secunder?

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Deputy Speaker, Sir, Members will recall that by the time that the Gicheru Commission was dissolved last time, the chief investigator in this matter, Mr. Troon, was on the final lap of giving his evidence. So, we are talking about a matter which was almost completely concluded. It has taken time, but the people who were involved are still available. I believe very strongly that this is going to be a much faster, neater and more effective way of getting to the root cause of the death of the late Dr. Robert Ouko.

With those few remarks, I beg to move.

(Applause)

Dr. Godana: Mr. Deputy Speaker, Sir, I stand to support the Motion of amendment which has been moved by hon. Raila.

(Applause)

Mr. Deputy Speaker, Sir, the Ninth Parliament has already made two grievous goofs. Only at the beginning of this Session, because we were driven by passion, we passed a resolution which could, in effect, have meant that we have no business for six months. Indeed, in similar manner, because the matter before the House is a very passionate one, I would want to use the language of hon. Raila that the murder of the late Dr. Robert Ouko was murder most foul indeed. And because it was a deeply emotional matter, we disregarded an elementary rule of due procedure which had been embedded in our rules of procedures.

I want to plead with hon. Members that when discussing grave matters of this nature, it behoves us to drive emotions out of our heads as much as we can. The motto of this House, the supreme institution of this land, reads: "For the Welfare of Society and the Just Governance of Men."

Hon. Members: And women!

Dr. Godana: Men include women for this purpose.

Mr. Deputy Speaker, Sir, if justice will not be guaranteed here by way of us following the safeguards of due procedure, I am afraid it will not be observed elsewhere in society. I am

submitting that it was a terrible mistake for this House to exclude Standing Order No. 161 from application in the case of this Committee. Why do I say so? I say so because the rules of this House or the rules of procedure determine what may be done properly or not in this House. Those who framed that rule were concerned about two matters: One, to ensure that persons who will give evidence on a weighty matter were guaranteed of anonymity of identity, so that they do not fear for their own security whenever they move around. It was designed to encourage people to come forward and give evidence without fear or favour, and with the knowledge that their identity and information they gave would be kept confidential. Secondly, it was designed to ensure an effective way in which Parliament could conduct a quasi-judicial work.

If it were to be a procedure of open court where lawyers would be allowed to cross-examine witnesses who make allegations against X, Y, and Z, I am afraid that such a Select Committee could last for five years. We ignored the wisdom behind the rule at that time. I think the wisdom behind the amendment hon. Raila has brought forward is to try and save on those lapses. We want, in the end, to know who were the killers. We want to establish the truth so that we can use it as a precedent to banish the institutions that resort to political assassinations from our country forever. We want to end the list of victims of political assassinations.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. I stand on Standing Order No. 48(2) which reads:

"No amendment shall be permitted if in the opinion of Mr. Speaker it represents a direct negative of the question proposed."

Mr. Deputy Speaker, Sir, the question proposed is to extend the life span of the Committee. I would like you to apply the rules of this House.

Mr. Deputy Speaker: Mr. Angwenyi, could you, please, read that again.

Mr. Angwenyi: "No amendment shall be permitted if in the opinion of Mr. Speaker---

Mr. Deputy Speaker: Stop there.

(Applause)

Order! Order, Mr. Angwenyi!

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I have to finish. Do not gag me!

Mr. Deputy Speaker: Order, Mr. Angwenyi! You just read: "In the opinion of Mr. Speaker---" And the opinion of Mr. Speaker was announced to the House that there is no contradiction and that is why I allowed the debate to go on. You cannot argue with Mr. Deputy Speaker.

Mr. Angwenyi: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Order, Mr. Angwenyi! That is the last time we should have that.

Dr. Godana: Mr. Deputy Speaker, Sir, I want to plead with hon. Members that the reputation of the Ninth Parliament has, in my view, been gravely injured by our ease to depart from observing a fundamental rule of elementary safeguard to due process, which we did by deciding to go round Standing Order No.161. If the object is to get to the bottom of what was, indeed, a foul crime, then, it is right that we ensure--- In that process the application of due process I belong to the Catholic faith and there are many Catholics here, including hon. Obwocha, who spoke not long ago. In the Catholic Church, in the process of declaring saints, we have the institution of the devil's advocate. I would want, here, to play, if need be, the devil's advocate. Even the suspected criminal has rights and no society will last long if it disregards elementary safeguards written in the Constitution about due process, just because the persons accused are most unpopular to those in authority or to those who have reason to exact vengeance.

Mr. Deputy Speaker, Sir, with those few remarks, I wish to support.

Mr. Deputy Speaker: I will allow only one more hon. Member to contribute and then I dispose of the amendment.

Mr. Khamasi: Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to contribute to this Motion.

Mr. Deputy Speaker, Sir, in the first place, I am not standing here to support the Motion as amended because without necessarily wanting to go against the Chair's ruling, you cannot extend something that is not there. So, the Committee is there and we are seeking to extend the duration of that Committee.

(Applause)

I am sure that, Mr. Speaker would not have allowed this Motion if it was all in vain because we are seeking an extension of the duration of the Committee. That is exactly why Mr. Speaker allowed this Motion.

Mr. Deputy Speaker, Sir, I think the question before the House is simple and clear: Do we extend the time frame of this Committee so that it completes its work or not? Period! That is what we want to look at.

I want to argue this way. This Committee was established by this House in its own wisdom. It was necessary for the Members of this Committee to investigate into the death of Dr. Robert Ouko. Indeed, the Committee came into effect on 26th March, 2003. It was, however, unable to work because of the reasons which hon. Obwocha truly established. Like most other Committees, it was not possible for this Committee to function effectively, and that is why it has taken a long time to come up with any tangible work that it was doing. The Committee had just gotten into the grips of doing its work. Therefore, we cannot, as a House, kill the same Committee which we ourselves established.

(Applause)

What we are trying to do is tantamount to killing a Committee which was established by this House. I think it is wrong and criminal. Whoever is doing it has got an ulterior motive and we must speak against it.

Mr. Deputy Speaker, Sir, this Committee has already started its work. Persons who have been adversely mentioned--- We have been assured here that they will be given an opportunity to defend themselves. There is no need for anybody to get worried. Those who are getting worried may be having ulterior motives. We want hon. Members to deal with this matter as it has been done before. I cannot see any reason as to why we should block this House from doing a duty which it has agreed upon and approved in this House. Natural justice demands that hon. Members of this House should not kill what we actually established in this House. It is imperative upon all of us. We had better think about the decision that we are going to make. We had better think about this issue seriously! How do we form a Committee in this House, and when it reaches mid-stream in its job, we begin to kill it? This is a very serious precedent which we should not establish.

I oppose this amendment and request that we extend the duration of this Committee as formally requested in this Motion. I beg to support.

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is it, Mr. Sungu? Would you relax so that we go on with the due process of debate?

Proceed, Mr. Okemo!

Mr. Okemo: Thank you very much, Mr. Deputy Speaker, Sir. I personally believe that those of us who have really been interested in finding out the real killers of the late Dr. Ouko were thoroughly saddened when the Judicial Commission of Inquiry that had been put in place was abruptly stopped. In fact, it had reached a very critical stage where we were getting closer to the truth, when it was abruptly killed.

Hon. Members: Why?

Mr. Okemo: My point is this: If we really want to get to the real cause of this problem, then we must look for the most effective way of arriving at the result. Now, the question is this: Do we achieve that through a Select Committee of Parliament or do we do that through a Judicial Commission of Inquiry?

Mr. Deputy Speaker I would like to suggest that a Judicial Commission of Inquiry will do a better job. Therefore, I would like to request my colleagues to support the amended Motion.

(Applause)

I do know that the Parliamentary Select Committee has done a good job, but I just do not think that they would do a better job than a Judicial Commission of Inquiry.

Mr. Obwocha: On a point of order, Mr. Deputy Speaker, Sir. Are you satisfied that the suggestion that hon. Okemo is making, that Parliament has powers to appoint a Judicial Commission, is in order?

Mr. Wanjala: We do not!

Hon. Members: We do not!

Mr. Obwocha: Mr. Deputy Speaker, Sir, we would like direction from the Chair so that this House marches on a route to help the people of this country. Parliament can only appoint a Parliamentary Select Committee, if the Government thinks that the most effective way of solving this matter is through the appointment of a Judicial Commission of Inquiry. If that is the case, then it should go ahead and do so. But this Parliament should follow the right path by proceeding with a Parliamentary Select Committee!

(Applause)

Mr. Deputy Speaker: Order, hon. Members! First, I would like to apologise. I should have proposed the Question when the amended Motion was seconded. Therefore, I would like to propose the Question now.

(Question of the first part of the amendment, that the words to be left out be left out, proposed)

Mr. Muite: Mr. Deputy Speaker, Sir, according to my understanding of Standing Order number 40, it is our duty not to permit any Motion which contravenes the Constitution. Executive authority in terms of the current Constitution is vested in the President.

Therefore, under the Commissions of Inquiry Act, it is for the President alone to decide whether he will appoint a Judicial Commission of Inquiry or not. Are you satisfied that the proposed amendment does not, in fact, violate the Constitution to the extent that this House is seeking to tell the President what to do?

(Applause)

Under the Commissions of Inquiry Act, that power is vested in the President alone. This amendment which has been proposed by the hon. Member for Langata violates the Constitution.

(Applause)

Mr. Deputy Speaker: I quite agree with you, Mr. Muite. This House does not appoint Commissions. This amendment is not proposing that the House appoints a Commission. To me, it is like a recommendation. The Commission may be appointed or not. After all, even in Private Members Motions, one always requests the Government to do something or the other. It is not that we are ordering the President; it is at his discretion. So, Parliament is not going to force the President because this is just a recommendation.

Mr. Okemo: Thank you very much, Mr. Deputy Speaker, Sir.

Mr. Wanjala: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Let us not have interruptions! If you want to say something, you should catch my eye.

Mr. Okemo: I was just going to refer to what you have ruled on, Mr. Deputy Speaker, Sir. That is, I did not, in any way, suggest that this House was going to appoint a Judicial Commission of Inquiry because I am aware that this House does not have that power. All we can do is to compel or ask the Government to make sure that they actually constitute that Judicial Commission of Inquiry. If it is a listening Government and if it is the wish of the majority of Kenyans, then that Government will respond accordingly. So, I do not really think---

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Can I appeal to hon. Members to let the debate on this amendment proceed so that you can vote for or against it? I am going to put it into a vote very soon, but interruptions will not do!

Yes, what is it, Mr. Angwenyi?

Mr. Angwenyi: Mr. Deputy Speaker, Sir, you have trained us to follow the rules and procedures of this House. So, we must insist that those rules and procedures of this House must be adhered to, to the letter. If we are not establishing a Judicial Commission of Inquiry, then the effect of that Motion is to kill the Motion moved by hon. Sungu. It is not an amendment!

Mr. Deputy Speaker, Sir, in that case, then Standing Order number 48(2) comes into effect. For Heaven's sake, please, do not disregard the rules of this House. You are the custodian of our rules!

(Applause)

Mr. Deputy Speaker: I agree that I am the custodian of the rules and proceedings of this House, and I am doing very well in that regard!

(Laughter)

Mr. Wanjala: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Will you let Mr. Okemo finish? Is your point of order different from what Mr. Angwenyi said?

Mr. Wanjala: Yes, it is, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Go ahead!

Mr. Wanjala: Thank you, Mr. Deputy Speaker, Sir. We are aware that the Chair might be an interested party in this matter.

(Laughter)

We are aware that the Chair is somehow related to the family of the late Dr. Ouko by marriage.

Recently, there was a wedding and we know that the wife of the late Dr. Ouko was compromised and left this country immediately after burying the husband. She went to the Coast together with the President.

(Applause)

Now, am I in order to ask the Chair to disqualify himself from this debate and in place, have an independent Chair?

Dr. Godana: Mr. Deputy Speaker, Sir, the hon. Member is definitely out of order. That is a frivolous and vexatious point of order.

(Applause)

You know the rules if you want to discuss the Chair. You are required to bring a substantive Motion in order to discuss the Chair. I therefore think it is utterly out of order for an hon. Member to rise on such a frivolous point of order!

(Applause)

Mr. Deputy Speaker: Order, now! Order, Members! I do not think I have anything to add on to what Dr. Godana has said. Please, continue, Mr. Okemo.

Mr. Okemo: I think I have almost lost my train of thought because of so many interruptions. But I will conclude by saying that if we are truly interested, including hon. Angwenyi, I know that those Members of the Parliamentary Select Committee would like to be seen to be busy and also to be seen to be doing some work, but that is neither here nor there.

(Applause)

What we are interested in are results---

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. I am not even a member of that Select Committee. My interest is that this House must follow the rules.

Mr. Deputy Speaker: Mr. Angwenyi, will you sit down?

Mr. Okemo: Mr. Deputy Speaker, Sir, I am also aware that we have a very rigorous rating of hon. Members' performance in the House. So, if we want to maintain our positions, we can do it differently.

I would like to conclude by saying that we ought to request the Government to constitute a Judicial Commission of Inquiry because it will do a better job.

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Sungu, I will not take any point of order.

Mr. Syongo: Mr. Deputy Speaker, Sir, I had a very sad opportunity to view the photographs of the body of the late Dr. Ouko. No Kenyan or human being deserves to die the way Dr. Ouko died, and particularly to be treated the way his body was treated after death.

We all must fully agree that we must go right to the bottom of this case and excavate the truth, so that such an incident does not recur in this country. We must go an extra mile to ensure that justice is not only done, but is seen to be done. Justice Gicheru's Commission did a wonderful job. I believe that at the time it was disbanded for no convincing reason, it was almost reaching a conclusion that would have indicated and established the culprits of this heinous crime. The current effort, through the establishment of the Parliamentary Select Committee, is commendable. It has done a good job. It has summoned 14 witnesses and has held 43 meetings at considerable cost, but what has been the objective achievement of the effort so far? I want to submit that in terms of coverage, the Select Committee has covered the very preliminary evidence that was adduced before Justice Gicheru Commission, some of which was discredited and those who submitted it jailed for perjury. It has also received evidence from persons who were subsequently sued and tried in a court of law and found to have been maligning individuals whom they claimed to have been involved. Court rulings are there on record to prove that they were not justified in making those allegations. Some of those allegations have now found their way back into the Parliamentary Select Committee.

Mr. Deputy Speaker, Sir, in terms of procedure, I agree entirely that natural justice must be seen to be done. If one is mentioned adversely, it is only fair that he has the opportunity to cross-examine and test that evidence for credibility and truth. That opportunity was denied on the claim that the rules governing Parliamentary Select Committees do not allow it. The Law Society of Kenya has already written to the Speaker to complain about the way the Committee handled the issue. What then comes to the minds of Kenyans is that there is probably no objectivity in this Parliament and its Committees. It also means that there is lack of credibility in this Committee and in this Parliament which established it.

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Mr. Sungu! I will not have a point of order. Continue, Mr. Syongo!

Mr. Syongo: Mr. Deputy Speaker, Sir, in those circumstances, it is upon this House to retrieve its credibility, honour and integrity. I am not questioning the ability of the Select Committee, but I am saying that probably Parliamentary Select Committees are not the right vehicle to do this kind of job. We are here as legislators to make laws, provide an oversight responsibility over the Government, and to effectively provide representation. Judicial exercises should be left to a judicial body and I make this very humble proposal that, that should be the case.

(Applause)

Lastly, one of the most unfortunate situations in this incident is that some of the hon. Members of that Select Committee are, in fact, legal counsels to some of the witnesses who are adducing evidence before the Committee. For the sake of integrity of this House, and looking for the truth and finding it, I fully support the amendment to this Motion.

(Question of the first part of the amendment, that the words to be left out be left out, put and agreed to)

Hon. Members: Division! Division!

Mr. Deputy Speaker: Order, hon. Members! The vote is whether to delete the words or not

to delete them and the Ayes have it. Therefore, those who are opposed and they think they can raise the right number for a division, can stand up.

*(Several hon. Members stood up
in their places)*

You have the right number. You are 20 hon. Members and, therefore, you can have a division. I order that the Division Bell be rang and the Bar be drawn.

(The Division Bell was rung)

DIVISION

(Question put and the House divided)

(Question negatived by 41 votes to 32)

AYES: Messrs. Abdirahman, Biwott, Boit, Cheboi, Chepkitony, Choge; Dr. Galgallo, Dr. Godana; Messrs. Kimeto, Kipchumba, Koros, Kosgey, Maj. Madoka; Messrs. Midiwo, Moi, Ngoyoni; Eng. Nyamunga, Dr. Oburu; Messrs. Ojode, Okemo, Prof. Olweny; Messrs. Omondi, Owidi, Poghismo, Raila, Rotino, Dr. Rutto; Messrs. Salat, Samoei, Sang, Syongo and Wario.

Tellers of the Ayes: Messrs Mwenje and Rotino.

NOES: Dr. Ali, Messrs. Angwenyi, Arungah, Mrs. Chelaite, Messrs. Dzoro, Ethuro, Githae, Ivuti, Kariuki G.G., Kariuki M., Khamasi, Khamisi, Prof. Kibwana, Dr. Kibunguchy, Kilonzo M.C., Prof. Maathai, Prof. Mango, Messrs. Masanya, Mbai, Moroto, Muchiri, Muite, Eng. Muriuki, Messrs. Murungi, Mutiso J.M., Mwancha, Mrs. Mwau, Messrs. Mwenje, Ndile, Mrs. Ngilu, Ms. Ndung'u, Messrs. Nyagah N.G.K., Obwocha, Ojaamong, Oloo-Aringo, Omingo, Onyanacha, Oparanya, Osundwa, Sungu, Tarus, Mrs. Tett, Messrs. Wanjala and Were.

Tellers of the Noes: Mrs. Mwau and Mr. Kipchumba.

ABSTENTIONS: Ms. Mbarire, Messrs. Mbau, Maore, Muiruri and Wambora.

(Debate on the original Motion resumed)

Mr. Omingo: Mr. Deputy Speaker, Sir, I rise to support the Motion.

Mr. Deputy Speaker, Sir, it is the wearer of the shoe who knows where it pinches. Personally, I have an experience relating to the loss of a beloved brother in mysterious circumstances. If you can find a shoulder to lean on in terms of getting recourse for the killers of your loved one, that is an avenue that anybody else rational would follow. I lost my late brother, the hon. Enock Magara, in mysterious circumstances linked to political murders. Therefore, an issue like this one needs to be supported by all of us.

If you followed the proceedings of the Select Committee before its mandate expired, you must have realised how moving the evidence that was given to it was. The Committee heard that the people who took away the late Dr. Ouko from his home, brutalised him so much that he cried like a goat. Despite all that, we are failing to establish the identity of the people behind that heinous act. We must be able to stand out and be counted. It is critical for us to ensure that the people behind that act are brought to book.

Mr. Deputy Speaker, Sir, the death of the late Dr. Ouko have undergone a lot of

investigations. The murder was previously investigated by the Scotland Yard and the Gicheru Commission. It is now being investigated by the Gor Sungu Select Committee. We were about to go back to a mysterious commission. Efforts to unearth the truth on the disappearance and subsequent murder of the late Dr. Ouko has almost become a mirage. So, today's victory is the people's victory. It is a victory for justice and fairness.

The events that led to the death of our beloved brother, the late Dr. Ouko, surrounded politics, and all of us here are politicians. If you see your fellow slave being buried in a shallow grave, you should know that the same fate could be awaiting you. So, we intend to support the Select Committee, so that it can go to the bottom of the matter. When the Committee winds up taking evidence from the public, it should present its Report to the House for adoption. Then the culprits should be brought to book.

I have only one reservation, which I intend to underscore through an amendment to the Motion. We should not give the Select Committee a blanket extension of its mandate. I will, therefore, move an amendment to the original Motion to provide for a timeframe within which it should complete its work, so that it can work with diligence and speed.

Mr. Deputy Speaker, Sir, I beg to move that the Motion be amended by inserting a comma before the fullstop and adding the following words---

Mr. Deputy Speaker: Mr. Omingo, I have not received a written notice from you of your proposed amendment as per the rules.

Mr. Omingo: Mr. Deputy Speaker, Sir, I have done that. The Clerk-at-the-Table has my written notice of the amendment.

*(The Clerk-at-the-Table forwarded
the notice to the Deputy Speaker)*

Mr. Deputy Speaker, Sir, we are not going to let this Select Committee drag its feet, or be interfered with for the sake of sabotage.

Mr. Deputy Speaker: Mr. Omingo, I have now received a written notice of your proposed amendment to the Motion. Can you move the amendment?

Mr. Omingo: Mr. Deputy Speaker, Sir, my sentiments about this Select Committee are in good faith. Let us have the late Dr. Ouko murder mystery resolved within a specific timeframe. I support the extension of the mandate of this Committee. I voted against the amendment that was meant to scuttle the work of this Committee. We want to know the killers of the late Dr. Ouko by a definite date. It should not be a mirage for centuries to come. We want to bring the culprits to book.

Mr. Deputy Speaker, Sir, I beg to move that the Motion be amended as follows:-

By inserting a comma after the word "work" in the fourth line and adding the words "and that the Committee reports to the House within five months of the date of the extension".

With those few remarks, I beg to move.

Mr. Mwanicha: Mr. Deputy Speaker, Sir, I rise to second the amendment.

Mr. Deputy Speaker, Sir, it is important that we give this Committee a timeframe within which to report to the House. Last time, it was the late Dr. Ouko. We do not know who it will be next time.

With those remarks, I beg to second.

*(Question, that the words to be added
be added, proposed)*

Hon. Members: Put the Question!

Mr. Deputy Speaker: Order, hon. Members! You do not tell me what to do. I know my work. Mr. Godana!

Mr. Godana: Mr. Deputy Speaker, Sir, I have no problem with the proposed amendment, although there is the query of whether five months will be enough for the Committee to complete its work. But I have a further amendment to that amendment to make. I want to plead with the House, really to understand that an amendment to an amendment is perfectly procedural.

The further amendment is that the Motion as proposed to be amended be further amended by inserting the following proviso at the end thereof---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Just before Dr. Godana says what he wants to say, I would like to inform Mr. Omingo that this is a Sessional Committee and the Committee's terms are sessional. Therefore, there is no point in putting time limit to a Sessional Committee. What will happen is that, when the Session is over, the Committee's work will be over. They will have to seek further extension if the House so wishes. Therefore, your proposed amendment is superfluous. It is, therefore, rejected.

Mr. Godana: Thank you very much, Mr. Deputy Speaker, Sir. With that, therefore, I stand to revise what I had said, and that is I stand to move an amendment to the Motion which is before the House. I want to plead with hon. Members to really understand the position that some of us are taking. I think there was an hon. Member who said that we have to redeem the dignity and honour of this House, by being seen to follow our own rules, and in particular, by being seen to respect due process.

I think it was a terrible mistake - as I said in my earlier contribution to the amendment, because I had not contributed to the Motion then - on our part as the Ninth Parliament to do away with Rule No.161 in the Standing Orders. A rule whose wisdom we failed to address our minds adequately to. I think, as I said, the framers of that rule, inserted the rule there because they felt that if you are to have open hearings, naturally, given that this is a society based on the rule of law, an aggrieved party must have the right to cross-examine. That would be a judicial inquiry. If that happened, a Parliamentary Select Committee may have to drag on for five years, and therefore, would be ineffective. It was also felt necessary to protect the identity and security of individuals who may feel threatened if they expose themselves with certain evidence in public. That is why Rule No.161 was planted therein. I am afraid the way the Committee has conducted its work, as has been demonstrated, justice will not be done; all lawyers have complained, including the Law Society of Kenya. I understand there were comments on the British Broadcasting Corporation (BBC) by a British lawyer who also wondered how this could happen. I think for the dignity and honour of this House, for our credibility, it is important that we go back to that Rule No.161. That is why, therefore, I am proposing that the Motion be amended. I think if I listened to Mr. Sungu properly, he said he would also have no problem with it. I would, therefore, propose that we amend the Motion by inserting the following proviso at the end of the Motion as drafted after the words, "work" and the "full stop". "Provided that the Committee shall respect the provisions of Standing Order No.161".

With those few remarks, I beg to move.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Deputy Speaker, Sir, I rise to second the amendment. I think it was a mistake for us to have given the Committee power to conduct its proceedings in public without bearing in mind the provisions of Standing Order No.161.

In the process, the reputation of some people has been tarnished. They have not had a chance to cross-examine the witnesses or to know even the evidence that is coming in. There were good reasons for this Standing Order, and those reasons still stand.

Therefore, I am supporting the amendment that the proceedings should be held in camera.

Mr. Obwocha: Mr. Deputy Speaker, Sir, I respect hon. Godana very much and he is indeed, very brilliant but he loses his head very quickly. On one hand he says that people have been maligned. They are feeling very bitter about what has happened, and on the other, he is telling the House to go into camera. Now, my question is: How are those people going to clear their names if you now want to revert from the mandate you gave the Committee? So, that is the big question. If so and so has been maligned, if his name has been adversely mentioned, I think he should have a chance to say his bit in public so that his name can be cleared.

Mr. Deputy Speaker, Sir, in 1997, I was in a Committee with hon. Godana reviewing the Standing Orders of this House that we are currently using. Those who were in that Committee and are still here are Mr. Wetangula, Dr. Godana and myself. The two others were kicked out. In most of the countries we went to, which included the House of Commons in Canada, the United Kingdom, Australia, starting from the South Wales up to the western Australia Parliament and then New Zealand, all those Parliaments are moving their Committees to public hearings. They are doing that so as to be able to move away from concealing information on issues of transparency and accountability.

Mr. Deputy Speaker, Sir, I think this matter is of public concern. I think the wisdom of this House was that this matter should be heard in public. The public can make judgement on what they hear. I think we have gone halfway. If we go back, Kenyans will think there is something this Parliament is hiding.

Mr. Deputy Speaker, Sir, if there is any issue, personally, what I would have requested the House to do, is probably to amend the Standing Orders, to allow cross-examination. But for now, I do not think that mandate is there. We should give a chance to those who have been maligned, if they have indeed been maligned, to clear their names.

Mr. Deputy Speaker, Sir, this House, I think believes and hopes that the Committee will do a good job. In public, Kenyans will hear what happened, how the Minister disappeared and how he was killed.

I beg to oppose that amendment.

Mr. Deputy Speaker: Hon. Members, Standing Order No.161 states that the proceedings will be in camera. But this House did waive that provision for the Select Committee so that it can hear evidence in public. So now, the Motion before us seeks to return that proviso so that there would no public taking of evidence. That is the implication of that proviso.

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

(Debate on the original Motion resumed)

Mr. Ethuro: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this particular Motion. This is a straight forward matter in the sense that this House had approved this Motion last year. In its wisdom, it had realised the need to get to the bottom of the murder of a former Member of this House, who was brutally murdered while still serving the Republic. I want to support this Motion as it is because political assassinations are still there! You cannot rule them out.

The only way we can deter any person, within these buildings or outside, from contemplating such action, is to ensure that the law follows them no matter how long it takes.

Mr. Deputy Speaker, Sir, I am proud of this House this afternoon. I was getting worried. I was standing several times. If there was anything that was going to destroy the dignity of this House, it was not the Select Committee. The Select Committee was approved as per the provisions of the Standing Orders and the National Assembly Powers and Privileges Act. We have an Act that we follow. We also have provisions to put things in camera. I am sure that the Members of the Committee, whom I respect, in their wisdom, if they think there is something completely serious, they are at liberty to go in camera if they so wish.

Mr. Deputy Speaker, Sir, I do not want to prolong this debate. I just want to endorse this Committee. They have done a good job and they should continue doing a good job, so that Kenyans can get to know the crooks behind that murder - a murder most foul. The route of the amendment was the wrong route. Those are not our powers. Let us do what is within our powers. Our powers dictate that we should have a Select Committee. Let us renew it for this Session. There is no need for a time limit. With those few remarks, I support the Motion as it is.

Mr. Deputy Speaker: Mr. Sungu, you have a right to reply. Do you want to reply before I put the question?

Mr. Sungu: Mr. Deputy Speaker, Sir, I would like to give my friend---

Mr. Deputy Speaker: Order! You have no time. I told you that I am giving you time for right of reply. Now, you are saying: "I want to give my time to so and so!" I did not allocate any time to you!

Mr. Sungu: Mr. Deputy Speaker, Sir, I want to thank you very much for that opportunity. I also want to thank hon. Members for rejecting the amendments that were put before the House. We must remember that the Committee had four investigation panels. One was headed by Mr. Chris Okoko - the Deputy Director of Criminal Investigation Department (CID) of the Kenya Police Department, which failed. Then, there was Detective Troon from Scotland Yard, who also failed. Then, there was the Gicheru Commission, which was disbanded before it could conclude its work and, therefore, did not issue its report. What has been said here, that the report of that Committee is available, is erroneous! I wanted to point that one out, now that I have got the chance. Then, we had Mr. Chrispin Ongoro who also failed, because they went and took John Anguka to court and that, did not succeed.

Mr. Deputy Speaker, Sir, this is a very important thing. I do not view it as just unearthing the past. I look at it as setting an example to this country for posterity that, nobody, however powerful, that nobody in the Government, however big or rich, should ever do what was done to Dr. Ouko again. That is not just for us but for our children! That is because we do not know who will be in power tomorrow. The powers that we have can be misused.

Mr. Deputy Speaker, Sir, I want to say that I am proud of the ninth Parliament. For the first time, Parliament is now getting its teeth back. Parliament has power to try people at the Bar there. That was the origin of Parliament as it started in the Westminster. Parliament has the right to call anybody here to answer questions and this Committee will do its bidding.

But in so saying, let me say that I have heard and listened to the sentiments of Members. I have the utmost respect for hon. Members of this House because they are honourable. I do not take any of them as guilty of anything or being an opponent or anything like that. Whoever comes before our Committee, whether from this Parliament or outside, will be treated fairly. It is just that we cannot listen to everybody at the same time. That is the only problem.

The malaise that must be addressed is the Standing Orders of the House and the Powers and Privileges Act, which forbid us to give outsiders, people who are not Members of

Parliament, an opportunity to cross-examine witnesses. Therefore, this Committee is being maligned for no reason.

Mr. Deputy Speaker, Sir, I want to assure the hon. Dr. Godana, who is a former Deputy Speaker, that I have said in this House that this Committee is made of intelligent people who are Members of Parliament. When it is necessary to go in camera, we will do so. But many people have died as a result of this. I want to plead with Members of this House to understand this fact only, that the only reason why we ask for this Committee to be heard in public is because people have died vicious deaths. Over 14 witnesses have died. The only security we can offer them is if they give their evidence in public. That is when their security is assured.

With those remarks, I beg to move.

(Question put and agreed to)

MOTION

EXTENSION OF MANDATE OF SELECT
COMMITTEE ON DEATH OF HON. NDILINGE

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-
THAT, this House extends the mandate of the Select Committee established on November 12, 2003 to investigate the murder of the late Hon. Anthony Wambua Ndilinge following his disappearance and subsequent death.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. Ethuro) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, at the outset, let me first of all congratulate my colleague, hon. Sungu, for having succeeded in securing an extension of the mandate of his Committee. There is a great similarity between hon. Sungu's just concluded Motion and this Motion, although the circumstances and the place differ substantially.

I would like to say that we, as a Committee, did not have the opportunity to start off. We had only one sitting and largely, we were held up by the Bomas process which was on until 31st March. So, from November to March, we held one sitting and thus, we were not able to do much.

Mr. Temporary Deputy Speaker, Sir, I would also like to say that unlike my colleague's Motion, the Select Committee on the Murder of hon. Ndilinge has never sought the waiver of Section 161 on the premature publication of evidence, which I think, has brought about controversy in the House and also in the approach of the investigations. In the preliminary meeting, we agreed that, as much as possible, we shall try to be impartial and conduct the affairs in camera so as to get most of the evidence or documents and make a good report to this House.

The genesis of this Select Committee was as a result of a mistrial of the High Court when it found out that the suspects were actually not the right persons to be prosecuted for this heinous murder. Therefore, after great consultation with the Attorney-General and family of the late hon. Member, we were in agreement that we bring a Motion to this House, persuade the House and in its own wisdom, the House granted us the permission to have this Select Committee.

Mr. Temporary Deputy Speaker, Sir, therefore, without tiring the House with lengthy arguments, I just wish to call upon my colleague, hon. Mwenje to second the Motion.

With those remarks, I beg to move.

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, I beg to second this Motion. I had the privilege to know hon. [Ndilinge very well. We sat with him in this House. He was a very eloquent, courageous man. He was a man you could rely on. I also had the honour to attend his funeral which

was so solemn. It was an occasion where the people of his Constituency, which is now ably represented by my friend here, were all crying and everybody was asking, who killed Ndilinge? Who are these murderers who would bother kill such an honourable man?

Mr. Temporary Deputy Speaker, Sir, the circumstances under which the late hon. Ndilinge died were very questionable. There were stories that on that particular morning, he was called to State House, only for him to be turned away again from the same State House. These are circumstances that require more than just an investigation. That is why it is important to have a Select Committee of Parliament which has several privileges under the law to investigate without being questioned. Mr. Temporary Deputy Speaker, Sir, so, since the Committee was not able to take off properly in the last Session, I think it is important to have its time extended so that they can go deep into the matter and find out the truth. The time has come that whenever a Member of Parliament is either attacked or killed, it should not be taken lightly. This is because Members of Parliament represent a lot of people in their constituencies. They are national figures. When we lose such a person, it is important that the truth is told, just like we have extended the mandate of the Committee investigating the death of Dr. Robert Ouko, with whom I also had the opportunity to serve in this same House.

Mr. Temporary Deputy Speaker, Sir, when a Member of Parliament is attacked, it is not common, because he does not just represent his family. He represents a lot of people and he is at risk from so many quarters. So, it is important that everybody knows that when you play around with the life of a Member of Parliament, you are playing with the whole Constituency and the whole country. The people who were arrested and taken to court are residents of Dandora which happens to be in my constituency. I was saddened when I called them after they were released to ask them what they knew. Their arrest was just a cover up of the real murderers of Mr. Ndilinge. It is for this reason that we need to go deeply into the matter so that somebody is not just arrested and because there is no evidence finally he goes scot-free and nobody gets to know the truth. It is time that if the investigators, the Criminal Investigation Department (CID) and the police do not do their work, then this Parliament is ready to do part of the work in the form of a Select Committee. This will ensure that they do not think that when a matter just rests there and is finished, that it is actually going to end there. Parliament has the power because we speak for the people and work for them. We will, therefore, investigate for the people and get the culprits for them.

Mr. Temporary Deputy Speaker, Sir, that is going to happen and it will also encourage the arm of Government that does investigations to know that whenever they are asked to do a particular job, they should do a clean job. It is, therefore, very important to note that the security of hon. Members of Parliament which has of late been taken for granted be looked into. Many hon. Members of Parliament have been attacked here and there; their bodyguards killed and their lives threatened. It is time we said, enough is enough and we are going to protect ourselves if we are not protected by the people who are supposed to do so. The security of hon. Members of Parliament should not be compromised at all; equally the security of our people whom we represent. Everyday in this House a Question is raised about security.

I happen to be the Chairman of the Departmental Committee on Administration, National Security and Local Authorities, and I am getting fed up with the many Questions that are being asked yet there are no answers coming. It is time we told the Government that they either tell us the truth or we tell them that they are part of it. I happen to be on the Government side but I also happen to have responsibility for this country. So we will say, do it, investigate and find the truth!

It is serious and I have taken great exception to the many Questions which are raised in this House regarding security yet we do not get proper answers. Dr. Galgalo has just mentioned about the situation in his constituency yet some Ministers answer Questions as if one plus one is equal to two. This cannot be accepted and action has to be taken. If we do not take action, the people of this nation will judge whether we are able to do the right job.

As for the case of Mr. Ndilinge, it was very sad because almost immediately, his father also

died of shock from his son's death. We are going to kill many more by not doing the right job; not following up those matters. The story that we got about Mr. Ndilinge that day about going to Kahawa, Kasarani and several other places was all hearsay and we need to get to the truth of this matter.

We do not need to emphasise and I am glad that the Government has now effected some changes. However, that is not enough. We want to be assured and I want to tell hon. members of this House that tomorrow my Committee has summoned the Minister of State, Office of the President and the Commissioner of police here.

*(Mr. Syongo and Prof. Olweny
consulted loudly)*

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr Syongo and Prof. Olweny!

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, I would like to take this opportunity to invite hon. Members of this House who wish to raise issues with the Minister of State, Office of the President and the Commissioner of Police tomorrow at 10 o'clock to come to Room No.7 and raise those issues so that by the time we report those matters in the House, then we know and they too know that it is going to be reported to this House. This House is supreme. Even the laws that are interpreted in the courts come from this House. I believe, even lawyers, like my friend, Mr. M. Kilonzo, know that they only interpret the laws enacted by this House. So, this House is supreme. If this august House cannot be respected, then this nation will never be respected. So, the first show of respect must come from this House. The first serious investigation must be shown, particularly where an hon. Member is involved. That is why I support this Motion so that the Committee can be allowed to continue with its work.

Mr. Temporary Deputy Speaker, Sir, we do not need to extend the mandate of these select committees forever just as we have done with the Committee investigating the circumstances that led to the death of the late Dr. Ouko. We have not set the timeframe. Whenever you start a select committee, the people are eager to know the findings. So, the longer you keep it, the more people continue losing confidence in that committee. I will also appeal to other Members of this Committee, including myself, to speed up the proceedings of this Committee. The same applies to the Select Committee investigating the circumstances that led to the death of the late Dr. Ouko. They should also hasten their work. They should not slow down their work because they have all the time. It will lose its meaning and become a useless Committee that will not really achieve anything. I think it is important that we take the shortest time possible to get the findings and report back to the House so that action can be taken. We should not just start these committees for other reasons, like publicity and so on. We need to carry out the investigations and report back to this House. Action should be taken against those found to be involved. It is also not good to keep the report of a select committee in the National Archives. It should be acted upon if it is going to have any meaning. We have seen many select committees whose reports, even after being adopted by this House, are kept in the National Archives. The Government has not acted on them. My prayer is that when the reports come out of the findings of the two Committees and are adopted by this House, the Government should move with speed and act on them so that those who are concerned will be satisfied that this Parliament has teeth to bite, and it can assist the people of this nation.

With those few remarks, I beg to second.

(Question proposed)

Mr. Wario: Asante, Bw. Naibu Spika wa Muda, kwa kunipa fursa hii ili niweze kuchangia Hoja iliyo mbele yetu. Natumai kuwa kifo ni kifo. Vifo vya marehemu Daktari Ouko, marehemu Mheshimiwa Ndilinge au Dkt. Mbai, vyote ni vifo. Vifo hivi ni dhuluma dhidi ya ubinadamu.

Nilipokuwa mdogo nilikuwa nikisikia sifa ya Kenya kwa upelelezi wa jinai, kwamba Kenya ni bora kushinda nchi nyingi katika Bara la Afrika kuhusiana na upelelezi. Hata hivyo, ninapigwa na mshangao kwamba kunapotokea vifo vya watu wenye madaraka makubwa katika nchi hii, sifa ile ya upelelezi katika nchi ya Kenya haisikiki tena. Iwapo Serikali ambayo imeapa kulinda Wakenya na mali yao ingefanya kazi yake kwa udhahiri, vifo kama hivi vingekomeshwa mara moja. Hii ni kwa sababu Serikali inalegeza kamba ya uchunguzi kuhusu vifo hivi. Hii ndio sababu wauaji wanapata fursa ya kuua na kuwa tisho kwa viongozi wa nchi hii.

Kwa hivyo, ni wajibu wetu sisi kama Wabunge tusimame leo na kuiunga mkono Kamati hii iongezewe muda ili ifichue waliomuua marehemu Ndilinge. Ninasema hivi kwa sababu wale watu ambao wangepanya uchunguzi kuhusu kifo cha marehemu walishindwa. Wacha tuchukue kazi ya ziada. Hii ndio sababu ninawaomba Wabunge wenzangu waiongezee Kamati hii muda ili ifanye uchunguzi kuhusu kifo cha marehemu Ndilinge.

Bw. Naibu Spika wa Muda, ni huzuni kubwa wakati kifo kama hiki kinakumba nchi yetu, na hasa jamii ambayo ilikuwa inamtegemea kama kiongozi. Jamii ya marehemu isipoambiwa mtu au watu waliomuua na Serikali kuwachukulia hatua, itakuwa ni dhiki kubwa. Hii ndio sababu tunasema kwamba kama Kamati hii haitaongezewa muda wa kukaa, na ukweli kuhusu kifo cha marehemu Ndilinge hautajulikana, basi, jamii yake itakuwa na huzuni kubwa. Kwa hayo machache, ningependa kusema kwamba ukweli ndio suluhisho.

Bw. Naibu Spika wa Muda, ninaiunga mkono Hoja hii ili muda wa Kamati hii uongezwe.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support this Motion. This Motion has been brought before this House because of our Standing Orders which state that each Select Committee of Parliament expires with the expiry of a new Session of Parliament. Had it not been for that Standing Order, this Motion would not be before this House. The only reason why this Committee did not finish its work was because it was interrupted by the business at the Bomas of Kenya. This Committee only met twice, and even for the two sessions it held, it conducted a lot of business quietly and without much publicity. This is the reason why we have Standing Order No.161 which requires Committees of Parliament to conduct their affairs in camera.

I would like to say that the days of people killing others because they had differed with them politically, in business, or family feuds are over. We are now saying that any hon. Member of Parliament whose death is mysterious will be investigated by this House. We must appreciate the fact that hon. Member of Parliament are held in high esteem by members of the public. Therefore, a death of an hon. Member of Parliament is not an ordinary death. People need to know the cause of an hon. Member's death because he or she represents other people and not just his family. So, the loss is greater because he or she represents other people in our country.

In view of the fact that policemen have now been awarded a substantial salary increment, it is my hope that when they are asked to investigate any death, they will do that diligently and as quickly as possible so that the culprits can be taken to court and the necessary punishment meted on them. We can only bring sanity to this nation if we follow the rule of law.

In view of the fact that policemen have got adequate means of communication, because vehicles have been distributed to most police stations in this country, it is also my hope that should such a case arise in future, they will have means of transport to carry out exhaustive investigations, arrest the culprits and take them to court. It is also my hope that now, we have a new Commissioner of Police who had no previous connection with the Police Force before he was appointed. He will be able to instill the necessary morale in the Police Force such that if cases like that of Mr. Ndilinge occur, proper investigations will be conducted, culprits arrested and taken to court. We do not want cases of people being arrested and taken to court as a cover up. When you do that, the courts releases the accused persons and the matter comes to a standstill.

It is also my hope, now that the police have a strategic plan in place, that they will be able, if such a case occurs, to investigate, arrest the culprits and take them to court. If all those things were

done, the issue of a Select Committee would not have arisen. But it has arisen because proper investigations were not done. The people who were taken to court had very little connection with the crime. It was just a cover up for reasons best known to the powers that be at that time.

I am also happy to see that there is no Motion, like the one we have just dealt with of the Ouko Committee, proposing that this House appoints a judicial commission of inquiry. We should not abdicate our responsibilities. We should not impose duties on others. We have not failed in our duties. So, I do not see why there was need to impose a duty on the President to appoint a judicial commission of inquiry. As it is, we have had Questions in this House---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Githae! You know we disposed of that Motion! So, just confine yourself to this one!

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir. I, therefore, rise to support the Motion that the mandate of the Committee should be extended because it expired through no fault of their own.

Dr. Galgalo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion. I stand to support the request to extend the term of this Committee. We are all interested in knowing who the killers of our late brother are. As some colleagues have said, the late Mr. Ndilinge was a very humble man. He was very friendly to all of us who were here with him. We were really shocked to find out that somebody had the audacity to commit that kind of crime.

Mr. Temporary Deputy Speaker, Sir, the fact that we are coming in as a House through our committees, to investigate some of those murders, reflects the failure of our security system. The fact that those leaders were killed is, in itself, a reflection of that failure. The fact that the investigative arm of the Government was unable to bring out the killers, is yet another failure. Those failures have been with us for all these years. We know of leaders, Members of Parliament and Ministers in this country who have been killed before. We know of the late Tom Mboya, J.M. Kariuki--- I mean, the list of the gallant sons of this country who have been murdered in cold blood is endless. The killers have never been brought to book. So, ours is a failure of history from all those years up to now. Even in the current system, our security forces continue to fail us. This afternoon, you heard Mr. Mwenje say that cases of insecurity continue to haunt us at all levels of our society every day.

Mr. Temporary Deputy Speaker, Sir, we heard how Mr. Kamotho, the Member of Parliament for Mathioya Constituency, was harassed. He was being stoned and the police saved him. Suppose the policemen were not there? Suppose he had decided, like many of us do, to go and meet the people and then a group of hooligans is organised to harass and kill him? So, that laxity in our security system and the laxity in the ability of our officers to investigate and bring culprits to book has haunted us all along. I think it is time that we sent the message to our law enforcers that Parliament is saying enough is enough. If any Member of this House gets attacked or killed, we will make sure that those cases will not be taken lightly. We will stand firm to make sure that all the culprits are brought to book and the Government had better wake up to this challenge.

Mr. Temporary Deputy Speaker, Sir, yes, it is true we have a new Commissioner of Police. We know there has been animosity between our disciplined forces. However, we want to appeal to the members of the police force that they should not see the new Commissioner as an enemy just because he comes from a different arm. They should co-operate with him. They should give him all the necessary support and not sabotage the activities that he is likely to inject into the police force now.

With these few remarks, I beg to support.

Prof. Olweny: Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support the Motion because this country seems to have a dirty past history of weird and mysterious assassinations every now and then. If you go back all the way to the 1950s, they assassinated Ofafa; then came Pinto, Tom Mboya, J.M. Kariuki, Robert Ouko whose Committee we have just given

another mandate, Reverend Muge and then Ndilinge. In most of these mysterious deaths, we have not heard about who masterminded and executed them and the reasons why they were carried out.

Mr. Temporary Deputy Speaker, Sir, I think the time has come when this country needs to have a museum of its dirty past. We need a museum to put in the kind of pictures about Dr. Ouko's body. If you see those pictures you will shed tears. We need a museum for that kind of material so that some of us who would not like to have a continuation of these mysterious murders, will look at them and then preach peace to this country.

Mr. Temporary Deputy Speaker, Sir, there was a time I visited Berlin and I went to a museum which has Germany's dirty past. What they used to do during Hitler's time is all there. So, it is a lesson to the Germans so that they would not repeat some of those dirty things. Let us give the mandate to this Ndilinge Committee so that it goes into the depth of how hon. Ndilinge disappeared when he left his home in the evening, what happened to him, how he ended up dying, who he was with, who he dined with and all these other people whose names we read sometimes back.

Mr. Temporary Deputy Speaker, Sir, once these investigations are carried out, let us not keep the results in the shelves of the Parliamentary Library. There is no point carrying out these investigations and then we heap them here in the library. What purpose are they serving? Let the Committees give their recommendations and then let the prosecution be done to the culprits so that we stop these mysterious assassinations in this country. They are doing us a lot of harm. Look at the Select Committee of the late J.M. Kariuki. They brought a lot of information about the supposed murderers of J.M. Kariuki but at the end of the day, the information was dumped in the library and nothing was done. It is for this reason that I am recommending to this Parliament that once the Committees we are giving mandate bring us their findings, then, prosecution should be effected. Whoever masterminded or performed these criminal acts should be taken to court.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I support the Motion.

Mr. M. Kariuki: Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to support this Motion.

I want to underscore one point: That the right to life is really fundamental to all of us. All the other rights we talk about arise because we are alive. Therefore, it is important to ensure that the safety of each one of us as citizens of this country is protected. The only way for those of us who are alive, to ensure our security, is by finding out the causes of death of the people who have departed from us. It is important to realise that when we are considering political assassinations of the nature that is before us now, more often than not, the Government of the day is usually involved. As my hon. colleague said, the attempt by Parliament to unearth the death of Mr. J.M. Kariuki was a very difficult task even for the Select Committee that was set up. At the end of the findings of the Committee, the then President had to demand that his name and that of his principal assistant, the then Minister of State, be removed from the report of the Committee. That underscores the point that it is not easy to investigate a Government which is in power.

However, it is a much easier task now because we are doing a post-mortem on the performance of the former KANU Government. The fact that hon. Ndilinge passed away when the KANU Government was in power, it is now much easier for the Select Committee to unravel this mystery. It is also an appropriate time that this Committee should venture into this exercise with as much vigour as possible.

Mr. Temporary Deputy Speaker, Sir, when I watch proceedings of Committees constituted by the USA Senate on CNN, I really wonder whether we are really up to the task here. Early last week, I watched the defence advisor, Mrs. Condoleeza Rice, being grilled by the Select Committee of the Congress on matters of security on the tragic event that took place on 9th September, 2002. Now the President himself has been summoned to appear before that Committee. It is important to use this moment to reflect on our Standing Orders, as to whether we should not conduct the business of Select Committees in the open, where members of public can appreciate the role of the Select Committees of this House. We should also be able to appoint Select Committees on all major events

taking place in this country. The Committees should be able to assert their place so that the citizens of this country can know that their law-makers are up to the task in as far as these investigations are concerned.

Mr. Temporary Deputy Speaker, Sir, I hope that in the fullness of time, this Committee will be able to come up with a useful report for this House. When this kind of Committees are set up, usually, my view is that the situation is like a vote of no confidence in law enforcement arm of the Government. It is a vote of no confidence in the police and the judiciary as well. This is a case that was investigated and apparently there was a trial, but Kenyans were not able to be informed from that particular trial and from the police investigations as to the cause of death of our brother. It is, therefore, important that this Select Committee do venture out beyond what the police and judiciary did in order to unearth the truth. The expectations of Kenyans are quite high. They expect the Committee to unravel the mysteries of all the political assassinations from Independence to date. That would be a commendable thing for this Parliament to do.

Mr. Temporary Deputy Speaker, Sir, all of us should appreciate that our security depends on our ability to unravel the deaths of those who have been before us. That way, we will be able to take measures to avoid similar threats to our lives.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to support.

Prof. Olweny: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): What is it Prof. Olweny?

Prof. Olweny: Mr. Temporary Deputy Speaker, Sir, because of time, I wish to request the Chair to call upon the Mover now to reply.

The Temporary Deputy Speaker (Mr. Ethuro): There is still some more time left. Proceed, Mr. Sungu!

Mr. Sungu: Thank you very much, Mr. Temporary Deputy Speaker, Sir. In support of this Motion, I want to quote from John 8:31-32:-

Jesus told the people who had faith in him:- "If you keep on obeying what I have said, you truly are my disciples. You will know the truth and the truth will set you free".

Mr. Temporary Deputy Speaker, Sir, this Committee is set up to find out the truth about the murder of a very close friend of ours; a colleague and an hon. Member of this House, who was murdered while serving this House. Like my hon. colleague has said before me, the murder was investigated and some people were taken to court, but nothing came of it. This speaks volumes about the security system that was in place at that time. It is my humble belief that this Parliament must rise above other arms of Government, including the Executive and the Judiciary because we are the lawmakers of this country. Parliament must rise and fill the gap where the Executive or the Judiciary has failed in order to find the truth. Parliament has the power to make laws and rules; we also have the power to change those laws and rules. Like my colleague has said, the laws and rules that we use here like the Kenya National Assembly Powers and Privileges Act need to be revised. For instance, did you know that under the Powers and Privileges Act, you can summon somebody, but if he fails to turn up, the only punishment that you can mete out is a fine of Kshs2,000. I do not know when this law was made, but it is outdated to the extreme. But I am happy in the belief that when Parliament summons somebody, particularly somebody with political significance, then the political onus for him to attend is greater than that fine of Kshs2,000. But we need to revise these laws that affect the investigative powers of Parliament. That goes for the Standing Orders as well because they have, in fact, become an impediment to the good operations of this House. When this Committee does sit, and I happen to be its Member--- At one stage, one Member asked me if I had invited myself to that Committee. Nay, I did not invite myself, but I was invited to it. If an hon. Member brings a Motion to this House and names Members of that Committee, then he has an obligation, if the House so accepts, to be a Member of that Committee. On that basis, I am a Member of this Committee, and I want to state here that I will try to give my best possible as far as

that Committee is concerned.

Mr. Temporary Deputy Speaker, Sir, this Parliament is now getting on the right path because it is now becoming a real check on the Executive; Parliament now knows its real functions; Parliament now knows that it works through committees. Members of Parliament are not just there to conduct *Harambees*, but to search into issues that affect the lives and livelihood of this nation.

Mr. Temporary Deputy Speaker, Sir, this Parliament must now set precedence, as I said earlier when contributing to the previous Motion. But we must rise above every other arm of the Government. We must set a precedent; that no other arm of Government can take over any investigation that Parliament has instigated. Any one of us can be affected. It does not matter whether you are in the Government or in the Opposition side. We know that assassinations do occur, and that politicians are the most susceptible. So, we are not doing this for individuals; we are doing it for the good of everybody, because tomorrow, you might be in power, but the following day, you might not. When you are not in power, the people who will then be in power may misuse the same laws of the country to---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Sungu.

Mr. Sungu: Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): There was actually a matter which the Prof. Olweny had raised and which I would like to dispose of now.

Order, hon. Members!

(The Question, that the Mover be now called upon to reply, put and agreed to)

Mr. J.M. Mutiso: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to reply to the debate on this Motion.

First of all, let me thank all those hon. Members who have contributed on this Motion on the extension of the mandate for the Select Committee on the murder of Mr. Ndilinge.

Mr. Temporary Deputy Speaker, Sir, much has been said and I will just make a few remarks with regard to the Standing Orders. On the outset, Parliament is supreme. It is the most supreme organ of governance and this House asserts that supremacy by having a Select Committee to investigate this matter. There has been a bit of confusion when it comes to the interpretation of the Standing Orders, particularly when hon. Members are confounded by the fact that a Committee has to come back to the House to seek fresh mandate for its elongation of time. I would like to remind hon. Members that this is a Sessional Committee and it lasts only while the Session of the House is on.

I want to urge the Chair to ensure that hon. Members are conversant with the Standing Orders. While debating Mr. Sungu's Motion, we were about to kill a very important Select Committee. That was a negation of the powers of this House. With all due respect, this means that the Chair might misdirect itself and therefore, put the supremacy of this House in jeopardy. I am just giving a word of caution as an hon. Member---

The Temporary Deputy Speaker (Mr. Ethuro): You know the rules!

Mr. J.M. Mutiso: Mr. Temporary Deputy Speaker, Sir, I beg your indulgence. I wish to ask for the co-operation of the Office of the Clerk of the National Assembly in matters of this Select Committee.

With those few remarks, I beg to reply.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker, Sir (Mr. Ethuro): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 15th April, at 2.30 p.m.

The House rose at 6.20 p.m.