

THE CASE FOR A LOCAL
GOVERNMENT COMMISSION
IN KENYA

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This Dissertation is submitted as
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3. CHAPTER TWO

The Position of Staff Relations in
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BY: KIMANI WA GICURU MUHORO

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KINANI WA GICHURU MURORO

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KIMANI WA GICURU MUHORO
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D I S S E R T A T I O N
THE CASE FOR A LOCAL GOVERNMENT SERVICE
COMMISSION IN KENYA

P R E F A C E

The purpose of this Dissertation is to look at the case for a Local Government Service Commission in Kenya. I must point out that one would greatly err if he plunged into a research of this kind without first of all defining, or at the very least stating, what a Local Government Service Commission is, or what it entails, Secondly one cannot look at the question as to whether we need a Local Government Service Commission in Kenya, without at the very least looking at the Nature and functions of Local Authorities, because it is from this Nature and functions of Local Authorities that the whole question as to the need of a Local Government Service Commission rests.

I thus intend to first define the meaning of Local Government Service Commission and secondly to look at the Nature and functions of Local Authorities in a very broad and general sense, so as to enable me put the whole question of the need of a Local Government Service Commission into its proper Perspective.

experiences and traditions, inform him by their knowledge details and his general control, those in short who form the class of professional public servants". (5)

INTRODUCTION

WHAT IS A LOCAL GOVERNMENT SERVICE COMMISSION?

The Local Government Service Commissions establishment was first recommended by the Handacre Commission of 1966. The Government accepted the recommendation. In paragraph 653 the Ndegwa Commission 1970-71 reiterated what the Handacre Commission had recommended. (1)

Paragraph 101 in the Sessional Paper No. 5 of 1974 accepted the establishment of the Local Government Service Commission to determine appointments, promotion, discipline and terms and conditions of service for all Local Authority employees (2).

Thus one can see that the aim both here in Kenya and other countries where the Commission exists, is to harmonize staff relations and make it possible for various Local Authorities to appoint competent and capable staff. (3)

This above definition necessitates a definition of what "Staff" means.

The staff of a unit of Local Government may be defined as the non elected employees engaged in assisting the representative organs (and the chief executive) in the preparation and the implementation of the Local Policies. (4)

It is that group of persons says J.S. MILL.....:

"which constitutes the permanent strength of the public service, those who do not change with changes in politics, but remain to aidthe political officialby their

experience and traditions, inform him by their knowledge of business and conduct official details and his general control; those in short who form the class of professional public servants". (5)

The role of the staff of the Local Units has become increasingly important in the last few decades, one obvious reason is the Increasing Size and complexity of the Local Government ^{of} bureacracy. There is a marked increase, particularly in the range, number and quality of the services which are expected by and performed for the residents in many Local Units. (6)

The older services, such as street and road maintenance and fire protection are being approached in some areas with a new consciousness of the challenge of advanced technology. For instance, the fire in the International Life House, Nairobi in late 1979, in which due to old and incompetent equipment, the Nairobi City Council Fire Department, was unable to control the fire, and due to public outcry, they were challenged and within a short time, bought more sophisticated equipment to fight fires in big buildings.

In a large number of Local Authorities, newer services, such as many of those in the social field are being, introduced for the first time. This development is readily apparent not only in the rapidly growing urban areas, but in many of the Rural Areas, which are quickly acquiring a larger consciousness of a need for more Local Government Services. This has accompanied the general rise in the standard of

living and the development of better means of transportation and communication. This growth in the scope and complexity of Local Services has been accompanied not only by an increase in the number of employees and the development of more complex administration, but also by an ever growing reliance upon the local staff members as well as organs of the Central Government to prepare and implement policy:-

"The increasing reliance upon the staff in the process of Local Representative Government makes the method of recruitment and selection and the conditions of advancement and discipline of the local employees an important matter, consequently even a superficial survey of the most salient variations in method is fruitful. The variations are especially noticeable in regard to who makes the selections and what protection the employees have against political and other prejudicial actions affecting their tenure of office".(7)

It is thus no wonder that the Report of the Commission of Inquiry 1970-71 popularly known as the Ndegwa Commission when talking of staffing as one of the problems facing local Authorities had the following to say. (8)

"The evidence presented to us indicates that most Local Authorities are unable to ascertain and retain the services of sufficient high level staff. Such staff have tended to move to better paid or high prestige posts in both the public and private sectors. Often this has resulted in the subsequent promotion of unworthy lower grade staff to positions above their level of competence. This unsatisfactory state of affairs appears to us to be due to several factors:-

- (i) high level staff experience a great deal of frustration, much of which stems from the interference of Councillors;

- (ii) there has been a tendency for appointment and promotions, as well as discipline, to be influenced by tribal and family considerations. Many alleged instances of nepotism and "brotherization" have been brought to our attention;
- (iii) there is no National Local Government Service. Local Government employees are employed individually by the 40 Local Authorities in the Republic, many of which are small in size. One of the results of this has been an almost total absence of efforts at planned staff development.
- (iv) Many Local Government Officers augment their incomes by running private business. This often results in them spending as much as or more time on their private business affairs as on their official duties; and
- (v) surcharges against officials who through negligence or other reprehensible cause are responsible for losses of council funds, have in most cases not been enforced by the Ministry."

After making this above observation, the Commission as regards matters concerning the staff of the Local Authorities recommended as follows:- (9)

- (i) "that a Local Government Service Commission as proposed by the Local Government Commission of Inquiry of 1966 and (10) Sessional Paper No. 12 of 1967 should be established as soon as possible to deal with the appointments and promotions and discipline of Local Authority Staff. Such a Commission would be the most suitable body to deal with the revision of terms and conditions of service for Local Authorities in accordance with paragraph 118 of Sessional Paper No. 12 of 1967;"
- (ii) "that the National joint negotiating Council, comprising representatives of the Kenya Local Government Workers Union and of the employing authorities, should continue in collaboration with the proposed Local Government Service Commission to formulate terms and conditions of service for all Local authority staff."

From the above recommendations it is clear that the case for a Local Government Commission is a very strong one, but attempts to implement the recommendations in the Bills of 1971, 1972 and 1980 which all provided for the proposed Local Government Service Commission have all failed. This failure can be attributed to opposition from Councillors, Councils, Members of Parliament and inadequacies in the Bills themselves, all these factors are discussed in Chapter 3 of this paper. In the later chapters, I intend to look at workings of the Local Government Service Commission in the countries where it exists. (With emphasis on the Commonwealth countries and the United States of America.) After this comparison I will then proceed to examine our proposed 1971, 1972 and 1980 Local Government Service Commission Bills with particular emphasis on the 1980 Local Government Service Commission Bill. (11) However, for the present purposes, I intend to now turn and look at the nature and functions of Local Authorities generally. This short examination will enable me to put the Local Government Service Commission in its proper perspective. Just as one cannot embark on a research of the Public Service Commission without looking at nature and functions of the Local Authorities, since it is only by knowing the nature and functions of the Local Authorities that one can realise or see the problems that the Local Government Service Commission is intended to cope with.

of health, roads, in Local Authorities, and many municipal public utility, undertakings. This has led way to question, why we continue with the additional parastatals of local

CHAPTER I

THE NATURE AND FUNCTIONS OF LOCAL AUTHORITIES GENERALLY.

"The responsibility of the Central Government for the economic and social well being of the country as a whole does not mean that the Central Government itself must provide all the public services and exercise all the regulatory powers which may be needed. Nor does the fact that the major political responsibility for Government depends on the outcome of National Elections mean that there is no place for the exercise of political power at a lower level. The organs of Local Government Serve two broad purposes:

- (a) They enable many public services to be provided at a level nearer the people whom the services benefit and
- (b) They enable Local Political opinion to be organised and expressed." (12)

Local Authorities although representative bodies chosen in an election;

"have not the autonomy of parliament; indeed they are dependant on parliament for their powers." (13)

The powers of Local Authorities derive expressly from statute and they are exercised subject to the rules of ultra vires. (14)

The ultra vires doctrine applies to Local Authorities for several reasons. Many Local Services involve interference with the citizens, common law rights, for which statutory authorisation is needed.

In recent years, the Central Government has assumed control of health, roads, in Local Authorities, and many Municipal Public utility, undertakings. This has led many to question, Why we; continue with the additional paraphernalia of Local

Local Administration? And would anything be lost, if the whole apparatus of Local Government were to be scrapped?

There are many advantages in retaining a system of Local Government. In the first place local control of affairs permits:- (1) Variation in Government according to the differences in Local needs, characters and circumstances. A rural area will probably want different kinds of schools from a large and densely populated town. Urban and Rural planning cannot be uniformly applied. Such functions therefore, are largely left to the Local Authorities. Each Area, too ~~has~~^{has} its special difficulties. In solving such problems, it is desirable to enlist the help of Local leaders to all the people most affected, a chance to chose between alternative proposals. According to J.S. Mill, the renowned philosopher:-

"the very object of having a local representation is in order that those who have any interest in common which they do not share with the general body of their country men manage that joint interest by themselves." (16)

If such local responsibility were to be replaced by administration from the Central Government through the Ministry of Local Government individuality of approach would give way to uniformity, and adaptability be superseded by rigidity. Could we expect parliament, which has so many matters to discuss or be ready to discuss, on whether to build new phases on the existing BuruBuru or Huruma Estates in Nairobi, or how fast slum clearance should proceed in Nairobi, or what scheme should be adopted for the relief of traffic on Uhuru Highway or Kenyatta Avenue.

in Nairobi? To what extent too could we expect a Government department or Ministry to put its energies in the development of only a certain area? They unlike the local Authorities will tend to deal with National issues while Local Authorities deal with their respective areas problems.

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However, hostility need not develop between the two forms of Government. While parliament still decides overall policy, the Minister of Local Government will act as a conseller, prompting, encouraging and co-ordinating the work of Local Authorities.

Secondly, direct responsibility for the Government of a locality harnesses powerful forces on behalf of the Community. Local interests see a constant and direct relationship between the efforts and sacrifices they make and the benefits enjoyed. Civic consciousness is a roused, a tradition built up, and local pride fostered. (17)

Thirdly, Local Government produces continuity of policy. The personal, political and party conflict is still not nearly so acute as it is for parliament. Hence Councillors of whatever shade of opinion find it easy to serve together on committees in order to secure the efficient working of local services. (18)

Fourthly, Local Government is valuable in itself since it

provides people with extra opportunities for taking an active part in the Government of the country. Such wide and direct participation is essential to preserve democracy and eliminate the work of the Nation being governed by a relatively small group of professional politicians or administrators. It is through Local Government that some of the members of Parliament learned their first political lessons, for example, Honourable Charles Rubia, who was the first African Mayor of Nairobi, and the Honourable Fredrick Gumo who was the Mayor of Kitale before the 1979 General Elections and many others, and although there are other training grounds, such as the trade unions, these tend to be somewhat narrow and specialised. The Councillor, on the other hand has to seek election from the general public, to be readily available to give advice and receive ^{complaints} complaints, and to share responsibility for making decisions on a wide variety of matters. Officials, too, are usually local men or women primarily concerned with Local needs and not departmental policy. Their first loyalty is to local people, not to the Central Department employing them, as would most likely be the case if they were Civic Servants. The public (Wananchi), above all feel, a more intimate contact with their own Local Administration. How a country should be administered may be of little concern to them; but they are, as in the case of Nairobi Residents, more interested in the,.....

that I now turn to the issue of the case of a Local Government

type of schools their children go to, how often their refuse is collected, and the state of repair of their roads and pavements. This point is well illustrated by the numerous letters one sees in the mail box columns of the Daily Nation and the Standard Newspapers, complaining about the poor running of utility services by the Nairobi City Council.

Lastly, it is healthy to have a division of power between the Central Government and Local Authorities. Although tension between the two does occur from time to time, as is often the case between the Nairobi City Council and the Ministry of Local Government, this tension serves the purpose of reminding the Central Government and more so the Ministry of Local Government that it is not sufficient to command but that continual consideration must be given to the feelings of even small groups of people.

It is now clear after looking at these four functions of the Local Authorities, that the functions of Local Authorities tend to be very politicised. And due to this politicisation or likelihood of politicisation in Local Authority matters, the non-elected staff members of Local Authorities need protection and this can only be achieved through the establishment of a body such as the Local Government Service Commission whose function will be governance of staff matters in all Local Authorities combined. It is with these above points in mind that I now turn to the issue of the case of a Local Government Service Commission in the following chapter.

C H A P T E R T W O

As I have already stated in Chapter One, the rapid development of Local Authorities and their services has accompanied the general rise in the standard of living and development of better means of transportation and communication. This growth in the scope and complexity of local services has been accompanied not only by an increase in the number of employees and the development of more complex administrative apparatuses, but also by an ever growing reliance upon the local staff members as well as organs of the Central Government to prepare and implement policy.

In this Chapter Two I intend to look at the position of other countries of the world as regards, staff of Local Authorities and this includes promotions, appointments, salaries, sackings, and also as to whether Local Government staff Commissions similar to our proposed one (1) do exist, and if they do not exist why? My main emphasis in making the above observations will be based on the Commonwealth Countries and the U.S.A.

The increasing reliance upon Staff in the process of Local representative Government, in a modern world, of rapid development and changes both economic and political, makes the method of recruitment and selection and the conditions of advancement and discipline of the Local employees an important matter: Consequently, even a superficial survey of the most salient variations in methods is fruitful.

These variations are especially noticeable in regard to who makes the selections and what protection the employees have against political and other prejudicial actions affecting their tenure of office.(2)

The first factor to be taken into consideration is whether the appointment is made by a local or a central Government organ. In most units of Local non-representative Government, such as those in the Philippines, Elsalvador, Spain etc, the staff members are considered to be Central Government employees.(3) In addition, in some units of Local representative Government, including many of the more populous Municipalities in India, the top staff officers are Central Government Civil Servants who are assigned to the Local Unit. Also in India because of their lack of financial resources, the Indian Local Village Authorities are often unable to hire full-time employees especially those to serve in a co-ordinating and day to day supervisory role of the Local Villages Activities. Thus the state often appoints, controls and pays for such officials in the larger villages and in groups of villages. The officials then advise the Local Authorities, serve as their Secretary and act as the liaison between the state and the Local Governmental units in collection of revenue, maintaining records and in other specified duties.(3)(b)

In Italy and other countries, many of the top Municipal Staff officers make their entire careers in

Municipal Services and are recruited and appointed directly by organs of the central government, which also determine their promotions. In fact in Italy, in addition to the elected officials, each Municipality has a Secretary (general), (4(a) the equivalent of our Town Clerk in Nairobi, (4) who is appointed by the Central Government and who directly supervises and co-ordinates daily administration. It is therefore to the Secretary (general) that the Municipal department heads are directly responsible. Although his primary responsibility is to the council, the Secretary (general) may nevertheless refuse to implement any illegal acts of that body or of any municipal officer, thereby guaranteeing impartiality of administration by the elected and appointed officials. The Secretary (general) also provides continuity during changeovers in administration and in many cases serves as the Local expert in public Administration and administrative law (4(a)

Such a system in Italy and many other countries not only enables the Central Government to centralize and standardize the recruitment, training, examination, and promotion of candidates for local chief administrative officer as well as other local government positions, but it also facilitates promotions and transfers in positions between local government units. In some countries, local units are allowed a limited discretion in choosing an officer from a centrally compiled list and, perhaps more important in some cases, they may, request a replacement

of an officer who has not been satisfactory. (5) In a few other countries, such as Srilanka (ceylon), a Central Local Public Service Commission was established about 20 years ago and it is linked with the Central Government. (6) Direct supervision of daily administration in Srilanka Urban Municipalities is entrusted to a Chief Administrative Officer, called the Municipal Commissioner, who is directly responsible to the Mayor. The post of this officer to whom all Municipal employees are responsible, is filled through appointment of the Local Government Service Commission, a Central Government Agency for the recruitment, appointment and transfer of the majority of Local Government employees. Established in 1946, the Commission is composed of eight members selected by the Minister of Local Government, plus the Commissioner of Local Government who is the ex-officio Chairman, of the nominated members, four are the direct choice of the Minister, the other four are selected by him from nominations submitted by various organizations representing the Municipalities. (7) In the Commission is vested full power for all personnel measures, including establishment of salary scales and allowances and pension funds. Uniformity in the Srilankan Local Government Service has thus been established and better trained and experienced officials made available to the Municipalities. (8)

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Bodies such as the Central Local Public Service Commission in Srilanka, may merely certify the competence of an individual or they may actually recruit, make the appointments, the transfers, the promotions, and take the disciplinary actions. Appointment of the Local Staff Officers by organs of the higher units or by other centrally located organs give the opportunity for securing, at least from the Central Government point of view, a certain minimum level of administrative competence in each Municipality. The Central Government also is assured that local political considerations will not have an adverse effect in determining the calibre of the official chosen. (9)

Many Local Authorities, including those in the United Kingdom, have the prerogative to appoint, dismiss and impose discipline on their own employees but there is an elaborate system of restraints imposed by the Central Government Laws which specify the necessary qualifications for certain positions, the conditions of working and the circumstances and the procedure under which an employee can be dismissed. These stipulations are particularly exacting for the top-ranking and professional posts. For some positions the organ of the Central Government must give specific approval for the appointment and dismissal of an official. (10)

job location. The total effect could have been seriously
damag In the United Kingdom (England, Wales, Scotland
and Northen Ireland) all the local authorities have
the power to appoint such staff as are necessary to unaltered
carry out their work and they have a statutory would provide
obligation to appoint such officers as the clerk of the
Council (or similar officer) who is the Chief

Administrative Officer of the Local Authority and is
or depressing depends on the out look of the
responsible for the conduct of Council business. The
restless and ambitious socials welcome the
Clerk is often a Solicitor, in which case he is also
worry resent the stress caused by Disturbance? (17a)
the Councils Chief Legal Officer. The Councils Financial
This massive reshapping of the Local Authorities in the United
Officer is the Treasurer (or similar officer); he advises
Kingdom led to the raising of a few questions: (17b)
on the financial implication of proposals, collects the
1. Where the geographical Area of an Authority
annual estimates and acts as Chief Accountant and Internal
was to be divided, how would its staff be
Auditor. Appointment and dismissal of some chief officers
divided?
are subject to the approval of the Central Government. (10)

2. There was also uncertainty about procedural
However, despite what I have said above as regards
personnel matters of Local Authorities there are occassions
when Local Government Staff Commissions have been set up
in Britain, and I will thus show why this occurred and
what the purpose of this Commission were:ugh moving

from one post to another?
The Local Government Act 1972 of Britain led to the
reshaping of Local Authorities and it involved a massive
reshuffle of staff. It created a substantial human problem.
Some officers feared redundancy, others faced early line in
retirement; others were worried about career prospects; others
were concerned about the inconvenience of a change in ~~job~~

job location. The total effect could have been seriously damaging to staff morale and could have produced added difficulties in the transition period. However, the atmosphere created by reorganisation was not one of unallayed pessimism. Many staff felt that the new system would provide brighter opportunities, that conditions of work in larger organisations would be more satisfactory.(11A)

"Whether the prospect of changes is stimulating or depressing depends on the out look of the individual and his personal situation. The restless and ambitious socials welcome the opportunity for movement; the comfortable and weary resent the stress caused by Disturbance!"(11a)

This massive reshaping of the Local Authorities in the United Kingdom led to the raising of a few questions.(11B)

1. Where the geographical Area of an Authority was to be divided, how would its staff be divided?
2. There was also uncertainty about procedural matters. How would the new authorities go about the task of appointing staff? Would they follow similar rules?
3. What compensation would be available for those who suffered financial loss through moving from one post to another?

The British Government appreciated the anxieties that would arise. The initial white paper (11c) published by the conservative Government which was in power at that time in February 1971 announced the intention to establish a staff

on similar lines to the parallel body used in the Commission to advise on the recruitment and transfer of personnel and safeguarding of staff interests. Subsequently a consultation paper from the Directorate of Environment invited suggestions for matters on which fuller discussion was desirable. (12a) N.A.L.G.O. (National Association of Local Government Officers) was particularly insistent on the need for a staff commission as it felt that such a body could protect its members from local council that acted unfairly to staff. (12b)

Section 257 of the United Kingdom Local Government Act 1972 duly authorised the Secretary of State to appoint a Local Government Staff Commission. In fact, this Commission, was established before the Bill became law and in the Interim period it was known as the Local Government Staff Advisory Committee. According to the Act the task of the Commission was to keep under Review the arrangements for the recruitment of staff by the new Authorities and for transfers of staff between the old Authorities and the new ones. Further the Commission was to consider staffing problems caused by the reorganisation and to advise the Secretary of State on any steps necessary to safe guard the interests of staff. Eight Regional Offices dealt with the individual problems of Local Authorities while the headquarters in London concentrated on general policy. The Commission worked

influenced by political motivations and consequently capable administrators have not been encouraged to risk their careers in such a political insecure position.

In order to avoid this "spoils system" many North American cities on similar lines to the parallel body used in the London reorganisation Nine years earlier. Essentially its task was to encourage, advise and warn. It was to respect the independence and legitimate Rights of the new councils so it had no power to make appointments nor did it seek to influence the appointments. It had no jurisdiction over, pay, grading or compensation. All this followed the London model. Local Authorities were broadly content with this situation as it offered a prospect of ^{Minimum} ~~minim~~ interference by the Commission. National Association of Local Government Officers would have however preferred the Commission to have had a rather wider ambit of activity. (13)

On the other hand some local units have the virtually unfettered prerogative to "hire and fire" the employees. In some U.S.A. Municipalities, for instance, the appointment and dismissal of the employees is under the full control of the Council, the Chief Executive, or of both (14). Although this method allows the Local Representative organs the fullest possible control over its staff organs, by the same token it places the employees at the mercy of the representative organs. Appointments and dismissals may be strongly influenced by political motivations and consequently capable administrators have not been encouraged to risk their careers in such a political insecure vocation.

In order to avoid this "spoils system" many North American cities have taken the control of Local personnel appointments and discipline "out of politics" by setting up a form of Local Civil Service Commission. The tasks of such a Commission may vary. It may merely certify the competence of a prospective employee or it may actually recruit applicants, make the appointments, determine promotions, and pass judgement on all disciplinary actions.(14)

There is a system of appointment of departmental heads such as Treasurers, and Clerks that is almost unique to the U.S.A. Direct popular election of department heads, who do not have seats on the councils or boards is almost unknown outside of the United States; even in that country this, practice is on the decline. Of the U.S Municipalities with more than 5,000 inhabitants about a third have elected Treasurers, a fourth have elected clerks, a seventh elected assessors, an eighth elected auditors, and a twelfth elected attorneys; about a half of the Municipalities with more than 5,000 residents elect one or more of their department heads.(15) This method of selecting administrative officers is largely a result of an antipathy to centralized control and a confidence in so called "popular democracy" which existed in the early years of this Republic, today this manner of selection is generally regarded or considered unsatisfactory.

the head of the municipal public works department and the

In a few municipalities the elected council men themselves are department heads. In the United States cities with the "Commission" form of Government, for instance, each of the council members has the direct charge of a department of the City Administration, with the councilmen determining among themselves who shall be in charge of each department. Moreover, in some of the smaller Municipalities, including a few in the United States and Sweden, the Municipal Clerk is elected from among and by the councilors (16)

The Chief Administrative Officer in Russian Local Units is almost invariably elected from the Council. In another country, El Salvador, one voting place on the council is reserved for the Solicitor (Sindaco), who is directly elected to this specific post. In many of the smaller Municipalities in this country other council men are assigned the direction of a department. There are other Municipalities in which the departments are directly administered by the board members; the Thai and Swiss Municipalities are an example. (17)

There are also a few local units in which the department heads are appointed by an organ or an official of a higher unit. Examples of this are the Phillipines Municipalities whose department heads are appointed by and responsible to the head of the counterpart department at the next higher level. Infact in the provincial capitals the head of the Municipal public works department and the

The Central Government, to look to the Central Government for guidance in the conduct of his provincial public works department may be the same man. (17)

It must however be pointed out that it is the feeling of quite a large number of people, more so civic leaders, that local selections of staff by the Local Units is much better than that by the Central Government. And thus they oppose as was the case when the LOCAL GOVERNMENT COMMISSION BILL 1980 was gazetted that anybody appointed by the Central Government to determine (staff appointments, promotions, salaries, discipline and sackings). They feel as was the case in Kenya that it is unwarranted central government interference and it is an attempt by the Central Government to wrest away the small independence they have left and give the Government power and authority over all that the Local Authorities do (18)

This feeling can be well summed up by the following extract. Regarding advantages of Local selections over Central Government appointment, Jackson has pointed out:-

"Where there is some provision that requires the consent of the Central Government to the appointment, salary, or dismissal of a Local Government Officer, that provision is not intended to affect the position of the officer in respect of his work. It is meant to give him some security against his own council, but he remains bound to obey all their proper directions and he does not in any sense become a servant of the Central Government. There is however, always a tendency for an officer whose ultimate fate may depend upon
from the ranks of its own staff.

"The Central Government, to look to the Central Government for guidance in the conduct of his work. All experience indicates that it is better to have a man whose concern and loyalty is entirely to the authority that he serves than an officer who may have some temptation to do things that he knows ~~like~~ keep him in good favour with the Central Governments. Hence, local authorities should always regard any powers of the Central Government in this respect as being undesirable and to be justified only, exceptional circumstances." (19)

Perhaps this comment tends to over state the case; never-the-less it is increasingly accepted that local selection of employees is more compatible with the Local representative Government than appointments by a Central Government organ.

The staff positions in many local Government units, particularly in the less popular rural units in under developed countries do not offer salaries, prestige, or prospect of advancement adequate to attract competent personnel; Central Government appointment can be helpful to mitigate some of these disadvantages of Local Government Service in Rural Areas. In the more populous Local Units of many countries, though, the staffs are large enough and the top staff posts are important enough that capable young potential administrators are willing to train for and make a career of local Government Administration. Thus the large city; such as Nairobi, or Mombasa in the case of Kenya, naturally has a comparatively large reservoir of trained and experienced Manpower to draw from in selecting the top officers, even if it limits itself from selecting from the ranks of its own staff.

CHAPTER THREE

In several countries, though the Chief Administrative Officers as well as other top staff officers, either by ~~law~~^{law} or by custom, may be non-local as well as Local persons. This development has done much to enable Local Government Service in both the less populous and more populous local units to be an increasingly promising Vocational field. Therefore more capable potential administrators are being drawn into the field and their services are available to a larger number of local Units. Such mobility between local units is the general practice in many countries, including Italy and France as well as the United Kingdom and Sweden. These trends, along with others such as the development of special training institutes and professional associations for local Government Officers, have done much to develop a growing profession of Local Administrative Officers. (20)

led to the establishment of a Local Government Service Commission in Kenya. It was in fact the third time the Government had sought to do so. The first time the Government introduced such a Bill was in the 2nd session of the second parliament in 1971 and the Bill was defeated on 2nd reading at its third reading. It was then reintroduced for a second time in the Third session of the 2nd Parliament on 20th July, 1972. This 1972 Bill was withdrawn on 21st September, 1972.

It is thus with these two other times the Bill was introduced, that in my discussion and analysis of the Local Government Service Commission Bill of 1980, that I intend

CHAPTER THREE

DISSERTATION

In this Chapter, I intend to look at the Local Government Service Commission Bill of 1980. The Local Government Service Commission Bill of 1980 was gazetted in the Kenya Gazette on 2nd May, 1980 and was signed by the then Attorney General Charles Mugane Njonjo. It is thus my intention to look at the Bill itself and try to analyse its pros and cons, so as to enable me to look at the question the Dissertation poses as to whether or not we need a Local Government Service Commission in Kenya or not.

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The 1980 Local Government Service Commission Bill, was not the first time the Kenya Government had sought or attempted to introduce such a Bill that would have led to the establishment of a Local Government Service Commission in Kenya. It was infact the third time the Government had sought to do so. The first time the Government introduced such a Bill was in the 2nd session of the second parliament in 1971 and the Bill was debated on and defeated at its third reading. It was then reintroduced for a second time in the Third session of the 2nd Parliament on 20th July, 1972. This 1972 Bill was withdrawn on 21st September, 1972.

It is thus with these two other times the Bill was introduced, that in my discussion and analysis of the Local Government Service Commission Bill of 1980, that I intend

to trace the History of the Bill.

It is only with this in mind that one can understand the reasons why despite the importance and need for a Local Government Service Commission in Kenya that attempts by the Central Government to introduce a Bill enacting such a Commission have failed.

The Local Government Service Commission Bill which was debated on, and killed, in its third reading in the second session of the second parliament in 1971 was mainly killed due to the following reasons (1)

1. "The Members of Parliament felt that the way, Section 3 of the 1971 Bill, (similar but not quite to the 1980 Bill Section 3), would lead to the control of the Commission by people of one tribe, namely the Kikuyu. In fact some Members of Parliament went to the extent of stating that since the Minister was from Muranga it was a Bill introduced by the Muranga clique to bring about Murangization of the Local Authorities." They thus sought to have a bill which would ensure that the Commissioners would be appointed from each province and from different tribes.
- 2 They felt that the Local Government Service Commission would lead to the final centralization of the Local Authorities under Central Government control, according to them what was needed was a decentralization of local authorities as the original K.A.N.U(Kenya African National Union)manifesto and the Republic Constitution had sought to do.

of the Bill:-

3. Finally the Hon. Members of Parliament felt that the Local Government Service Commission was unnecessary and would lead to the imposition of unsuitable candidates or unwanted ones on Local Authorities who did not want them.

Due to these three factors the Local Government Service Commission Bill of 1971 was killed at its third reading after a controversial and emotional debate

However before I proceed to discuss the 1972 Local Government Service Commission Bill, I must point out that the establishment of this Commission was first recommended by the Hardacre Commission of 1966. The Government accepted the recommendations. In paragraph 635 the Ndegwa Commission reiterated what the Hardacre Commission had recommended. Paragraph 101 in the Sessional Paper No.5 of 1974 accepted the establishment of the Local Government Service Commission to determine appointments, promotion, discipline and terms of conditions of service for all Local Authority employees. After the killing of the 1971 Local Government Service Commission Bill, the Central Government however did not give up with the idea of a local Government Service Commission and the then Minister for Local Government Dr. Julius Gikonyo Kiano reintroduced the Bill into the Third Session of the 2nd Parliament as the 1972 Local Government Service Commission Bill on 20th July, 1972.(2) He gave the following as the reasons for the reintroduction of the Bill:-

1. One of its aims was to give a sense of security and permanence to the employees who worked for various local Authorities.

2. The Bill once passed would enable these employees to work as impartially as possible without constant direction by the functional Committees of the Council, these functional Committees are composed of elected Councillors. He said that the members of the National Assembly were the legislators of the Nation and they passed laws. However when it came to the implementation of the resolutions that were passed in the National Assembly, these matters were left to the Civil Service and to the executive branch of the Government. (He was enunciating the doctrine of separation of powers). In the Local Government System he said at present, despite modifications having been made here and there, the elected Councillors were both legislator that is to say they are a policy making branch as well as an executive branch of the Government.

This had led to a lot of overlapping, which the Government was now trying to remove by introducing this Bill.

3. The third point which the Government had in mind in reintroducing this Bill (1972) was to try and attract young men and women into the Local Government Service by having terms of service, which irrespective of where the Local Authority is, are more or less similar. He said that the Government had been suffering seriously from a shortage of properly trained Manpower in some of the Local Authorities and therefore what the Government was trying to do with this Bill was

3. was to create a Commission which would do the work of employing these types of people instead of leaving the matter to the respective establishment Committees of Councillors who are themselves elected politically like the members of the National Assembly. Elaborating on this point further Kiano said and I quote:-

"What I would like to say is that administration in Local Authorities has suffered greatly from political pressures within the councils because the employees are directly responsible to the elected Councillors. We are trying to create a situation to save them from that problem."(3)

In summing up his motion reintroducing the Local Government Service Commission Bill as the 1972

Local Government Service Commission Bill Kiano said:-

"However, the Bill before us now is dealing with a Local Government Service Commission which would look after the remuneration, recruitment, discipline of workers in local Authorities. I have said that it will be directed to give first preference to the Local applicants. The staff Committee will deal with Junior posts for Local Authorities, and be answerable to the Commission, for senior posts, Mr. Speaker, Sir, a provision has been made to make sure that preference is given to the local people" (4)

The second attempt by the Government to reintroduce the Local Government Service Commission met with a lot of opposition from the members of the National Assembly. It was opposed for the following reasons:-

Some Members of Parliament of whom Mr. Tsuma, ^{- dead} the then Member of Parliament for Lurambi South was the most vocal, opposed the Bill on the

grounds that the Local Government Service Commission would be in effective, since they felt that it would have no control, since the Government did not provide the Local Authorities with most of their money, it was the residents of these Local Authorities that did so. (5) So they wondered how the Commission would control how they paid and employed their workers Mr. Tsuma said that the Bill would be useless because and I quote him:-

*envisaging
Cafeteria
system
→ 1992 henceforward.*

"I have my House and I control my expenditure, but can anybody come and tell me that he wants me not to eat ugali but only eat rice, yet I am eating ugali because I cannot afford rice? How can I meet such an obligation." (6)

Yatz!

This group of Members of Parliament thus felt that the Local Government Service Commission would be useless since it would employ and not pay the staff and the councils or Local Authorities might refuse to pay the staff on the grounds that they were employed by the Commission.

2. On the composition of the Local Government Service Commission, Tsuma and those who shared his views felt that the ruling by the Local Government Ministerial Committee that the members of the Local Government Service Commission be eight from each province would not be sufficient since they could be from different provinces but the same tribe. Many of the Members of Parliament feared that even with provincial representative the whole commission might be dominated by one tribe, namely the Kikuyu. Mr. Juma Boy said:-

"The fear is that the whole Commission might be dominated by one tribe, Mr. Speaker Sir, that is the whole idea behind this provincial representation Mr. Speaker Sir: (7)

This group of Members of Parliament was strongly condemned by Mr. Stanley Ole Oloitiptip who was then the Assistant Minister for Health, who condemned the leaders who feared tribalism and said it was high time the National Assembly stopped thinking on the lines of tribalism and nepotism and became Nationalistic. He said:-

"Mr. Speaker Sir, coming to the point as to whether there was fear or not because I know that very many Honourable Members here do think perhaps because the Minister comes from the Kikuyu tribe, for that matter he is initiating this Commission so that the Commission can employ only Kikuyu or Kikuyu people in this country." (8)

3. Some of the Members of Parliament felt that since the interviews for the jobs would be held in Nairobi, then the proviso under section 7(4) of the 1972 Local Government Service Commission Bill which was similar to the proviso 7(4) in the 1980 Local Government Service Commission Bill, telling the Councils to meet the travelling expenses of all the candidates who have travelled for interviews was unfair since some Councils were poor and they gave the example of a Council like the Samburu County Council which at the time could definitely not meet such expenses.(9)
4. Some of the Members of Parliament also felt that the Staff Committee provided for under section 9 of the 1972 Bill would be ineffective since it was a part of a Local Authority and they could not see how it could then play doubles and be responsible to the Local Government Service Commission at the same time. (10)

5. Some Members of Parliament felt that if the Bill was passed there would be no need to have Local Authorities in Kenya Because they would be Local Authorities turned into rubber stamps. They felt that under the Local Government Regulations 1963, the Local Authorities had the right to determine who should serve them well. Some of the Members of Parliament went to the extent of saying that all Bills that were brought before the National Assembly for enactment, including the Local Government Service Commission Bill happen to be brought by people who have a personal interest in them thus implying that the Local Government Service Commission Bill was meant to benefit some people at the expense of the Local Authorities. One particular Member of Parliament a Mr. Kurgat felt that the Commission when formed would only benefit the people of Central and Nairobi Provinces.

6. Many Members of Parliament including Mr. Seroney the then Member of Parliament for TINDERET felt that the purpose of the Bill was to further centralize the Local Authorities into the hands of the Central Government. They felt that since centralization of many things had already led to a lot of problems the Central Government should have been decentralising its activities rather than further centralising by introducing Bills such as the Local Government Service Commission Bill. So they opposed the Bill on the grounds that its aim was more centralizing than streamlining staff matters and creating efficiency in the staff of the Local Authorities.

felt that unless and until this country can find a method of stopping nepotism, corruption and tribalism, they would be wasting their time in trying to do anything else because even if they

6. Mr. Seroney supported this above contention by saying:-

".... Now Mr. Speaker, Sir, by this Bill the Minister is carrying out that process of centralization even further, and he now wants to take away from the Local Authorities the Right to hire and fire staff." (12)

Still on the issue of centralisation others who opposed the Bill felt that the whole purpose of the independence constitution was to decentralise Administration and infact at the Lancaster Constitutional Conference Kenya African National Union (KANU) had wanted some powers to be given to the Local Authorities and now by bringing the Bill the Minister was turning away from the very wishes of the ruling party K.A.N.U. of which he himself was a Member. They felt that the methods of employing by the Local Authorities should not be taken away from them as the Bill purports to do when these powers are removed the Local Authorities will be denied everything. In summing up this above arguement of the M.P.s, Mr. Nthenge said:-

"Mr. Speaker Sir, a lot of people in this country became too ambitious and they think they should have everything under their control. I want to tell my colleagues that we should not take away the powers from the Local Authorities and deny them the right to employ and discharge."(13)

7. Other Members of Parliament who opposed the Bill felt that unless and until this country can find a method of stopping nepotism, corruption and tribalism, They would be wasting there time in trying to do anything else because even if they agreed to this proposed Bill the Members of the Commission would go on employing their brothers

7. and that would be nepotism, they might be corrupted by being given money by those who wanted employment and they could also be carried away by emotions and only employ their own tribesmen and that would be tribalism. Therefore, the solution and only remedy to the problems of this country would be the recognition of a new disease which was spreading very fast and was called nepotism and corruption and tribalism and something should be done about it. They felt that it was because of this that the Minister had not been able to control these councils because the councils had been doing things the wrong way. The arguments above seem to be very contradictory and at times very self defeating in that what the Commission aimed at doing was to kill this very new disease which they were calling for the recognition of. (14)

8. Other Members of Parliament felt that there was no need of a Commission to recruit workers and send them to LOCAL AUTHORITIES which will then pay them. They felt that infact County Councils themselves should be left alone to recruit the people and deal with their own Affairs. Mr. Juma Boy M.P., said:-

"When some of these officers will not work in accordance to the directions of the County Councils, how will the councils take disciplinary action? I feel we should not take away all powers of County Councils simply because we want to set up a Commission." (15)

The Bill however was not opposed by everybody, some people did infact support the Bill. The then Assistant Minister for Local Government Mr. Munoko when he read the Bill for a second time said that:- (16)

1. "First of all the Government had no intention whatsoever of centralizing all the Local Authorities powers and infact it was the intention of the Government to see that Local Authorities were strengthened."

2. The purpose of the Bill he said was merely the question of whether we should strengthen the Local Authorities Staff. Whether we should have staff in Local Authorities who are capable of carrying out the responsibilities entrusted to them and thus be able to serve the Wananchi better. That is the only question which is contained in the Bill and which the House is required to look into.

Mr. Munoko said:-

"I have no hesitation to say that if the Government said that these are competent staff manning the Local Authorities some more services would be given to them." (17)

Others supporting the Bill such as Mr. Mwithaga, felt that the passing of the Bill would enable the Staff of Local Authorities to broaden their Local Government professional outlook. He argued that there was a general feeling amongst most officers working in the Local Authorities that there should be an independent body dealing with their affairs and they were crying for a Local Government Service Commission and the House should know this. He said:-

"If Hon. Members of Parliament go back to their constituencies and consult with the officers in the field they will come back to the House with a different mind. I am saying this because they will be told by these officers, "GO PASS THE BILL BECAUSE WE WANT IT BADLY"(18)

This 1972 Bill was withdrawn and killed and buried on 21st September, 1972, after no compromise was reached between the Central Government and the Honourable Members of Parliament.

After this brief history of the 1971 and 1972 Local Government Service Commission Bills, I will now turn to the latest Bill on the Local Government Service Commission and that is the 1980 Local Government Service Commission Bill which was gazetted in the Kenya gazette Bill Supplement on May 2nd, 1980. In its short title and commencement the proposed Local Government Service Commission states the purpose of the Bill as follows:-

"An act of Parliament to establish a Commission control the appointment of persons to the staffs of Local Authorities and the discipline, remuneration qualifications and training of such persons, and for matters incidental to and connected with the foregoing sections." (19)

Thus in this short title and commencement one see that the aim of the Central Government in introducing the Bill was to create a body that would deal with all matters pertaining to staff in Local Authorities as has already been done with the establishment of the already existing bodies such as the Public Service Commission for teachers, and the Judicial Service Commission for Judicial Officers.

The functions of the Public Service Commission are very similar to those stated as to be the ones intended for the Local Government Service Commission. The functions of the Commission are clearly defined in the Public Service Commission Act (Cap 185 of the laws of Kenya) and the regulations made thereunder.

"It makes, confirms, and translates appointments and acting appointments, authorizes promotions and retirements and exercises disciplinary control over the Civil Service." (20)

The Public Service Commission does not however appoint teachers as these come under the purview of the Teachers Service Commission which was established under the Teachers Service Commission Act, (Cap 212 of the Laws of Kenya). This Act was passed in 1967 as the Teachers Service Commission Act No. 2 of 1967. This Commission was set up in 1967 under legislation enacted by parliament in the previous year. The Commission became the employer of all non-Civil Service Local Teachers in primary, secondary, technical and teacher Training institutions. Other functions assigned to the Commission included promotions, postings, discipline and the remuneration and terms of service of the profession.

The powers of the Public Service Commission also do not extend to the offices that fall under the review of the Judicial Service Commission, (21) which is established under Chapter IV of the Constitution and its work is to appoint Judicial Officers. (22)

One can clearly see that all other "Public Officers" have independent bodies that govern their staff matters. Infact a Local Government Service Commission is long over due in Kenya. Local Government Workers are the only workers of the Public Service to-day that do not have a streamlined system and are very much at the mercy of their respective Local Authority Employers.

PART 1 of the Bill is preliminary and Section 1 of the Act contains a short title and commencement and says that the Act may be cited as the Local Government Service Commission Act. 1980.

Section 2 - is the Interpretation Section of the Bill. PART 11 - of the Bill contains Sections 3 - 7 which deal with the basic machinery of the Local Government Service Commission. Section 3 (1) - generally deals with the Establishment and Constitution of the Commission. This Section says:-

"There is hereby establishment a Commission to be known as the Local Government Service Commission which shall consist of not less than five nor more than twelve members appointed by the President."(23)

This Section 3 (1) was the centre of a lot of controversy during the 1971 and 1972 Local Government Service Commission Bill debates in the National Assembly.

Infact I am surprised that despite the controversy that surrounded this Section in the 1971 and 1972 debates, the Draftsman of the 1980 Bill did very little to amend it or improve it to avoid fresh opposition to it. All they purported to do in the Drafting of Section 3(1) of the 1980 Local Government Service Commission Bill was to replace the word 'Minister' in Section 3(1) of the 1971 and 1972 Bills with the word 'President' in the 1980 Bill. Thus the effect of this is that the fears expressed in the debates of the two earlier Bills still hold a lot of water and are applicable to section 3(1) of the 1980 Local Government Service Commission Bill and I thus intend to look at these

arguments so as to enable me to recommend amendments to the Section.

In the 1971 Bill the wording of section 3 (1) was such that the Minister was responsible for the appointment of the Commissioners (members) of the Commission. This was however strongly objected to by the Hon. Members of the National Assembly on the grounds of fear of tribalism or regionalism in the Local Government Service Commission. Infact the Ministerial Committee which was formed to look into the Bill after the 1971 Local Government Service Commission Bill had failed, met twice and considered these above objections which had been raised about section 3(1) of the 1971 Bill and they concluded that:-

"It was important to provide enough safeguards within the Bill so that irrespective of the person in power, there will be enough safeguards to protect the particular local Authority or district so, that the Commission is not rendered to be used for regional tribal or personal favourism by the person in charge that is the person appointing the members of the Local Government Service Commission". (24)

It was thus not surprising that when the Bill was reintroduced as the 1972 Local Government Service Commission Bill Section 3(1) of it had been worked in such a way as now to reflect equal distribution of members so as to kill the regional domination fear. The section now stated as follows:-

"There is hereby established a Commission to be known as the Local Government Service Commission which shall consist of 8 members one from each province appointed by the Minister". (25)

Despite this amendment of Section 3 (1) in the 1972 Local Government Service Commission Bill which Prima Facie looked fair. Members of Parliament were still dissatisfied with it and they felt that the Section was inadequately worded and insufficient as a safeguard against tribal domination, since members of the Commission could be from different provinces but the same tribe. Infact most of the members of the National Assembly felt that the idea behind provincial representation was to perpetuate tribalism. One of the Members of Parliament said and I quote:-

"The fear is that the whole Commission might be dominated by one tribe, Mr. Speaker, Sir, that is the whole idea behind the Provincial Representation Mr. Speaker, Sir."(26)

Mr. Seroney opposing the Bill was against the wording of Section 3(1) where he opposed the appointment of the Commissions member's by the Minister, saying, that the Minister could appoint weak people who he could influence and dominate. He proposed that instead of the Commissioners being appointed by the Minister, they ~~should~~ should be appointed by a sort of a Miniature Association of Local Government Authorities of Kenya. He said that the possibility of a Minister making arbitrary appointments cannot be ruled out.

I whole-heartedly agree with Seroney about the danger of giving one man the power to appoint his pawns so as to be able to make the proposed Local Government Service Commission his own instrument. Infact the only difference in the 1980 Bill from the 1972 Bill is that in the 1980 Bill, The 'President' replaces the Minister as the appointer of the

Commissioners. Due to the opposition which was very stiff in 1971 and 1972 as to the wording of Section 3(1) the Drafters of the Bill should have foreseen that Section 3(1) of the 1980 Bill needed some changes and to forestall it from being rejected as it was in 1971 and 1972 should have provided a half way measure with which the proponents and opponents of the Bill would have been content with. They should have adopted the System envisaged by Seroney and modified it a bit so that they gave the President or Central Government power only to appoint half of the members of the Commission and the other half should have been appointed from nominations handed in by Local Authorities or the affiliates. (27) What I have in mind as the model that the drafters should have adopted in the 1980 Local Government Service Commission Bill would have been a model very like the one used in the Sri Lankan Local Government Civil Service Commission, where the Central Government appoints only 4 of the Commissioners and then the other 4 are appointed by the Central Government from a list of people nominated by the Local Authorities and Affiliates Association such as Unions. This method if it had been adopted would have made the Appointments more acceptable and would have gone a long way in making the Local Authorities feel that the proposed Local Government Service Commission was not their foe and enemy but Ally and Friend.

It would also make them feel that the Local Government Service Commission is a part of them and not divorced from them and was not a tool of punishment being used by the Central Government on them. I say this because there is a concerted feeling among the Local Authorities that their "Authority" lies in their power to appoint and dismiss whomever they want. In the STANDARD MARCH, 8th 1980 - it was reported as follows on the Local Government Service Commission Bill 1980 :-

"A senior official of the Nairobi City Council said about the Commission - The whole idea is an Insult to the Local Authorities particularly because the Commission will take away the "Authority from the Councils". (28)

This statement clearly shows the concerted feeling amongst Local Authorities that their "Authority" lies in their power to appoint and dismiss whomever they want. Section 3(2). States "The President shall appoint a Chairman of the Commission from amongst the Members thereof". In the 1971 and 1972 Local Government Service Commission Bills the wording of Section 3(2) said ; "The Minister shall appoint..... instead of President shall appoint..... The wording of Section 3(2) in 1972 Bill debates was strongly objected to by the House. The then Minister for Local Government had intended amendment to section 3(2) in the 1972 Bill failed to be prevailed upon by Members of the National Assembly to amend section 3(2) of the 1972 Bill in such a way so that the Members of the Commission itself appointed the Vice Chairman and Chairman. After carrying out the requested amendment the Commission from amongst the Members. This position is similar to the method the President uses to appoint the

Minister later changed his mind and requested that the National Assembly insert once again that the

"Minister, shall appoint a chairman and a Vice-Chairman of the Commission, instead of the one inserted before, whereby the Commissioners themselves will be left to choose from among themselves who the Chairman is. To support his argument he made the following statement:-

".....Although it is not written law....We prefer to see that even His Excellency the President approves of the kind of a person who is to be the Chairman of a Statutory Board like this one. These Members will be new Members and if they meet each other and they are to chose from amongst themselves a Chairman they will not perhaps have known each other long enough..... My own personal conviction is that the Minister should be allowed to appoint the Chairman and the Vice Chairman." (30

On this amendment point the Minister was hotly opposed and the majority of the House felt that it was only fair and just to leave the Commission to appoint the Chairman and Vice Chairman since in the end it would be only them to blame if they made a wrong choice. It is nowonder that when the intended amendment to section 3(2) in the 1972 Bill failed to insert the words "Minister to make the appointments of the Chairmen and Vice Chairman it led to the 1980 Bill inserting that the President would be the one to appoint a Chairman of the Commission from amongst the Members. This position is similar to the method the President uses to appoint the

Chairman of the Public Service Commission. (31) The same objections which applied against the Minister appointing the Chairman in the 1972 Bill would still apply against the President in the 1980 Bill and most likely the feeling that the Commission should appoint for themselves would even be stronger today. One should take Social and Political conditions into account when introducing or attempting to introduce new legislation. The Drafters should have taken notice of the fact that people generally in Kenya detest it due to the prevalent corruption and tribalism caused by power vested in one man and so instead of the President appointing the Chairman, should have left it up to the Commission Members themselves so that they could work in harmony with an elected not imposed leader. The Public Service Commission is similar to the Local Government Service Commission and it consists of a Chairman, a Deputy Chairman and a five other members appointed by the President.(32)

Section 3(4) (5) and (6) deal with the holding of office by the Local Government Service Commission Members and what happens in the case of a vacancy in the Chairmanship or Membership of the Commission. All these subsections authorise the President to appoint acting Chairman or Members.

Section 4 of the 1980 Bill - Generally deals with the Tenure of Office of Members of the Commission. Section 4(1) and (2) deals with retirement, reappointment and resignation of Members of the Commission.

Section 4(3) - is a very controversial one, both from a legal point of view, and from a political point of view, this section reads as follows:-

"If a member of the Commission absents himself from the three consecutive meetings of the Commission without obtaining the written permission of the Chairman, or, in the case of the Chairman, from the President, or if any member becomes in the opinion of the President unfit or unqualified to continue in office or incapable of performing his duties as a member of the Commission, the President may in such manner as he thinks fit declare the office of the member to be vacant and the office shall there upon become vacant."(33)

The Central Government view as to why a Local Government Service Commission was necessary is well enunciated in the speech of the Permanent Secretary for Local Government Mr. Andrew Ligale reported in the DAILY NATION OF MONDAY 10TH 1980. In his speech Mr. Ligale said that when the Bill was passed:-

".....the Right personnel could be attracted to work for Local Authorities if the employer was impartial, which he said has not been the case in the past." (34)

The question any prudent man or woman would ask themselves is whether the wording of section 4(3) and especially more or so in the last five lines creates ~~or does not create~~ an impartial employer? Secondly, on what lines or basis is the opinion of the President to be gauged and what is meant by unfit and unqualified to continue? Infact the whole controversy surrounding 4(3) lies in the following words.....

".....or if any member becomes in the opinion of the President unfit or unqualified"

Thus the key word is "opinion". So one will definitely have to understand the meaning of the word "opinion" if he or she is to grasp the full meaning and implications of Section 4(3). According to the OXFORD ENGLISH DICTIONARY VOLUME VII 1970 - Opinion has been defined as follows:-

1. "What one thinks or how one thinks about something; judgement resting on grounds insufficient for complete demonstration; belief of something as probable or as seeming to ones own mind to be true, though not certain or established."
- OR
2. "What one thinks about a particular thing, subject or point; a judgement formed or a conclusion reached, a belief, view, notion."(35)

Thus in short what the drafters of the Bill meant by 'OPINION' knowingly or unknowingly is that what the President thought of a members, character, quality or value, it is sufficient for him to if it is a negative estimation to sack him and it will be lawful. Thus the effect of the word "opinion" in the subsection is to leave everything as regards the removal of the members of the Local Government Service Commission in the hands of the President, this sought of thing can be very dangerous when one looks at the very corrupt and tribal nature of the Kenya Society to-day.

Infact all the President has to do if the Commission refuses to appoint his protege or friend, or refuses to dismiss a foe of his, or dismissess an ally of his, or he is pressured to sack the members of the Commission if their deeds or actions contravene the wishes of a powerful group is to say;-

"that in his opinion X, Y, Z, are incapable, unfit, and thus unqualified to continue as members".

My contention is that the members or Commissioners of the Local Government Service Commission should have security of tenure such as that afforded judges of the High Court and Court of Appeal. The Attorney General and the Auditor General. They infact will be acting in a quasi-judicial manner as is implied by section 12 of the Bill and thus their staying in office and removal procedures should have the stringent measures applied for the other groups with security of tenure I have named above.(36)

The other question that section 4(3) raises is whether the Local Government Service Commission does create an impartial Employer as Ligale purported to say? The answer to this question is that the effect of section 4(3) is to make the Local Government Service Commission partial in its duties and not impartial in its duties. What the Drafters of the Bill should have done is to word section 4(3) in such a way that the members of the Commission would be afforded the security given to people such as the Attorney General, Auditor General, Judges, so as to curb the fears of the Local Authorities and Members of Parliament that the bill was an attempt by the Central Government to influence, appointments and dismissals in the Local Authorities a move such as this would have gone a long way in enabling this long awaited for and much needed Bill to be passed.

Section 5 of the 1980 Bill - states that a member of the Commission is not eligible for appointment as a Local Authority Officer for a period of one year one day commencing the day on which he last, held or acted in the office as a member of the Commission. This clause is a good one although I feel that it should be for a longer period of 3 years after he leaves the Membership of the Commission so that any influence they wielded in the Commission has been eroded.

Section 6 - of the 1980 Bill deals with the Appointment of the Secretary to the Commission and the staff of the Commission.

Section 6(1) - states

"That the President shall appoint a Public Officer to be the Secretary to the Commission."

The effect of this section is to make the post of Secretary to the Local Government Service Commission a public office, (38) which is also the case with the Public Service Commission and the Teachers Service Commission, where the Secretary of the Teachers Service Commission is appointed by the Minister for Education. The problem that arises in this section is that the Secretary of such an important body such as this and who is also the body's Chief Executive can just be removed at the wish of the President as per section 25 of the Kenya Constitution which states that any public officer holds a public office at the pleasure of the President who can abolish or create or reconstitute any public office.

This in a way affects the intended impartiality of the Commission since although the Secretary is not allowed to vote in the commissions or enter into its deliberations he, due to his being the Chief Executive of the Commission will hold a lot of power over the Commission's deliberations and the hold the President has over him could lead him to wielding his power to influence the Commission's decisions to favour the whims of the President. I recommend that the Secretary of the Commission due to his importance be appointed from amongst Public Servants but that after this appointment he should be no longer a public officer and he should be afforded the tenure of office afforded persons such as Judges and the Attorney General, so as to make him more secure and more likely than not impartial.

Section 6(2) says

...."That the Public Service Commission shall appoint such staff as the Minister deems necessary for the proper and efficient discharge of the functions of the Local Government Service Commission."

This Subsection should be reworded and the word "Minister" removed and replaced with the Local Government Service Commission so that the Public Service Commission and the Local Government Service Commission should be the one responsible for their appointments as they deem fit. The incursion of the word "Minister" may tamper and in fact will tamper with the impartial image sought by the Central Government. Section 6(3) - states that every person employed by the Commission shall for the purposes of any written law, be deemed to be a public officer.

This provision is unwise considering the political nature of the Local Authorities in Kenya. My feeling is that what the Bill should do is to provide for the Appointment of Commission Staff from Public officers when once they are appointed should seize, so to be and are afforded security of tenure like that afforded judges etc. I feel this way because they will remain Central Government Officers and will thus owe their loyalty to the Central Government, and in the event of any Central Government, Local Authority show down they would most likely side with the Central Government. This would be detrimental to the impartial image the Central Government is giving as a reason for advocating for the creation of the Local Government Service Commission.

Section 6(4) - provides that the Secretary to the Commission shall not be a member of the Commission and he shall neither enter into nor vote in its deliberations. This is a good provision and if section 6(1) (2) and (3) were reworded like I have suggested it would be a more practicable clause.

Section 7 of the Bill generally deals with the remuneration, allowances and expenses of members and staff of the Commission.

Section 7(1) - states that the Members of the Commission shall be paid such remuneration and allowances as the Minister, after consultation with the Treasury, may from time to time determine." The wording of this section was very controversial and was the subject of a lot of debate when the 1971 and 1972 Local Government Service Commission Bills were being debated on. In fact if the 1980 Local Government Service Commission Bill had been debated on it would have caused a lot of controversy.

It is thus very surprising that after all the opposition Section 7(1) reviewed in the debates of 1971 and 1972 the Draftsmen of Section 7(1) in the 1980 Bill did not change its wording.

What in fact the Government should do and ought to have done, is to word section 7(1) in such a way so that the Commission Members would get their salaries and allowances from the consolidated fund. This is what is done for the remuneration and allowances of the members of the Public Service Commission, where the Seven Members of the Commission who are appointed by the President are paid out of moneys provided by Parliament. This is to avoid political interference in the functions of the Commission.

During the 1971 and 1972 debate on the Local Government Service Commission Bills the members of Parliament felt that this power of the Minister in section 7(1) meant that the Commission would not really be an Independent Commission at all. One of the Members of Parliament Mr. Seroney said:

".....Before we have even really found out why this Public Service Commission has been rendered not as effective, as we had hoped in the beginning we are now asked to embark on another venture of trust to create yet another Commission, which even on paper is not as Independent as the Public Service Commission. With the Public Service Commission their remuneration is spelt out and it is not left to the President or any Minister to decide from time to time what remuneration the members of the Public Service Commission should get..... yet in this Commission (Local Government Service Commission) we are expected to place our trust in an individual Minister or a future Minister, hoping that perhaps, he may not deliberately.... try to influence the members through their remuneration and allowances....."(39)

As I have already stated the draftsmen of the Local Government Service Commission Bill should have adopted in Section 7(1) the method used in the Public Service Commission Act. The salaries of the members of the Public Service Commission is determined by Parliament. THE CONSTITUTIONAL OFFICES AND REMUNERATION ACT. (40) At least the merit of having that, is that there will be no reason to manoeuvre or try to influence, the members of the Public Service Commission by making them feel that they have to toe the line otherwise their remuneration and allowances will be affected therefore it is unfortunate that instead of bringing to Parliament, the remuneration of the Local Government Service Commission Members, the draftsmen of the Bill chose to say that the Minister, will decide the remuneration of the Local Government Service Commission Members as he may from time to time after consultations with the Treasury decide.

Section 7(3) states that the Minister, after consultation with the Treasury, may from time to time prescribe the amount of contribution to be paid to the Government by a Local Authority towards the cost of the Commission and the date by which such contribution shall be paid. This Section 7(3) has to be read in conjunction with section 7(4) so as to enable one to grasp their full meaning. Section 7(4) states the following:

"In a solution to any contribution under subsection (3) a Local Authority shall reimburse the Commission the cost of advertising any vacant post on its behalf, the amount of the expenses of candidates who have attended interviews in respect of vacant posts, and the amount of any other necessary expenses incurred by the Commission on behalf of that Local Authority."

"Provided that the Minister may in any particular case direct that any such expenses or any specified portion thereof shall not be so reimbursed."

These two subsections 7(3) and 7(4) were the centre of a lot of controversy during the 1971 and 1972 Local Government Service Commission Bill debates. The Members of Parliament, were very much opposed to them. The general mood of the opposition to these subsections was that the Minister of Local Government was creating a Commission to take away the powers of the Councils to appoint their own people and it was as if he was telling the councils that:-

"we are taking that power from you by creating a Commission and you will bear that cost of this Commission," which includes the salaries, remuneration and allowances of the Commissioners, and expenses of candidates which have to be reimbursed". (41)

They wondered how a poor country Councils would be able to meet all these Commission's expenses. They felt that this Section 7 as a whole was unfair and that if the Minister was creating a Commission because he thought it was in the best interests of the Local Authorities, then he should find means of financing this Commission. Instead of imposing this thing on Local Authorities and again forcing them to bear the expenses. In the 1971 and 1972 debates on the Local Government Service Commission the Members of Parliament summed up these two subsections as unfortunate and they should not be passed.

It is with this above opposition in mind that one is really surprised to find in the 1980 Local Government Service Commission Bill the same two subsections verbatim to the 1971 and 1972 Bills. It is no wonder that the 1980 Local Government

Service Commission Bill failed, despite the great need for a Local Government Service Commission, due to the reluctance of the Draftsmen of the Bill to learn from their past mistakes.

The making of the Minister of Local Government by the Bill to be the financial Controller of the proposed Local Government Service Commission finances and financial needs, is yet another attempt by the Draftsmen of the Bill to subordinate the Local Government Service Commission to the Central Government. No wonder the Local Authorities viewed the establishment of the Local Government Service Commission as a punishment meted out to them by the Central Government, By insurbordinating the Local Government Service Commission to the Minister. The Draftsmen of the Bill make the impartiality reason given by the Central Government for the formation of the Local Government Service Commission an Utopian Theory or hope.

PART III - of the proposed 1980 Local Government Service Commission Bill which is from Sections 8 to 12 deals with the powers and functions of the Commission. Section 8 generally deals with the powers and functions of the Commission. Section 8(1) states the following:-

"that in the exercise of its powers and functions under this Act the Commission shall act in accordance with such general or special directions as may be given the Minister, but shall not otherwise be subject to the Direction or control of any other person or Authority".

The effect of this proviso is to make the intended Local Government Service Commission a mere rubber stamp of the Minister. This clause caused a lot of controversy both in

Parliament during the 1971 and 1972 Bill debates, and in the press during the early months of 1980 when the proposed Bill was announced. The wording of this clause raises two very important questions.

1. Is it possible for one to argue that the Local Government Service Commission Bill was creating an Impartial Commission?
2. Would the intended Local Government Service Commission not be subject to the direction or control of any other person or authority by virtue of this section 8(1) or would the proviso facilitate for it?

The Permanent Secretary in the Ministry of Local Government is quoted in a Local Daily as having said that;-

"the purpose of the Bill setting up the Local Government Service Commission was that the right personnel could be attracted to work for Local Authorities if the employer was impartial....." (42)

Contrary to this above statement, the wording of section 8(1) leaves one with the feeling that the purpose of the Bill was to establish a partial and not an impartial employer for all the Local Authorities, and appoint staff who would favour the Central Government and not the Local Authorities. What the Central Government is in effect doing is to remove the evil from the Local Authorities of partiality and now invest it in the Central Government to exercise. It is no wonder that the Local Authorities in a Local Newspaper opposed the Bill on the ground that it was a punishment and a deprivation of their democracy and authority.

Secondly, it was felt and I concur, that section 8(1) instead of facilitating for the minimum of interference of the Local Government Service Commission in its work, It is instead facilitating for the maximum of interference in the functions, powers and duties of the proposed Local Government Service Commission.

It is also very obvious that since the Minister does not and can never act as an individual due to his responsibilities to the Cabinet, under the doctrine of collective Ministerial responsibility, (43) Then the Proviso that the Local Government Service Commission shall not be subject to the directions or control of any other person or authority is unrealistic. In fact by virtue of sections 3, 4, 5 and 6 of the Bill it is the President who has the ultimate control over the Local Government Service Commission.

Thus under Section 8(1), the Minister is giving himself too many powers. For instance, he is reserving to himself the powers to issue directions of general character as to the exercise and performance by the Commission of its functions under this Act in relation to matters which appear to him to affect the public interest and the Commission shall give effect to any such directions. These kind of phrases are capable of wide ramifications. It is thus unfortunate that the Minister had not seen it fit to create an Independent body and leave them to carry on their work. I can quote a parallel; when our constitution created the post of Auditor General, there was and there is a proviso in the constitution

that in the exercise of these functions, the Auditor General shall not be subject to the Direction of anybody, (44).

What the Central Government and the Draftsmen of the Bill should have done is to create a Commission and then include it in the Act that in the exercise of its functions the Commission should not be subjected to the directions of anybody. This provision should be like the provisions in the constitution of Kenya dealing with the Office of the Controller and Auditor General. Section 105 (5) of the Kenya Constitution provides the following:-

"In the exercises of his functions under subsections (2), (3) and (4) the Controller and Auditor General shall not be subject to the direction or control of any other person or authority."

Section 8(2) of the proposed 1980 Local Government Service Commission Bill provides that:-

"Subject to the provisions of any other written law, the Commission, in consultation with the Local Authorities concerned, shall have power....."

The effect of this proviso is (1) again to give the Minister absolute control over the Local Government Service Commission.

(2) The Local Government Service Commission Act is now subordinate to other Acts dealing with Local Government matters. As for the Local Government regulations 1963, the Minister has to approve the Appointments and dismissals of certain officials (45) if the Local Government Service Commission is to be subject to other acts, of which the Local Government Regulations 1963 will be one, then in reality there will be no need at all for a Local Government Service Commission since it will not be able to appoint and dismiss as it deems fit after consultations.

Since under the Local Government Service Commission Regulation 1963, it is the Minister who decides or who has the final say, over salaries, promotions and dismissals of Local Authority Officers and since the Local Government Service Commission's Bill is by virtue of section 8 (2) subject to the provisions of any other written law, then it is the Minister who will have the final say in all things the Commission does. This in effect makes the Commission, impotent, ineffective and reduces it to a mere advisory role.

Section 8 (2) gives the impression that the whole purpose of the Bill is a veil to hide the real intention of the Central Government which seems to be able to control all matters and affairs of Local Authorities absolutely. A look at the wording of section 8 (2) of the 1972 Local Government Service Commission Bill confirms the above contention. This 1972 clause read:-

"The Minister may make regulations prescribing the grades into which Local Government Officers shall be divided and the qualifications for appointment in such grade".

The Draftsmen of the 1980 Bill amended, or, let us say they reworded the clause by putting a veil over it but essentially it remained the same thing.

What the Draftsmen of the 1980 Bill on the Local Government Service Commission should have done is to word section 8 (2) in such a way that only Acts such as the constitution, Penal Code and Civil procedure code apply to the Local Government Service Commission and not other Acts like the Local Government Regulations 1963, which only tend to weaken and undermine the

the Commission. - Such an amendment would go along way in facilitating the Independence and impartiality of the Local Government Service Commission.

Section 8(2) (6) - says that the Local Government Service Commission shall have power to

"recruit, appoint and promote persons to hold or act in offices on the staff of every Local Authority and to confirm the appointment of any Local Authority Officer."

The Principles outlined in this subsection are good and sound ones and infact would lead to the appointment of capable staff. And it would lead to the streamlining of the Local Government System and efficiency and also minimise cases of Tribalism and Nepotism in Local Authority appointments. However, despite the goodness and soundness of these words of section 8(2) (a) they are rather utopian in their context of the 1980 Bill due to the weaknesses I have pointed out in the preceding sections and until ~~then~~ these weaknesses I have pointed out are rectified the wording of this section will remain utopian in outlook, and fact.

The wording of Section 8(2) (6), 8(2)(c) and 8(2)(d) is okay but until the above recommendations I have stated under section 8(2) (b) are carried out they will be utopian subsections. These subsections briefly state the following Section 8(2) (c)

"...the Local Government Service Commission shall have power to exercise disciplinary control over all Local Authority Officers, including the power to suspend or remove officers from office;-

Section 8(2)(c) - states:-

"The Local Government Service Commission shall have power to determine the salary and other conditions of service on which persons shall be recruited, appointed or promoted to hold or act in offices on the staff of a Local Authority;"

Section 8(2) (d) states:-

The Local Government Service Commission has power to advise Local Authorities with regard to the training of persons appointed or to be appointed, as Local Authority Officers, and the establishment of entrance and promotion examinations."

Section 9 of the Bill generally deals with the Delegation of powers by the Commission Section 9(1) stated the following:-

"The Commission may in writing delegate any of its powers and functions under this Act to an executive consisting of four of its members including the Chairman".

This is the only Section of the 1980 Bill that has been substantially and really amended from what it was formerly in the two previous Bills. If the attitude of reform adopted by the Draftsmen of the 1980 Bill in Section 9(1) was the one adopted for the whole Bill then the Local Government Service Commission would now be a reality and an existing law in Kenya. Previously this Section 9(1) was worded differently and a lot of opposition was voiced in the 1971 and 1972 Bill debates. Section 9(1) of the 1972 Bill provided:-

"that the Commission may delegate any of its powers and functions under the Act to an executive Committee, consisting of four"

This clause was opposed on the grounds that it was a very dangerous thing despite the fact it was done in other boards. Mr. Marie Seroney opposing it said:-

Section 10 (1) of the Bill states:

".... But then this smells no good, Mr. Speaker, because when the Commission delegates this authority to an executive committee, we do not know how that executive committee will be composed. Therefore I think it would be better if the Commission did not delegate at least any of its important functions to any body else".(46)

Under this clause the Commission delegates some of its functions like examination, selection, promotion and others, to a board of the 1980 Bill provided for the executive committee to which may only or in part consist of persons who are not have 4 Commissioners as members including the Chairman of the Commission. Now, what this could mean is that the Commission may delegate such important powers like and 1971 debates.

Section 9(2) states that:-

"The Commission may in writing delegate any of its powers and functions in respect of such grades or categories of Local Authority Officers as may be prescribed to a Local Authority or Local Authorities."

Section 11 in the 1972 Bill said the following

In the 1972 Bill the category of those officers the Local Government Service Commission could delegate any of its functions and powers was specified as those earning £660 or less per annum. The 1980 Bill however does not limit the Local Government Service Commission as such. However, one can assume this delegation will follow that given by the Public Service Commission where the Public Service Commission has delegated some of its powers and functions to Permanent Secretaries, the Commissioners of Police and Departmental Heads to deal with certain categories of Junior Staff. (47)

Section 10 of the Local Government Service Commission Bill 1980 deals generally with the powers of the Commission to provide for examinations and to appoint boards for these examination purposes.

Section 10 (1) of the Bill states:

"The Commission may make provision, in such manner as it deems, fit, for examinations, and may appoint such selection, promotion, or other boards as it may consider necessary for the proper discharge of its functions under this Act".

Under this clause the Commission delegates some of its functions like examination, selection, promotion and others, to a board which may only or in part consist of persons who are not members of the Commission. Now, what this could mean is that the Commission may delegate such important powers like promotion to an organization consisting wholly of persons who are not members of the Commission; people drawn from outside the Commission. This is often very dangerous development. One of the Hon. Members of Parliament speaking about this section which was Section 11 in the 1972 Bill said the following:-

"Again you can see the danger of that Mr. Speaker, Sir, we have had complaints, which were denied, that some of the functions of the Public Service Commission have been taken by some other organizations. Now if there are such misgivings with regard to the Public Service Commission, I do not see why, Mr. Speaker, we should now successfully accept another set up which could be reduced into the same position". (48)

Thus what the Draftsmen should have done is to word Section 10(1) in such a way so that the delegation be done to only an Executive Committee or Board comprising only of members of the Commission. This would do away with Section 10(2) which states:-

"A board appointed under this Section may wholly or in part consist of persons who are not members of the Commission."

or both such fine and imprisonment.

This provision as I have already pointed out is very dangerous and it could lead to the interference with the functions of the proposed Local Government Service Commission.

Section 11 of the Bill generally deals with attendance before the Commission and the production of documents.

Section 12 of the Bill deals with the protection of the members of the Commission. It states as follows:-

"Every member of the Commission, and any person exercising any power delegated under this Act, shall have the same protection and privileges in case of any action or suit brought against him for any act done or omitted to be done in execution of his duties under this Act as is by law given to a Magistrate acting in the execution of his office."

This Section is a very important one, since the members of the Commission need protection in the execution of their duties under the proposed Act. Because they will be acting in a quasi-judicial manner and thus they need some form of protection like that afforded Magistrates and Judges.

PART IV - of the proposed 1980 Bill deals with miscellaneous things and it contains sections 13 - 18.

Section 13 - deals with communications to the Commission and it states that they shall be privileged.

Section 14 - Imposes a penalty for attempting to influence the Commission and imposes fine not exceeding ten thousand shillings or imprisonment for a term not exceeding two years or both such fine and imprisonment.

Section 15. Imposes a penalty for giving false information to the Commission which is a fine not exceeding ~~the~~ ten thousand shillings or imprisonment not exceeding terms of two years or both such fine and imprisonment.

Section 16 - provides that for;-

"the purpose of Sections 14 and 15 "Commission" includes the Chairman, the Secretary and any other officer, members or employee thereof, and any person appointed to assist the Commission in the exercise of any of its functions and powers and duties".

Section 17 - provides for a penalty for Disclosure of Information to unauthorized persons. A fine not exceeding Six Thousand Shillings or Imprisonment for a term not exceeding one year or both such fine and imprisonment.

Section 18 - deals with Regulations, the Minister may after consultation with the Commission ~~may~~ make for the running of the Commissions affairs.

In the Schedule, there is laid out the Oath^{of} Declaration of a Member of the Commission and a Memorandum of Objects and Reasons for the Bill which is signed by the then Attorney General Charles Njonjo and dated 23rd April, 1980

Thus the 1980 Bill for a Local Government Service Commission is a short Bill with only 18 Sections.

CONCLUSION

CHAPTER 4

In this Chapter which is the conclusion to my research paper on the Local Government Service Commission. I intend to look at the reasons that necessitate the creation of a Local Government Service Commission in Kenya. Over the years it has come to light that the Local Authorities in Kenya, are burdened by extreme irregularities in their running. This is especially so in training, promotion and recruitment aspects, which have been plagued with Nepotism, tribalism and favouritism. This Nepotism, tribalism and favouritism is not only evident in the Local Authorities, but also in the other fields of the public and private sectors, where also it is not surprising to see tribalism in its extreme form. (1) These problems were foreseen when the Independence Constitution was being drawn up and the Public Service Commission and the Judicial Service Commission were set up to remove the promotion, recruitment, training and dismissal of Civil Servants and Judicial Officers from the Executive or Legislative arm of the Government. (2) However in the case of the Local Authorities the staff related matters were left to the Local Authorities to determine who to employ and sack. This has led to a lot of insecurity, unfairness and corruption in matters relating to staff in these Local Authorities.

It has become even more evident and obvious in the last few years, that the time has come when the staffing and personnel Matters in Local Authorities should be handled by an Independent and Impartial body, Similar to the Public Service Commission or Judicial Service Commission. In a Report appearing in a local Daily Newspaper (3) An article appeared titled "RELATIVES OF VIPS GIVEN SENIOR POSTS BY CITY COUNCIL". It was stated that several people including relatives of some prominent people, had been recently given senior posts or promotions within the Nairobi City Council. The report further noted that:-

1. The Council had recently moved to advertise top jobs in the City Inspectorate whose holders had neither been suspended nor dismissed.
2. The massive jobs recruitment arrived by the Council began in January 1981 service continued unabated, even though the Council had almost certainly exceeded the 14000 ceiling mark in its establishment.
3. That in the latest exercise of overstaffing the Council had created an additional post of photographer in the Council, although there was already one serving the Mayor's Parlour.

These three points raised by this Report above although based on the Nairobi City Council are illustrative of the general position in Kenya. In fact in some Councils the situation has been very serious to the extent that the Councils have been dissolved, and Commissions set up by the Ministry of Local Government to run the Councils.

found suitable for employment as a Senior Administrative Assistant in the Town Clerk's Department".

I will give a few examples of Nepotism, favouritism and insecurity amongst Local Authority staff to show why we really need a Local Government Service Commission in Kenya. These examples despite being based on Nairobi are generally illustrative of the position in the Local Authorities in Kenya. The first two examples are good examples of both Nepotism and corruption.

The first example of corruption and Nepotism involves a certain Mr. Francis Sorora Oloitiptip, who from the title of the report is impliedly a relative of the present Minister of Local Government. (4) He was successfully recommended by the Town Clerk, Mr. G. Wanjie, for appointment to the post of Senior Administrative Assistant in the Town Clerks Department, as per Minute 8 of the Staff Committee Meeting of February 13th 1981 pertaining to the Town Clerk's Department. The contents of Minute 8 clearly show according to the Report, that the Town Clerk had not observed the laid down procedures of the Council relating to the filling of senior level vacancies. The normal procedures call for the advertising of senior level jobs in the first instance and the interviewing of short-listed candidates in the second instance. Chairman of the Public Health Committee, who pushed through the staff Committee the appointment of his wife Minute 8, however, quoted the Town Clerk as saying that Mrs. Ruth Wanjari Kariuki to the post of Senior Administrative Assistant at a starting salary of £1860 p.a. - "Mr. Francis Sorora Oloitiptip had been interviewed and found suitable for employment as a Senior Administrative Assistant in the Town Clerk's Department". (5)

The report however revealed more departures from the procedures:-

1. "Oloiptip was being recommended for a post - held by retiring holder, Mrs. R.M. Gachugu - which was due to fall vacant on April 17th 1981".
2. "Wanjie went on to recommend to the Committee that authority be given in the meantime for Oloiptip to be held against a vacant post of Senior Valuer up to April 16, and thereafter, once he has become the Senior Administrative Assistant in the salary scale £1,860 - £1,980 X 72 - 2,340 X 84 - 2424 p.a. with an entry point of £2268 p.a. he should be held against the vacant post of Committee Clerk."

The Minute gave no indication as to what qualifications Mr. Oloiptip had in land economics to justify his temporary appointment to the post of a Senior Valuer pending Mrs. Gachugu's departure. Whether Mr. Oloiptip was qualified or not it does not matter since he was not even firstly interviewed and secondly it is highly irregular for some one to be appointed to a temporary post when the post he is actually being recruited for is due to become his in a mere couple of months. The irregularity becomes even more noticeable given the Council's current financial crisis. The second example of an irregularity which smirks of corruption and Nepotism is that of Councillor Kariuki Muthia, Deputy Chairman of the Public Health Committee, who pushed through the staff Committee the appointment of his wife Mrs. Ruth Wangari Kariuki to the post of Senior Administrative Assistant at a starting salary of £1860 p.a. -

"a step up the ladder for Mrs. Kariuki from her previous post of a Senior Clerical Officer". (5)

A good example of the insecurity experienced by Local Government staff members, is to be found in a local Newspaper advertisement. (6) This advertisement invited applications for the posts of Senior Assistant Chief Superintendent, Senior Assistant Chief City Superintendent (Security) and Assistant Chief City Superintendent.

The advertisement which did not indicate if these were additional posts, caught the three present occupants completely by surprise as they had not been dismissed or suspended.

According to the Report (7) and this clearly shows why we need a Local Government Service Commission to protect Local Government Officers from political rivalry. The first post, that of Senior Assistant Chief Superintendent was held by Mr. J.G. Maina, brother of Councillor

S.M. Maina, an outspoken critic of Mayor Nathan Kahara.

These advertisements were highly irregular. Normally, under Council procedures, the creation of any additional posts as in the case of that of the second photographer - the dismissal or suspension of any Council employee including those in the lowest categories of jobs must be recorded in Council Minute books. According to the Report the January and February, 1981 Minute books carry no reference whatsoever to any decision leading to the advertising of these three posts.

Local Government Service Commission Bill that will be

It is with the above problems in mind which make the Local Government Service Commission a necessity in Kenya that one wonders why the Association of Local Government Authorities (ALGAK)⁽⁸⁾ and others such as the Union of Kenya Local Government Workers (K.L.G.W.U.)⁽⁹⁾ (a) campaigned by passing resolutions to block the Government's efforts to establish a Local Government Service Commission by blocking the tabling of the 1980 Local Government Service Commission in Parliament?

The reason was in the way the 1971, 1972 and 1980 Local Government Service Commission Bills were worded. They left a lot of things hanging in the Air. (10) The Central Government although purporting to create an Independent and Impartial Commission only managed in the Bills to create a Commission that was partial and a tool of the Central Government itself. The refusal of the Central Government to change certain Sections of the 1980 Local Government Service Commission Bill despite their being the main causes of the defeat in Parliament of the 1971 and 1972 Local Government Service Commission Bills, which also led to the failure of the Local Government Service Commission Bill 1980 which never even reached Parliament and was killed even before it was tabled before Parliament. With the constant failure of the Central Government to learn from its past mistakes and present an acceptable Local Government Service Commission Bill that will be Government Service Commission despite the great and

urgent need for one. The Report of the Civil Service Review endorsed by Parliament and lead to the creation of a Local Government Service Commission one doubts as to whether the Central Government really ever intended to create an Independent and Impartial Local Government Service Commission since if they so intended they would have compromised with the opposers of the Bill and created an Independent Commission such as they have done for the Public Service Commission and the Judicial Service Commission. The controversial sections of the 1980 Bill such as 3, 4, 7 and 8 which caused the failure of the 1971 and 1972 Local Government Service Commission Bills should have been re-phrased or re-worded, like they did for section 9 in the 1980 Local Government Service Commission Bill. These Sections should have read and should read like the sections similar to them under the Public Service Commission and Judicial Service Commission. If this had been done or is done now since it is not still too late, we will have a Local Government Service Commission. And this will greatly improve the efficiency, morale and out put of our Local Authority officers and this will lead to increased social and economic development in their respective Local Authorities. But until the Central Government becomes fully committed to the idea of a Local Government Service Commission and is ready to draft a proper Bill, then in Kenya we will always lack a Local Government Service Commission despite the great and

urgent need for one. The Report of the Civil Service Review Committee 1979-80, better known as the Waruhiu Report said that it had been pointed out to them that the title of the Public Service Commission was inaccurate. The term "Public Service" should embrace the entire public sector including parastatal bodies but excluding the Judiciary. The Commission said that: (11)

"There exists the Teachers Service Commission which deals with only a part of the Public Service, and a Bill was recently tabled in Parliament to provide for a Local Government Service Commission. We are satisfied that the Public Service is Misnamed and that "Civil Service Commission" would be a more appropriate The enlargement of the Public Service that we have proposed could be achieved "service boards" to deal with the various Sections of the Public Service"

They further went on to say that: (12)

"...on the Public Service Commission we have proposed that the Commission be enlarged and that one of the boards under it should concern itself with local authorities employees. This will obviate the need to have a separate Act of Parliament for the Local Government Service Commission. We have found that there is a measure of harmonization of salaries and fringe benefits in Local Government. This has been achieved through creation of four categories of local authorities. Those that are similar in their sizes and functions are placed in the same category".

I however do not agree with these recommendations of the Waruhiu Committee that the Local Government Service Commission be created as a board under the ambit of the Public Service Commission so as to remove the need for a separate Act.

This is because the Public Service Commission is already overburdened with the tasks it is at present carrying out.

In fact the Waruhiu Report acknowledges this and says:

"We have received evidence which shows that the Public Service Commission delays decisions on promotion and disciplinary cases and that such delays affect individual Civil Servants with detriment We therefore recommend that the Public Service Commission should design a method which will facilitate speedy processing of the cases referred to it." (13)

So one wonders how the Committee went further to recommend the enlarging of the Public Service Commission when it already acknowledges the heavy work load on the Public Service Commission Machinery. Inclusion of extra duties on it would lead to a lot of work, slowness and inefficiency in its running and this would not help the much aggrieved Local Government Workers. Thus what the Government should do is to present before Parliament a more acceptable Bill with all the recommendations I have made.

What the opposers of the Local Government Service Commission should remember is that, they should not be resistant to changes and competition for power should cease. And what should remain is nation-building in the interest of all citizens of the country and that is exactly what the introduction and creation of a Local Government Service Commission would do.

Contained in the Kenya Gazette Supplement Bills Supplement of May 2nd, 1980.

B.C.S. Wade and G. Philips (A.L.O. Bradley) BK
"CONSTITUTIONAL AND ADMINISTRATIVE LAW" NINTH EDITION,
LONGMAN (ELBS) Chapter 21 at Page 350. (1978)

FOOTNOTE FOR THE INTRODUCTION AND CHAPTER ONE

1. The Report of the Civil Service Review Committee 1979-80, Government Printer, Chapter XIV, Clause 320, Page 130.
2. This establishment of a Local Government Service Commission would mean that Local Government employees just like the Teachers and Civil Servants who have the Teachers Service Commission and Public Service Commission respectively would have one Independent employer.
3. Mr. Andrew Ligale's speech reported in the DAILY NATION MARCH 10th 1980 at page 5. In his speech Mr. Andrew Ligale who is the Permanent Secretary for Local Government said that the aim of the Local Government Service Commission was to create an Impartial employer who would appoint competent and qualified staff.
4. Samuel Hume, and Eileen M. Martin, THE STRUCTURE OF LOCAL GOVERNMENTS THROUGHOUT THE WORLD" THE HAGUE/ MARTINUS/NIJHOFF/ 1961 at Page 150.
5. J.S. MILL "REPRESENT THE GOVERNMENT" (LONDON Every man's Library Edition 1957) Page 341.
6. Samuel Hume, and Eileen M. Martin THE STRUCTURE OF LOCAL GOVERNMENTS THROUGHOUT THE WORLD supra at Page 151.
7. Samuel Hume, and Eileen M. Martin "THE STRUCTURE OF LOCAL GOVERNMENTS THROUGHOUT THE WORLD" supra at Page 152.
8. The quotation is derived from Clause 630 on Page 217 of the Commission's Report presented to His Excellency the President on May 1971.
9. These recommendations are set out in Clause 653 Page 228 of the Ndegwa Commissioners Report 1970-71.
10. Also known as the HARD ACRE Commission of 1966.
11. Contained in the Kenya Gazette Supplement Bills Supplement of May 2nd, 1980.
12. E.C.S. Wade and G. Philips (A.L.O. Bradley)BK "CONSTITUTIONAL AND ADMINISTRATIVE LAW" NINTH EDITION, LONGMAN (ELBS) Chapter 21 at Page 350. (1978)

13. E.C.S. Wade and G. Philips (A.W. Bradley) BK "Constitutional and Administrative Law" supra page 357.
14. In England powers of Local Authorities derive expressly or by implication from statute but in Kenya they only derive expressly from statute.
15. The Government of Kenya passed "THE TRANSFER OF FUNCTIONS ACT 1970 CAP OF THE LAWS OF KENYA" to facilitate this central Government control. This Act empower the President to transfer any function from a Local Authority or Authorities to the Central Government. This Act was passed because many Local Authorities were too poor to run these services and thus would lag behind in development.
16. MILL J.S. "Representative Government" (London : Every Mans Library Edition 1957) Page 352.
17. J. HARVEY and L. BATHER - BK "The British Constitution" O.U.P. First Edition Chapter 23 at Page 406.
18. J. Harvey and L. Bather - "The British Constitution" O.U.P. First edition Chapter 23 at Page 407.
6. Thompson, Virginia, "Rural and Urban Self Government in "South East Asia", Emerson, Rupert, Representative Government in South East Asia (Cambridge, Mass 1955), PP 116-9.
7. Len like the (Kenyan) Local Government Service Commission where the members are appointed by the Minister of Local Government four of them indirect choices and four of them from nominations submitted by various organisations representing the Municipalities. In the proposed Kenyan Bill for a Local Government Service Commission under Section 3(1) - the Local Government Service Commission shall consist of not less than five and not more than twelve members appointed by the President. In fact this is very similar to the existing Public Service Commission and Judicial Service Commission in Kenya.

FOOTNOTES FOR CHAPTER TWO:

1. Local Government Service Commission Bill Gazetted in Kenya Gazette of May 2nd 1980.
2. The Structure of Local Governments throughout the World. By Samuel Humes and Eileen M. Martin. THE HAGUE/MARTINUS NIJHOFF/1961 Page 151.
3. George Harris Mantagu "Local Governments" (London P.S. King and Son Ltd. 1926. at Page 60.
- 3.(b) International City Managers Association, The Municipal year Book 1959, 88.
- 4.(a) Samuel Humes and Eileen M. Martin Local Governments throughout the World supra at Page 321.
4. Note: That in Nairobi and also Local Authorities in Kenya, the Town Clerk or the Clerk to the Council as the case may be is appointed by the respective Councils and the appointment has to be approved by the Minister for Local Government.
5. Jennings, W. Iver, Lask, Harold and Robsen, W.A. A century of Municipal progress (London Oxford 1936), Page 32.
6. Thompson, Virginia, "Rural and Urban Self Government in "South East Asia", Emerson, Rupert, Representative Government in South East Asia (Cambridge, Mass 1955), PP 118-9.
7. Len like the Srilanken Local Government Service Commission where the members are appointed by the Minister of Local Government four of them indirect choices and four of them from nominations submitted by various organisations representing the Municipalities. In the proposed Kenyan Bill for a Local Government Service Commission under Section 3(1) - the Local Government Service Commission shall consist of not less than five and not more than twelve members appointed by the President. In fact this is very similar to the existing Public Service Commission and Judicial Service Commission in Kenya. Act 1972
The problems of Implementation. Supra at Page 130.

8. In fact the purposes for which the Srilanken Central Local Public Service Commission exists is the same as those for which the 1980 Local Government Service Commission Bill gave in the preamble for the setting up of the Local Government Service Commission in Kenya. The only major departure is that while in Srilanka the Commission caters only for the Municipalities. In Kenya the intended Commission was to cater for all the existing and future Local Authorities in the Country.
9. This view held by the Central Government of Srilanka that the Commission will be Impartial and will make the Administration attain a certain minimum of efficiency is the similar view held by the Kenyan Central Government. This is illustrated by a speech made at Eldoret and reported in DAILY NATION MONDAY MARCH 10th 1980 at Page 5 where the Permanent Secretary in the Ministry of Local Government Mr. Andrew Ligale expressed sentiments about the Commission similar to those held by the Srilanken Central Government.
10. This is very similar to the present position in Kenya where the Ministry of Local Government under the Local Government Regulations 1963 must give the approval for appointing and dismissal of certain top Council officers such as the Town Clerk, Medical Officers of Health. This is well illustrated by the recent dismissal of the Nairobi Town Clerk, Mr. Simeon Getonga which was very controversial since at first the Minister had not been consulted. However later the Minister approved the dismissal and accepted the appointment of Mr. Wanjie as the new Town Clerk of Nairobi. This statutory power of appointment in Britain is provided for under THE LOCAL GOVERNMENT ACT 1972 Section 273.
- 11.(A) Peter G. Richards "The Local Government Act 1972; problems of Implementation" (George Allen and Unloin Ltd. 1975) Chapter 6 at Page 128.
- 11.(B) NALGO Local Government Reorganisation Information Bulletin 2/71 PP 8-9.
- 11.(C) 1970 - 1 emnd 4584, paragraph 151.
- 12.(a) Peter G. Richards, the Local Government Act 1972 The problems of Implementation. Supra at Page 130.

- 12.(b) While N.A.L.G.O. (National Association of Local Government Officers) in the United Kingdom supported the establishment of a Local Government Service Commission, in Kenya it was the reverse. In the Standard Newspaper of SATURDAY MARCH 8, 1980 at Page 7 Mr. James Karebe - The Secretary General of the Kenya Local Government Workers Union (K.L.G.W.U.) opposed the proposed Commission since he felt that the Commission would kill his union, as one of its functions would be to determine terms and conditions of service for Council employees.
13. Peter G. Richards supra at Page 131.
14. PRUCKER PETER, The practice of Management (New York) (London - Heineman (1955) at Page 168.
15. International City Managers Association, The Municipal Year Book 1959, at Page 86.
16. Wheare, Government by Committee; An Essay of the British Constitution - OXFORD CLARENDON PRESS 1955. Page 140.
17. Samuel Hume and Eileen M. Martin, The structure of Local Government throughout the World - The Hague/Martinus NIJHOFF/1961 Page 158.
18. This anti Commission sentiment is well expressed by the following words of Mayor Nathan Kahara of Nairobi contained in the Standard of March, 8, 1980 at Page 7, he said "We have been in office for a few months and have done nothing to warrant a Commission. So why not give us a chance to practise democracy?"
19. Jackson, R.M., The Machinery of Local Government (London 1958) Page 104.
20. Laski, Jennings and Robson, A century of Municipal progress, 82 Supra.
- VOL. XXVII Hansard Page 1214.
- VOL. XXVII Hansard Page 1222.
- VOL. XXVII Hansard Page 1221.
- VOL. XXVII Hansard Page 1224.
- VOL. XXVII The Bill was read for a second time on 27th July 1972 Page 1410.

17. VOL.XXVII Page 1414. (Munoko)

CHAPTER 3 FOOTNOTES:

18. VOL.XXVII Page 1414 (Mwinda)

1. These reasons are contained in VOL.XXVI Kenya National Assembly Reports Hansard. 1st Session of the 2nd Parliament 1971.
2. XXVII Kenya National Assembly Reports Hansard 2nd Session of the 2nd Parliament 1972 at pages 1194 - 1195. (The second Session ran from Tuesday 13th June, 1972 to Friday 28th July 1972).
3. VOL.XXVII Kenya National Assembly Reports Hansard supra at page 1196.
4. VOL.XXVII Kenya National Assembly Reports Hansard supra page 1197.
5. After the passing of THE TRANSFER OF FUNCTIONS ACT 1970 CAP OF THE LAWS OF KENYA' The Government has taken over most of the functions of the Local Authorities and in fact provides most of the Local Authorities revenue so Mr. Tsuma and his groups argument does not hold any water.
6. VOL.XXVII Hansard supra at Page 1197.
7. VOL.XXVII Hansard supra at Page 1223.
8. VOL. XXVII Hansard supra at Page 1226.
9. Despite this feeling this same proviso 7 (4) of the 1972 Bill was the same vobatim as the 1980 Local Government Service Commission Bills Section 7 (4).
10. This Section 9 changed in the 1980 Bill which instead of a staff Committee, provided for an executive Committee consisting of four of its members (Commissions) including the Chairman.
11. VOL.XXVII Hansard Page 1207.
12. VOL.XXVII Hansard Page 1214.
13. VOL.XXVII Hansard Page 1222.
14. VOL.XXVII Hansard Page 1221.
15. VOL.XXVII Hansard Page 1224.
16. VOL.XXVII The Bill was read for a second time on 27th July 1972 Page 1410.

17. VOL.XXVII Page 1414. (Munoko)
18. VOL.XXVII Page 1414 (Mwithaga)
19. Kenya Gazette Supplement No. 24 (Bills No. 5)
2nd May 1980.
20. This power originates from Section 107(1) of the Constitution of Kenya. The Public Service Commission is formed under Section 106 of the Constitution of the Republic of Kenya.
21. This is as per Section 107 (4 (a)) of the Constitution of Kenya.
22. The Judicial Service Commission is appointed under Section 68 (1) which states "That there shall be a Judicial Service Commission".
23. This Section is very similar to that of the Public Service Commission which is provided for under Chapter VIII Section 106(1) of the Kenya Constitution Section 106(1)states:-
"There shall be a Public Service Commission which shall consist of a Chairman, a Deputy Chairman and five other members".
Section 106 (2) of the Constitution states that:-
The members of the Commission shall be appointed by the President."
24. VOL.XXVII Hansard supra Page 1195.
25. VOL.XXVII Kenya National Assembly Reports Hansard 3rd Session of the second Parliament from Tuesday 12th September 1972 to Thursday 23rd November 1972. at Page 332.
26. VOL.XXVII Hansard supra statement made by Hon. Juma Boy at Page 1223.
27. This is what is done in Srilanka when the members of the Local Public Service Commission, the equivalent of our proposed Local Government Service Commission are being appointed see Footnote Chapter 2 of this paper.
28. The STANDARD March 8th 1980 at Page 7.

29. Dr. Julius Gikonyo Kiano - former M.P. Mbiri.
30. VOL.XXVIII Hansard supra at page 336.
31. The President also appoints the Chairman of the Judicial Service Commission since it is the Chief Justice who is its Chairman and he is always a nominee of the President. The Chairman of the Teachers Service Commission on the other hand is appointed by the Minister of Education (these days it is the Minister of Basic Education since Teachers Service Commission falls under the ambit of this Ministry).
32. Section 106(1) of the Kenya Constitution.
33. This Section should have been worded like Section 106(8)(a and b) of the Constitution which provides a method by which the President can remove Commissioners of the Public Service Commission.
34. DAILY NATION, Monday 10th 1980 at Page 7.
35. OXFORD, English Dictionary Volume VII 1970 at Page 151.
36. The security of service for Judges of the High Court and Court of Appeal is provided for Section 62(1) of the Constitution of Kenya. That of the Attorney General and the Auditor General is provided for in Sections 106(6) and (7c and b) for the Attorney General and Section 110(6) and (7) for the Controller and Auditor General of the Constitution of Kenya.
37. Section 106 (3) of the Constitution states that the President cannot appoint somebody a member of the Public Service Commission if they were members of Parliamentarians, however if Parliament has been dissolved two times since they left Parliament the President can appoint them members.
38. As per Section 25 of the Constitution every public officer holds office at the pleasure of the President, meaning they can be sacked any time.
39. VOL. XXVII Hansard Page 1206.
40. Chapter of the Laws of Kenya.
41. VOL.XXVII Hansard Page 1211.

42. THE DAILY NATION MARCH 8th SATURDAY, 1980 at Page 5.
43. See Section 17(3) of the Constitution of Kenya which provides for Collective Responsibility in the Cabinet.
44. Section 105(5) of the Kenya Constitution provides for this. "In the exercise of his functions under sub-sections (2), (3) and (4), the Controller and Auditor-General shall not be subject to the direction or control of any other person or authority".
45. Regulations 107 - 142 of the Local Government Regulations 1963.
46. VOL.XXVII Hansard Page 1213.
47. Section 107 of the Constitution of Kenya.
48. VOL.XXVII Hansard Page 1214.
9. DAILY NATION, Friday March 7th 1980 Page 5
THE STANDARD March 8th 1980 Page 7. Both papers reported that since the Association of Local Government Authorities of Kenya general meeting on February 29th which resolved to oppose the proposed Commission, there has been a lot of lobbying aimed at killing the Commission at Parliament Building.
9. THE STANDARD saturday March 8th 1980 page 7.
Mr. James Karabo, the Secretary General of the Kenya Local Government Workers Union, feels that the Commission would kill his union, as one of its functions would be to determine terms and conditions of service for Council Employees.
10. since the Central Government talked about an impartial independent Commission, yet it created a partial dependent Commission with the Minister of Local Government having absolute control over it.
11. Clause 254 at Page 97. (Waruhiu Report).
12. Clause 321 at Page 131 (Waruhiu Report).
13. Clause 253 at page 97. (Waruhiu Report).

FOOTNOTES TO CHAPTER 4

1. Tribalism is now the No. 1 enemy of the Kenyan Nation and if it is not checked our system will crumble in no time.
2. Section 106(9) of the Constitution sets up the Public Service Commission while Section 68 of the Constitution sets up the Judicial Service Commission.
3. SUNDAY NATION, March 8, 1981 at Page 4.
4. SUNDAY NATION, March 8 1981 at Page 4.
5. SUNDAY NATION March 8 1981 supra.
6. DAILY NATION, February 25 1981 at Page 13.
7. INSIGHT REPORT -- Sunday Nation March 8 1981 at Page 4 by Mohammed Warsama.
8. DAILY NATION, Friday March 7th 1980 Page 5
THE STANDARD March 8th 1980 Page 7. Both papers reported that since the Association of Local Government Authorities of Kenya general meeting on February 29th which resolved to oppose the proposed Commission, there has been a lot of lobbying aimed at killing the Commission at Parliament Building.
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10. Since the Central Government talked about an Impartial Independent Commission, yet it created a partial dependent Commission with the Minister of Local Government having absolute control over it.
11. Clause 254 at Page 97. (Waruhiu Report).
12. Clause 321 at Page 131 (Waruhiu Report).
13. Clause 253 at page 97. (Waruhiu Report).

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