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Truth, Justice, and Reconciliation Commission

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Oral Submissions Made to the Truth, Justice and Reconciliation Commission Held on Thursday, 12th January, 2012 at the National Irrigation Board Hotel, Hola

Present

Getrude Chawatama - The Presiding Chair, Zambia
Ahmed Farah - Commissioner, Kenya

(The Commission commenced at 10.10. a.m.)

(Opening Prayer)

The Presiding Chair (Commissioner Chawatama): I welcome you to today’s sitting in Hola. It has been a long journey, but as a Commission we are so happy to be here. We are also very happy with the progress that we have made and special thanks go to the staff of the TJRC who have worked tirelessly. Today, they were told the very last minute that the panel has decided to split into two. We appreciate the effort that you have put in to make today’s hearings a success. Thank you very much.

(The Presiding Chair introduced herself and members of the panel)

We would like to encourage those attending hearings to make sure that they switch off their cell phones. This is because cell phones cause disturbance, not only to the proceedings, but also to the recording system. So, if anybody has his cell phone on, could he switch it off? If they have urgent matter to attend to then they can just move far away from where the proceedings are taking place and attend to it. This morning and this afternoon, you will hear witnesses who will appear before us. These are people who have given us statements in the past. They have been selected to give their testimonies before the Commission.

It is our prayer that in making the selection, the people who are going to testify today will be representative of some of the challenges and violations that the people in this area cannot only identify with, but violations that they too have gone through. As witnesses give their testimony, we urge everybody to keep quiet. That is a sign of respect and it is also a sign of affirming that witness. The witnesses will be sworn in and then the leader of evidence will lead them in their testimonies. If the leader of evidence has any question or clarifications, this will be done at that stage after which, the Commissioners will be at liberty to either ask questions, or clarifications. We encourage our witnesses to relax, and should any witness decide that they want a little break during the time they are giving their testimony; this is something that can be facilitated. We are here to make you as comfortable as possible. We are also here because we are interested in what you want to share with us. Thank you once more for attending. I now hand you over to the leader of evidence.
Ms. Emily Kimani: Commissioners through the Chair, our first witness today is Witness Code 17 as per the codes list.

(Mr. Mohamed Doyo Maro took the oath)

Ms. Emily Kimani: Good morning, Mr. Maro.

Mr. Mohamed Doyo Maro: Very fine thank you.

Ms. Emily Kimani: I welcome you for this session. Before you proceed, kindly, tell us your full name for record purposes.

Mr. Mohamed Doyo Maro: My name is Mohamed Doyo Maro.

Ms. Emily Kimani: Mr. Maro, you are seated before as the Chair of the Tana River Council of Elders to take us through the historical injustices that your community has undergone. Is that the position?

Mr. Mohamed Doyo Maro: Yes.

Ms. Emily Kimani: I welcome you to make your presentation. Take us through violations and then thereafter give us your recommendations on the same. Welcome.

Mr. Mohamed Doyo Maro: Thank you very much. I am an elder. I was born in 1927. I do not know how many years have passed since then. I was born here. I am a pokomo. This community has very many people in Tana River. If you go to the upper side, there is Mnyoyaya, Moilana, Wata and Pokomo. The upper side also has the Orma. All these people live together as one community here in Tana River District.

I have been the Chair of the council of elders from Mbalambala up to Kipini for 16 years now as a leader. There are so many issues in Tana River. This includes lack of legal rights. The first thing, the boundary between the Pokomo and the Somali has been a cause of conflict for a long time. Since independence, there have been issues. There have been a lot of problems between the Somalis and the Pokomos. There has also been conflict between the Mnyoyaya and Walailano. The Government has not clearly demarcated the boundaries. I went to see His Excellency President Moi when he was in power over these rights, but he did not solve them for us. Even during the current Government under Kibaki, the problem has become even worse.

People of Tana River, Mnyoyaya, Moilana, Pokomos and Ormas have been denied these rights. Our hospital is like rotten house that has been abandoned. It is in a sympathetic situation, but that is where we are admitted. We do not get proper medication. You get a prescription and you are told to go and buy medicine from other private hospitals. When you are discharged, you get a bill that you cannot afford to pay. That is one right that we
have been denied. I have complained. I have gone up to the President, and asked for this to be looked into, but it has not been done.

The third issue is about education. I wonder why our schools do not excel in national examinations. Even if they do not do well, there is no institution of higher learning in our area. These are some problems we face in Tana River.

Our roads are terrible. Garissa-Mombasa Road is impassable. I do not know whether your officers came here by road or air. If they came by road, I am sure they saw how bad this road is. This has been our concern for many years. Since the time of Mzee Kenyatta, this road has remained in the same state up to today. I do not know whether we are waiting for the trumpet to be blown so that this road can be tarmacked up to Garsen.

The other issue which I have followed with the authorities is the recruitment of youth into the army, police, prison and in the AP. During the recruitment exercise, money changes hand. If you cannot part with Kshs60,000, your son cannot be employed. We formed a committee of 40 elders from this district. We went to complain to Nairobi about these malpractices, but nothing has happened so far. We have not succeeded.

With regard to agriculture, we do not have market for our produce. For example, our mangoes rot in the shamba because we cannot sell them. We have struggled to do mango farming on large scale, but with little success. We are also exploited by middlemen from Nairobi. They buy them as they wish. Since we have no other market, we sell to them at a throw-away price. We have tried to get this market in Nairobi, but all in vain. We have never succeeded. We have gone through Members of Parliament. We have tried to go through the civil servants, but it has not worked out. These are injustices that they have visited upon us in Pokomo land. Businesses are dying. This does not just affect the Orma or the Pokomo or the Mnyoyaya, but all the communities that live in this district. It is the same situation. I am speaking the truth that is known among all these communities.

I appeal to this Commission to visit the hospital and see the condition in which it is. It is the same Government that is in Kenya. But if you look at our schools, starting from Mororo all the way up to Kipini they are in pathetic condition. You cannot believe that this is where your children live. Will they benefit in any way? Will they get any treatment? In three days, they do not get any water yet, that is a boarding secondary school where children are supposed to be learning. If you look at the desks, they would rather sit on the cement. The situation is very bad. We are all Kenyans and we should be treated equally. We have pleaded for this, but we have not succeeded. Today, you have come here to listen to us and we are not talking politics. I am talking about the problems that Tana River is facing and what the elders have tried to solve without any success.

Ms. Emily Kimani: Thank you, Mr. Maro for that very articulate presentation of the issues facing the Pokomo and neighbouring communities. Your presentation…

The Presiding Chair (Commissioner Chawatama): Leader of evidence, before you proceed, let him address the issue of land ownership.
Mr. Mohamed Doyo Maro: Nowadays, before land is subdivided, it is surveyed. We have been told that we have no land. Since the days of our grandparents and parents, we were told land would be adjudicated and demarcated before anybody could get their parcel of land. For us in Tana River, we have been denied land. We do not have such a right. Our land from Mbalambala to Kipini, maybe only four or three have been demarcated, but the rest remains undone. I am told that this land belongs to the county council. If you built your home on land, because you do not have the documents, you can be evicted any time and the land allocated to someone else. We have complained about this in Tana River, both elders and youth, but we have not succeeded. We have been denied this right, whether it is plots or parcels of land. Nobody has land.

I do not know whether we are outside Kenya or part of Kenya, I am not sure.

Ms. Emily Kimani: Mr. Maro, another issue that you also recorded in your statement was that of flooding, if you could also tell us something about flooding.

Mr. Mohamed Doyo Maro: Flooding in Tana River has been here three times. The first floods were seen in 1961. They affected people’s property. This road was flooded and all the houses were swept away. People had food aid flown in from outside. That was during the colonial times. In 1968, we had a very big flood which affected our farms and houses. Nothing was given by the Government in compensation for the most affected.

I do not know how to put it in Kiswahili, but we call them tents. All that was given were the tents. We were wondering whether the children would sleep in the same tents with their parents. Recently, there was another flood which affected livestock and crops in Garsen. Water was all over the place. There was nowhere to go. Our food was destroyed. We rely on relief food given by our Government. However, this food is never enough. Some people get ten kilogrammes and it is expected to last them for three months. Sometime we do not get maize or rice. I have some of it at home, but I have not eaten it, because I do not even know how to prepare it. So, we have never recovered from the effects of El-Nino in Tana River District. We requested the Government to rebuild the destroyed homes or compensate for the farms and crops destroyed. Families lost a lot of livestock, but nothing was given. These were the rights denied during the floods.

Ms. Emily Kimani: There is also the issue of KenGen that you framed in your statement to say that it has increased poverty and also something little on the Shifta attacks and ethnic clashes between the Pokomo and neighbouring communities.

Mr. Mohamed Doyo Maro: This issue came up three times. First, there is one area called Ndura Location where it happened. The neighbours are called the Warde. There was a problem between a farmer and a livestock keeper. However, we helped them to reconcile. I was one of the witnesses together with the DC. We went and sorted out the issue.
Recently, I think it is two years ago, there was a bigger problem, which was between the Ormas, Wardes and Pokomos who were killing each other. There were so many deaths. You hear a Pokomo has killed an Orma, a Warde has killed a Pokomo and you find that a Pokomo has gone, again, and killed a Warde and an Orma. Cattle belonging to the Orma and Wardes were killed and farms belonging to the Pokomos had crops destroyed. The Government had to intervene. We, as elders, also stood until this was resolved. Now we co-operate and we have meetings together.

I have forgotten the issue of the irrigation scheme which was in Hola. This was there for a very long time. People cultivated cotton and got some profit out of it. But there were changes. A company which I do not know whether it is a State corporation or it belongs to some tycoons started planting maize. However, the maize farmers did not benefit from their crop. This is the work that the Pokomos, Ormas, Wardes, Watas, and all communities in that area do. Previously, they planted cotton and benefited a lot. They took their children to school. Nowadays, even if you do a lot of work and harvest 50 bags of maize thinking that you would get some money, you do not because there are so many deductions and overheads. All you end up with is Kshs10,000 or Kshs20,000. The rest you are told they took away money for the tractor and water. This is an injustice which must be addressed if we want our farmers to benefit. The communities cultivate together, but they do not get any benefit from growing this crop.

Ms. Emily Kimani: That is very rich presentation of the issues that face the residents of this area. I wish to ask you a few questions, so that we may be able to understand more clearly. On the first issue that you talked about of boundary, were you telling us that since independence there has never been any boundary between the North Eastern part of Kenya and Tana River?

Mr. Mohamed Doyo Maro: Indeed, that has never happened.

Ms. Emily Kimani: Have you as an elder and other elders tried to approach the Government and what was their response about this issue?

Mr. Mohamed Doyo Maro: Every time we go there to raise the issue with them, we are told that the Government would come and correct the issue. However, nothing has been done.

Ms. Emily Kimani: The second issue that you talked about was on hospitals, you talked of one hospital, are there other hospitals, or is it just one?

Mr. Mohamed Doyo Maro: There are a number of hospitals. I was talking about the general hospital for the entire Tana River. In other places, there are dispensaries. We have Ngao, Shara and Makere dispensaries. The general hospital that serves the whole of Tana River District has very few doctors. Patients are taken to Hola and Garissa General Hospital for X-Ray services.
Ms. Emily Kimani: What is your recommendation to rectify the poor state of the district hospital?

Mr. Mohamed Doyo Maro: I recommend that our hospital should have enough equipment so that when people go there, they can get their TB diagnosed. They do not have to go to Garissa.

Ms. Emily Kimani: The fifth issue you talked about was about employment opportunities, where you told us that people have to bribe with Kshs50,000 to Kshs60,000 for their children to be employed. You went further to tell us that you and your delegation approached some office to try and rectify this situation, which office is this that you approached, and what was your feedback?

Mr. Mohamed Doyo Maro: As an old man, I should be harassed after this by the security personnel because I have tried to seek clarifications from the DC’s office on this matter. We have also gone to PC’s office in Mombasa. This issue was referred to the President. That was before the current President. He believes everything is okay, but it is not. People are crying for justice.

Ms. Emily Kimani: You also raised the issue of schools, how many schools are in this region?

Mr. Mohamed Doyo Maro: There are schools in Mororo, Bura, two in Hola, Mwenje, Tarasaa and Ngao. There is also Kipini. But the schools are overcrowded.

Ms. Emily Kimani: How do these schools perform in national examinations compared to other regions of this country?

Mr. Mohamed Doyo Maro: I have educated five children to high school level. The result of Tana River District is not good. In every school about one or two children pass and the rest do not perform well. Maybe, there is progress, but the results are different in Tana River.

Ms. Emily Kimani: What are your recommendations to improve the status of these schools and also performance?

Mr. Mohamed Doyo Maro: These schools do not have enough equipment. If you go to schools in Hola, we have Tarasaa and Hola, and then you go Hirman in Mororo.

Ms. Emily Kimani: Last but not least, I seek your recommendation on the issue of flooding. What do you feel would be the long-term solution to this issue?

Mr. Mohamed Doyo Maro: On this issue, you cannot attack the Government a lot, but we are told that whenever people are affected they get aid; whether it is a house they should have temporary shelter constructed for them or maybe they should be given blankets. But we do not get any of these. Now, what do I say? We did not get anything. If
there is any aid then the Government should help those affected. At the moment, some do not even have homes.

Ms. Emily Kimani: You have surely represented your people well in your testimony before us today. I also want to thank you for the reconciliation efforts that you have told us about in light of the issue of ethnic clashes. Keep on keeping on and may God bless you. I have no further questions.

Commissioner Farah: Mr. Doyo Maro, could you, please, define the problem of the boundary between North Eastern Province and Tana River?

Mr. Mohamed Doyo Maro: As I know it from River Tana, it is three miles going up. But today, they are right here and that is where the problem started. Those of the other side have come down to build their houses very close. Maybe they have only left about one and that becomes a problem when they want to build their schemes. There is Buratiro on the Wandera side. There are problems which nearly flare up into fighting every month or year. When you come to Masalani, the Masalani that you hear about is a Pokomo term. But they came from there and built and this brought about problems. Now there is upper Masalani and lower Masalani and yet, they are both in Tana River. When you go to Bura if you cross to the second side they are very close here. We have complained about this so that it can be clarified by the Government so that we can have a boundary which is supposed to be three miles away from Garissa one side and Tana River on the other side. But this has not been done.

Commissioner Farah: Three miles which side?

Mr. Mohamed Doyo Maro: Three miles on this side of the river, on the Tana River side.

Commissioner Farah: I understand now. Thank you.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. I do not recall whether you answered the question posed to you by the leader of evidence on the Shifta attacks. When have these attacks taken place? How often? What has the impact been on your people?

Mr. Mohamed Doyo Maro: These attacks have happened three times. The first time up to the second time it was a problem. By the third time, it had spread to the entire Tana River from Mbalambala up to Kipini. We have had a problem for nearly one year. When the Government would come all they would do would be to apprehend people, but I told them that as elders we must intervene. I was one of the members of the committee who tried to negotiate with the Orma elders, the Wardei elders and the Pokomo elders. I took 21 elders from our side and 21 from their side and we sat down and discussed until the issue abated slowly by slowly until there was no longer any conflict and now we eat together.
The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. What your testimony has served to do is to lay a very strong foundation. So as Commissioners we have a good understanding of the challenges that are being faced by your communities and the witnesses that will follow will just build on the very good work that you have done. On behalf of the Commission, we thank you for making yourself available to come and testify before us. One of the things that I would like to say to you is that according to the Act that birthed this Commission, our recommendations to the Government are mandatory, meaning if we recommend that a hospital be built it has to be built. The Minister for Justice, National Cohesion and Constitutional Affairs will report to Parliament every six months on the progress of the implementation of the recommendations of this Commission. So, your time has not been wasted. I know that you have been to a lot of offices as you have said to complain, but it is our prayer and desire that the issues that you have brought up and the recommendations that we will make will lead to the people of your community leading a better life. So, we thank you very much. Have a good day.

Leader of Evidence, stand down this witness and call in the next witness.

Ms. Emily Kimani: Our next witness is witness code 4 as per the cause list.

(Mr. Wilson Sinema Timothy Komora took the oath)

Ms. Emily Kimani: Before we proceed, kindly tell us your full name for record purposes.

Mr. Wilson Sinema Timothy Komora: My name is Wilson Sinema Timothy Komora. I have been accompanied by a colleague, Mr. Leonard Gayoye who has taken the position of Manasseh wa Korane who was supposed to accompany me.

Ms. Emily Kimani: We also welcome Mr. Leonard who has accompanied you. Our former witness Mr. Maro has laid a very firm foundation of the issues facing the Pokomo Community living in this area. So, my humble request is you make additional issues and also give us the recommendations thereto. With those few words, I welcome you to make your presentation.

Mr. Wilson Sinema Timothy Komora: Briefly I would like to highlight that we as the Pokomo Community have seen that there has been a deliberate plot by our Government, which we had hoped would help us to gain some progress, to marginalize us to make sure that we have no land and that we are left with land that we inherited from our forefathers.

In brief, I would like to say that in this country when we gained independence, districts were created. In our community, land has been handed down from our forefathers to our fathers and children and that is the way things should be.

I have been told to talk about what was not highlighted by the previous speaker and I will go straight to that. The first issue is that of KenGen. We know that it is a Government...
plan to bring progress in the country. We know that we are part of this country. But it is obvious that whenever there are plans of putting up dams in the country we are not involved or consulted. This has led to a problem because as a community we used to depend on our river. When water overflows into our farms that is when we farm. When the dams are full, fish reproduce. But when the dams were put up and the water was dammed in the upper part then it became normal for us to have drought. This has changed our agriculture. Now we have famine every time in this area and it has also contributed to the parents not having any source of income to be able to educate their children.

As the speaker before me said, during recruitment into the armed forces we have seen very strange things. The youth are not employed according to their academic performance, but there is the issue of corruption. We see corruption even within the county council. Allocation of council plots is not done in a transparent manner. If you walked through our new towns, especially Hola, you will find that most plots have been taken up by people and the methods used are not clear. Even if you ask the offices, they can never explain. So, we know that there is some serious corruption.

I also want to talk about the issue of marginalization briefly. Since independence our neighbours have been attacking us. They have been the aggressors. Immediately after independence, we had the Shifta war. Any time we looked for help as a community because our farms are on both sides, the Government or those who were in charge of security kept telling our people to just move from that area and cross over to this other place. Every time this happened, whenever we would just move briefly, our neighbours would occupy the land we had left and they would be given security by the Government. This was a deliberate move to get us to move out of our areas where we were practising agriculture.

The other issue which we have seen which we believe is unfair is that every time we crossed over from one side to the other, we depended a lot on canoes. This occurred in 1987 and this was repeated in 1992. This was removed and we were depending on this to cross the rivers. The children need this to be able to cross from one end to the other. At some point, children were unable to go to school. This contributed to our education going down because of the removal of these canoes from the river.

The other thing that I would want to talk about which would prove that we are being deliberately marginalized is the areas of Ndura and Gwano. Our people have been tortured. In this place there is the KWS who have brought in a reserve without consulting the community. We see this as the Government plotting that animals are more important than human beings because the monkeys and the baboons in that area, generations of Pokomos have lived with them for very many years.

We were not consulted, but it ended up being a court case. Eventually, the Nduras and the Gwanos got their independence. These are Pokomo sub-tribes. But the truth is that until today the court ruling is not being respected or upheld and they have just forced themselves there. Every time we have our people arbitrarily arrested and detained. I even have part of the court order here and would like to suggest that this court ruling as a country has to be respected. So, we are saying that this court ruling has to be upheld and
respected. I would also like to ask that the KWS should leave, so that the farms can revert to the original owners. For all this time that they have stayed here torturing the people, the people should be compensated adequately and fairly.

The other thing that makes us think that we are being treated unfairly is that we are the original owners of the Tana River County but from 1993 to about 1995 locations were formed with the intention of giving land to people who came in later. This land originally belonged to the Pokomo. We talked about it at that time, but the Pokomos have been reassured that these locations are being formed for administrative purposes. Later on, we realized that it is a way of giving people who migrated into this area land. We are asking this Government to respect the original district boundaries. We are also asking that even the original locational boundaries should also be respected because you cannot go to sell those new locations to the immigrants.

There is one other issue which has come up which I should mention before I forget. This is the issue of security which has led to our not living in harmony. We have always had problems regarding security with our neighbours because we are farmers and they are pastoralists. They are the ones who are usually the aggressors because they bring their livestock into our farms. In 2001, there was a conflict between us and the others, but instead of the Government being neutral to ensure security in a fair way, we realized that the Kenya Police Reservists had been deployed in so many areas. The weapons being held by the Pokomos were withdrawn by the Government. This left us exposed and led to the problem that we have had. Such issues are the ones which lead us to believe that it is a deliberate plot by the Government against us as a community to marginalize us and deny us our rights.

We do not have any documents and yet we know in this country there are areas where the land was demarcated immediately after independence and people were given ownership documents. But in our area the land has not been adjudicated or demarcated. We are asking the Government to ensure that this is done, so that we can get possessory documents because this is our home. We are surprised that there are a few areas where people have possessory documents and they have lived there for generations. I just want to indicate that as a community we believe we have been marginalized and there is a deliberate attempt to deny us land.

**Ms. Emily Kimani:** Thank you for taking us through the additional issues that face the Pokomo Community. I want to kindly request you if you wish to furnish us with a copy of your memorandum. You have already furnished me with the judgment in Civil Case No.341 of 1993, that you have talked about, that the same may form part of the Commission’s record.

**Mr. Wilson Sinema Timothy Komora:** I have already given it.

**Ms. Emily Kimani:** The memorandum and a copy of the judgment in Civil Case No.341 of 1993 are admitted to form part of the Commission’s record.
The Presiding Chair (Commissioner Chawatama): admitted as prayed.

Ms. Emily Kimani: Thank you. I have no further questions for this witness.

Commissioner Farah: Mr. Komora, you talked about corruption in the county council. Could you explain a bit more on this? Does the county council deal with only the Hola area or does it deal with constituency land?

Mr. Wilson Sinema Timothy Komora: Corruption in the county council is mainly within the towns and I can speak more confidently about Hola. We understand that there are towns that are coming up. Whenever a town seems to be growing it has to plan for the community. Even if we have people who come from outside to invest in the area it is okay. However, I am saying there is corruption because most of us have tried to follow up so that as original inhabitants we can also be allocated plots. But the truth is that you will find them being given out silently. I would like to say that if you cannot inform the other people that now this area is being divided into plots and please apply if you want, that shows that there is some secrecy. If there is no bribery involved, then why would you make it secret? Why not make it open, so that people can apply and balloting is done so that those who are fortunate can get.

Commissioner Farah: The speaker before you, the old man who was the chairman of leaders said that the Mnyoyaya, Orma and the Pokomo live together in Tana River District. When you talk of conflict with your neighbours, are you targeting those or are you targeting the Somalis and the Wardei? Let us be clear on that.

Mr. Wilson Sinema Timothy Komora: When we talk about Mnyoyaya or the Malakote and the Pokomo all these are farmers. The conflict is between us and the Somalis. They are pastoralists who normally come in with their livestock and destroy the farms. This was a big trigger of the conflicts.

Commissioner Farah: It is now clearer. I have no further questions.

The Presiding Chair (Commissioner Chawatama): I only have one or two questions. What would you like to see done in the area of security?

Mr. Wilson Sinema Timothy Komora: In terms of security, especially the upper side - our farming is mostly done in the east which is where we border with the Somalis - we would like these areas to have peace with a police force and also offices for the chief to be given more authority and security personnel, so that in case any problem springs up, it can be sorted out immediately. Our people say that the boundary should be the river. We want the Government to clarify and for the people to be told. We are not refusing them to come in and for their livestock to drink from the river. In fact, there are certain areas that have been left for them to access the river. That has been there since the time of our ancestors and this should be respected. The boundary between us should also be respected because it is five miles away from the river. So, we would like the Government to resolve this issue keenly.
The Presiding Chair (Commissioner Chawatama): As a Commission we are not only called upon to look at issues that relate to truth and justice, but also reconciliation. In the way you have responded to my first question which was related to security, you are also asking the Government to intervene in the issue of boundaries, so that you can live in peace. But what can you as a people do in order to be reconciled because the Government can come in and talk to both sides and then maybe leave and then you will still continue to live with your neighbours. I know that the first speaker spoke a little bit about the efforts that have been made. However, from your point of view, what could you do as a people to promote reconciliation?

Mr. Wilson Sinema Timothy Komora: I know that there are committees that are trying to bring all the communities together in security issues. The important thing that we would want is that these committees should go on sensitizing both areas, so that each community will respect the other. We, as pastoralists, know that farming or agriculture is what the farmer depends on and it is just as important as his livestock so that every person respects the property of the other person. If we have that respect there will be no problem.

Our neighbours used to believe that only livestock was property, but that maize and bananas are not property. If that changes so that they recognize that even this is property, then there will be no problem at all.

The Presiding Chair (Commissioner Chawatama): We travelled by road and we managed to have an experience though briefly and tried to just imagine what the people in this area experience every day of their lives in terms of roads and the hardships. You have spoken about some of the hardships that you face; the lack of security, employment opportunities, school dropouts and poverty generally. What impact has this had on family life in this area?

Mr. Wilson Sinema Timothy Komora: All the things that you have mentioned have really affected us. This has contributed to dismal performance in education. It has heightened the levels of poverty. It has contributed to the family life not to be very good generally because the roads as you were told are impassable. Our mangoes rot here because we do not have a road. It is only recently that we saw a sign that maybe the road has started improving. At the moment, we see the Government only emphasizing on the road on the upper side yet most of our people live on the lower side. We have the lower road that goes through the farming areas. I would like to say that the Government should look into this, so that this road and so that we can get our produce to the market.

We have two schemes here. There is one in Bura and another one here. We are grateful for the Hola Scheme because it has been recently revived. But before that we saw that things were not going on well. This scheme is our land and our expectation is that the first priority to ownership of the land is that the indigenous owners should be given priority that is the Pokomos together with other communities within the district. Only after we have had enough should other people be considered because whenever there is...
any issue of development taken to a certain area you are taking it to the original inhabitants of the area. So, if you are reviving we would not be happy to have people from outside being given the land yet we have our people who frequent these offices daily looking for the same land. In terms of employment, you will find that out of every ten people, there may only be two from Tana River. This applies even for driving positions yet we have so many drivers here. We should have eight local people and maybe the other two from outside. So, we are affected in all ways. Those who are brought in by the Government work for us here. It has become a big way of trying to deny us our rights and increasing poverty.

The Presiding Chair (Commissioner Chawatama): Thank you very much. We are also grateful for the memo and the copy of the judgment that you have given us. This will help us in making meaningful recommendations. We thank you for making time to appear before us this morning. Thank you.

Leader of Evidence, stand down this witness and call the next witness.

Ms. Emily Kimani: Presiding Chair and Commissioners, our next witness is code 2, as per the cause list.

The Presiding Chair (Commissioner Chawatama): Before the witness is sworn in, my observation is that we are supposed to be hearing from a female witness.

Ms. Emily Kimani: Madam Presiding Chair that is precisely the position. She is accompanying the witness who will testify because she is feeling unwell, but they will explain that before they commence their presentation.

The Presiding Chair (Commissioner Chawatama): I think it is always best to inform us first so that we prepare ourselves and know who we are facing.

(Mr. Said Hamisi Babwaya took the oath)

Ms. Emily Kimani: Mr. Babwaya, how are you this morning?

Mr. Said Hamisi Babwaya: I am fine, thank you.

Ms. Emily Kimani: Could you kindly introduce the lady seated on your right before we proceed?

Mr. Said Hamisi Babwaya: This is my colleague who has accompanied me.

The Presiding Chair (Commissioner Chawatama): I have an issue with that. Is this the person who is being introduced as the person accompanying this particular witness and, is the person on our cause list? Then it is the other way round. He is accompanying the person who is on the cause list.
Mr. Said Hamisi Babwaya: This is the person, whose name is on the cause list, but she is not feeling well and she requested me to speak on her behalf.

Ms. Emily Kimani: If you do not mind, tell us her name.

Mr. Said Hamisi Babwaya: Her name is Nasteha Abubakar.

Ms. Emily Kimani: Madam Abubakar, if you do not mind, could you please confirm that position from Mr. Babwaya?

Ms. Nasteha Abubakar: Yes. It is me who requested him to help me because I am not feeling well. For the whole month I have been feeling unwell so I requested him to help me.

The Presiding Chair (Commissioner Chawatama): We are, indeed, very sorry that you are unwell. We would have loved to hear from you and especially because we are not satisfied that we have not heard from a lot of female witness in our work. So, indeed, for us it is sort of an opportunity to hear a female witness speak. I would like to know, according to the statement we have, you are supposed to be a member of kalole Muungano. Is that correct?

Ms. Nasteha Abubakar: It is Galole Muungano!

The Presiding Chair (Commissioner Chawatama): We want to know if the witness who is speaking on your behalf is part of that organization.

Ms. Nasteha Abubakar: Yes. He is our Chairman and he is in Galole Muungano Organization.

The Presiding Chair (Commissioner Chawatama): Are you quite happy for him to speak on your behalf?

Ms. Nasteha Abubakar: Yes, I am happy.

Ms. Emily Kimani: Mr. Babwaya, if you do not mind, could you tell us your full names before you proceed, for record purposes?

Mr. Said Hamisi Babwaya: My name is Said Hamisi Babwaya. I am the Chairman of people living with disability in Tana River County.

Ms. Emily Kimani: You are seated before us in your capacity to represent the issues that people living with disabilities face in Tana River County. Is that your position?

Mr. Said Hamisi Babwaya: Yes.
Ms. Emily Kimani: Thank you, Mr. Babwaya. I would like you to make your presentation by outlining all the issues that people living with disabilities face and also the recommendations thereto. Welcome.

Mr. Said Hamisi Babwaya: It is okay. Tana River County has an organization which started or was formed since July, 2006. The aim of the organization is to advocate for the rights of the disabled people and to see that people living with disabilities can get development in accordance with the Vision 2030 and beyond. With regard to disabilities, there are Pokomas, Wardei, Oromos and other communities who bring together all the disabled people because in our community we believe that our tribe is that of the disabled people, not the Pokomas and any other community. Our aim is to attain development and get any assistance that we can get.

As pertains to our issues:-

1. We raise issues concerning the approaches and the services from the gender office.
2. It is the approach and services from the National Council for Persons with disabilities.
3. It concerns the representation of the disabled people in committees and other boards,
4. Implementation of issues concerning the disabled and other issues.

First, I would like to talk about the gender office in Tana River County. The people living with disabilities have come from far and now they have reached the apex of the development. To have reached this level, there are many challenges that we still face, especially when we started and which has something to do with Government policy that each disabled person must be registered so that they can succeed in accessing funds for the development of people living with disabilities in Kenya.

When the registration started, there were many challenges with the Gender Office. The main problem was that any time that people living with disabilities went there, they had a problem of trying to speak together with their staff and also to be registered as disabled. The communication that was coming from there was that, it was not part of their programme. You could be answered in a rude way and if it went on you would be given false information.

As a leader, I have witnessed and spoken to the concerned officer with regard to this problem but the response has not been so good.

Secondly, the National Council for People Living with Disabilities and the Government has passed a resolution that every December there has to be a celebration; an occasion for people living with disabilities. But they have forgotten that this requires support from them and the gender office.
We believe that the Government is lifting us from being beggars, but we are seeing that the National Council for People Living with Disabilities wants to take us back to the same situation of being beggars. We do not refuse to be beggars because that is what we used to do, but, at least, it starts somewhere. We need to see what our budget is like and also for us to face it together with our stakeholders.

In the year 2011, Tana River was not able to have the forum because there was no support and the gender office was not fully involved to see it happen. So, we leaders refused to hold the forum because we were supposed to be supported from the gender office. If anything, we should have worked together with them. The gender office did not call for a stakeholders’ meeting and did not explain to us what the Ministry or the National Council may have contributed so that we could be in tune with that.

The other thing is that when funding came, there was the issue of tax exemption. There are other issues for education assistance and there were also other issues concerning the revolving fund. Educational assistance was on the website but we did not receive it, but we are trying to follow up.

With regard to the revolving fund, we had sent our proposal to the National Council for People Living with Disabilities, but it was brought back so that we can follow the new guidelines and we have finished. The strange thing is that the tax exemption and the assistive devices which most of the people living with disabilities took to Nairobi through the gender offices, have not received a response. That is the challenges we have at the council because there is only one DSDO in the entire county. The DSDO has so many responsibilities which we believe he is not able to fulfill because there are many programmes. All these responsibilities are resting on one shoulder and for us as disabled getting to go to the national office has been a problem because the DSDO is the one who has the responsibility of doing that. So, for us people living with disabilities, there has been a problem and we have been in the dark in understanding exactly how these issues are being done.

Also, the council has had many conferences with regard to the issue of development of people living with disabilities. We understand that the council and the national organization, the co-coordinators; if there is anything they can communicate with us...But there have been many conferences in the national office and also the Tana River County has not been involved, which is a big blow to us.

Another thing is representation. The Disability Act says that, persons with disability must be involved in all committees and in all other boards. It is the Government policy to see that the disabled persons are represented in every sector. The strange thing is that some of the guidelines which are stipulated by the national office do involve people living with disabilities. For example, the Constituencies Development Fund (CDF), KNUT, DED, County Council, DSG, TJRC, etcetera.

With regard to representation that is being done in other places, it is being done as it is supposed to be. Representation is what is worrying among the disabled people, even
within the county and at State level. People living with disabilities will not be able to get leaders who will be concerned about their interests in the development towards the Vision 2030 and beyond.

With regard to implementation of issues concerning people living with disabilities; they have many programmes and a lot of few things that they are involved in. In order to plan changes among the people living with disabilities, these programmes are given and they get some help. Assistance or aid is required from the Government offices, other stakeholders and the community for that period of time. All these involvements are not implemented properly because of things beyond our understanding; they take a very long time. Tana River County Council had been allocated funds in order to try and implement issues for the disabled; but these funds have taken a very long time. Our expectations, not only from this Commission, but first of all from the gender office, is to change the outlook of people living with disabilities.

Secondly, they should stop delays in submitting the forms from the people living with disabilities to the headquarters. They should also handle the documents from people living with disabilities properly as is required. The gender office should also co-operate with people living with disabilities and bring together or involve people living with disabilities properly from all locations, in forums such as the festival for the disabled and other occasions. The Council should be able to fund issues concerning people living with disabilities like the UNAID does and they should help the gender office with funds in order for them to implement all the programmes for the disabled people and other activities.

Another one is to bring a national representative at the county level so that people living with disabilities will be able to get proper services instead of them staying in Nairobi. The Council should give assistance to the disabled people.

The Council should be able to follow up with the Kenya Revenue Authority for those disabled people who have filed for tax exemption. Currently, the disabled follow up the issue themselves. The Council should involve leaders of the disabled at the county and national level in various functions. We want efficient representation in different committees at different levels. We can get disabled people who care about other disabled people and who know their problems.

The Government policies should include GWS activities in the formation of boards. The Government should emphasize that the disabled people be included in different boards and committees as the new Constitution of Kenya stipulates. If it is followed like that, claims from the disabled people will stop.

Government offices together with other stakeholders should speed up activities of the disabled people at different levels so that they can be able to bring differences in the disabled people.
These are the issues that I have to present as a leader of disabled people in Tana River County.

Thank you.

Ms. Emily Kimani: Thank you very much for your presentation and recommendations on those issues. I will start with seeking a slight clarification. You have told us that you are a member of Galole Muungano Organization. According to the memorandum that you furnished this Commission, I can see that the name of your organization is “Tana River District Organization”. If you do not mind, please, shed some light on the two and show the existing discrepancy.

Mr. Said Hamisi Babwaya: Galole Muungano is an organization that brings together all the people living with disabilities in Galole. I was the chairperson when we started the district organization and, as a leader there, I managed to leave that responsibility to other people with disability. This is because I had been elected to run at the district level and the Galole Muungano is just covering one division. So we have decided to share the responsibilities so that I remain at the district level and at Galole Muungano. I am just a member, but I am no longer a leader there.

Ms. Emily Kimani: So, am I right to say that Tana River District Organization is the umbrella body?

Mr. Said Hamisi Babwaya: Yes. Tana River District Organization for People Living with Disabilities is the umbrella body for all the people living with disabilities in Tana River County. This district organization takes care of all people living with disabilities because it tries to seek their rights and other assistances.

Ms. Emily Kimani: There is no other clarification I am seeking, but a question. What efforts has the umbrella organization done to tackle some of the issues that you have highlighted before us today so as to improve the rights of people living with disabilities in Tana River County?

Mr. Said Hamisi Babwaya: As a leader, I have gone to the gender office and explained to the DSDA what people with disability face there. They promised to take steps, but I continue receiving complaints from people living with disabilities. I cannot engage in war of words with the DSDA and that is why I thought that it was wise to take the matter to this Commission so that the office can change its way of operations because all the people living with disabilities are in that office. Whether the DSDA is there or not, the PLWD should get the required services.

That is briefly what I have tried to do.

Ms. Emily Kimani: Mr. Babwaya, you have furnished me with memorandum, I do know whether you wish that the same forms part of the Commission’s record.
Mr. Said Hamisi Babwaya: I have submitted the memorandum before the Commission so that they can read it and take the necessary steps.

Ms. Emily Kimani: Presiding Chair, I pray that the memorandum be admitted to form part of the Commission’s record.

The Presiding Chair (Commissioner Chawatama): Admitted as prayed.

Ms. Emily Kimani: Thank you very much, Mr. Babwaya, your views will be taken on board in the compilation of our report. Thank you very much and may the Lord Bless you. I have no any questions for you.

Commissioner Farah: Mr. Said Hamisi Babwaya, I am happy that you have done a very good presentation on behalf of your people living with disabilities in Tana River District. All over the country in other counties that we have been going to, there is always an organization of people living with disability that has been presenting testimony to us. The issues that they have been presenting to us are the same issues that you have raised and they have been reverberating across the country. That is lack of contact, communication and lack of services within the national organization and the county organization.

Today you have ably said that the DSDA deals with social affairs of women, children and other people so that there is little time for people living with disabilities. Therefore, your memorandum will form part of many other memoranda that people who have been living with disability have presented to this Commission.

We thank you for doing so, we will take them seriously and we will make appropriate recommendations.

Thank you very much.

The Presiding Chair (Commissioner Chawatama): Thank you very much for coming to testify before us. I have to say that you are very special person and I have no doubt on your dedication to serve your members. We celebrate your life as a Commission for the work that you are doing and you will continue to do that to make the life of those that you are serving better. Please, continue.

When you talked about the challenges in the gender office in Tana County; are there any persons living with disabilities who serve in that office?

Mr. Said Hamisi Babwaya: In the gender office there is no person working there living with disabilities. It is the group of people living with disabilities that co-operate with the gender office, but there is not a single person living with disabilities working in that office.
The Presiding Chair (Commissioner Chawatama): In your opinion, do you think that the services provided by that office would be better if they did have a person living with disabilities working there?

Mr. Said Hamisi Babwaya: It would be better because PLWD working there would be part and parcel of the people living with disabilities. I do not think that he will do contrary to what his people expect. If he does what is contrary to their expectations, then that would be the person to be blamed directly by the fellow people living with disabilities with regard to the services rendered. It is better that there should be a person living with disabilities working in that office and attending to other people living with disabilities.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your answer. From the documents that you have submitted to us, there is mention of schools for the deaf, mentally challenged or handicapped. I do not know if there are any other schools in Hola that cater for people living with disabilities. Could you just share with us the state of the schools that are here and whether or not they are well equipped to perform the functions that they are meant to perform?

Mr. Said Hamisi Babwaya: In Tana River County, there are two special schools. One is Liza Hola School for the deaf and the other is Hola School for the mentally handicapped. Among the people living with disabilities, there is one group that is for the blind which has no educational services, because there is no special school for the blind to cater for their educational rights.

The Presiding Chair (Commissioner Chawatama): Would this be one of your recommendations then, that a school for the blind is built? If so, are there other schools for those with special needs that you would also like to recommend?

Mr. Said Hamisi Babwaya: My recommendation is that we need a special school for the blind, and also other special schools that will cater for the severely disabled and other people with other physical challenges. I would also urge the Government to equip the existing schools, so that disabled people get the best service that they require.

The Presiding Chair (Commissioner Chawatama): My last question is on the membership of the people that you serve; how many members do you have?

Mr. Said Hamisi Babwaya: At the district organizations, we have 27 people living with disability who come together for issues with disabilities. Among the 27, 21 are disabled themselves. They have various types of disabilities. When there is a meeting, every disability group represents their issues which are discussed and highlighted. There are others, who are care givers, for the people living with disabilities. For instance, there is IAKA, and there are the people who are carrying out assessments. They are represented in those special schools which are members of the Committee. There is also the quality assurance officer and senior teacher in education. If there is a new problem in education, he can give guidance and advice on what should be done. So, those of us in the
Committee are people who are capable and co-operate for the best interest of the people living with disabilities in the district. We also have divisional representatives who are members of that Committee and bring together issues from their respective divisions, and present various reports. Action can be taken, for example, in the disability assessment, there are 200 hospitals. According to the Government, they said disability assessment should be done in gazetted hospitals in Kenya. In Tana River County, there is Hola District Hospital, and Ngao District Hospital. People living with disabilities who come from far are not able to access this service because of the distances. Some of them are not able to come to Hola. Disabilities assessment cost Kshs200. If you combine it with fare and everything else, it is more than, Kshs1,000.

For example, there is divisional representative from North Tana. In the meeting whose minutes are recorded here, he has complained about the people there. We have tried to take action through the DSDO and the MOH. The panel was meant to go to North Tana in order to carry out the disability assessment for those who cannot access it. That did not happen because of the emergency case of the person that was there. But we are in touch with the MOH. This year, January, it is a priority for the panel for disability of the hospital to go to North Tana, where it will visit every division, at every health centre, so that they can access the people living with disabilities. They should have the assessment carried out there, so that they can have their rights with the National Disability Fund for purpose of rehabilitation after registration.

The Presiding Chair (Commissioner Chawatama): Thank you very much for taking time to come and testify before us and for quickly stepping in so that this lot did not remain empty, and that people living with disabilities in this area have been represented by yourself.

I think in line with the testimony of the first, second and even the third witness, I will advise that a camera person goes and takes photographs of the general hospital and maybe one or two schools, just for our record so that when we refer to it, we are able to see the state of the hospital that has been referred to.

Thank you very much to the two of you for coming. We hope and pray that the work that you are doing and the recommendation that we make will ease some of the burdens that you have carried for so many years. We will also help you as a leader, and other leaders in showing the people that you lead, that, indeed, you are putting in a lot of effort, and that your work has born some fruit. Thank you very much, and have a good day.

Leader of evidence, let the witness stand down, and call the next witness in terms of numbers, the witnesses who have turned up...

Ms. Emily Kimani: The same is being confirmed as we speak. So, we have a witness ready to come in next.

The next witness is witness code 8 as per the course list.
Bwana Idd, how are you this afternoon.

Mr. Khalif Bahola: I am fine. I do not know how you are doing.

Ms. Emily Kimani: I welcome you for today’s hearing. I know you have left behind your work, so that you can come today. I thank you.

Before we continue tell us your full names for the sake of the records.

Mr. Khalif Bahola: My name is Khalif Bwana Iddi Bahola.

Ms. Emily Kimani: Bwana Iddi, what is your occupation?

Mr. Khalif Bahola: At the moment, I am a farmer.

Mr. Emily Kimani: I can see on your right hand, you are accompanied by a certain elder; perhaps, if you can identify him to us.

Mr. Khalif Bahola: This elder is Rev. Michael. He is the statement taker of this Commission from Mwenje Division.

Ms. Emily Kimani: We welcome him and he should feel at home.

Bwana Iddi, you are before us after recording a statement whereby you want to tell us the problems that the people of Wenje in Tana are undergoing.

Previously, we found witness that have told us and testified eloquently about the problems that the people of this area are undergoing.

Mine is to invite you to make additional information, because I know you were seated outside there and you were listening to it. Perhaps, you may make comments on the problems that have not been articulated and you go on to give us your recommendation.

I welcome you.

Mr. Khalif Bahola: Thank you very much. Since morning I have been hearing what is going on. I am very grateful to you. I do not want to repeat what has been said in order to save on time. I know you have taken into consideration one of the other elders and the previous witnesses. Perhaps, what has not been touched in details are a few points, and I will now start.

There was the issue of the shifta, and animosity among different tribes. We saw this animosity during the shifta wars, especially after independence in 1964 and coming onward. There were issues of looting, raping, and also killings. On the issue of shifta, we
have a report that we have been given in the villagers, for example, on 20th June, 1992; two women were killed in a village called Fanjua. Two women who were pregnant were killed at a village called Fanjua. It is in Wenje division, Kinakomba location.

We also have two elders; one was called Hemedi Habda Wachira, who was killed on 20th June, 1992. We have another old man from Lenda called Ademaru, who was killed by the shifita. We could not manage to get the correct year. In the same year, of 1992, three people were killed by the same shifitas. One was called Ali Yussa, and another one was called Saidi Haicha. There was also an AP, who was called Matomu, on the side of kilindini that is in Wenje division.

As we speak right now, there is a victim of the shifita menace, who is called Mzee Ayub. He is outside there. We could not manage to take the tribulations that he underwent, but he can testify. The Commission could see how he has suffered after the shifita war. He is outside there. You can just think about it, and give us a feedback.

These shifitas come from the other side of the river. They were Somalis. We do not know what the problem was. We were near the border with Somalia at Tana River. Most shifitas were Somalis from the other side. They were killing people by guns. Those are some of the cases and incidents that we have managed to write.

The tribal animosity has also contributed to killings, and massacres. There was a village, where 17 people were killed in one day. We have documents such as death certificates that we have presented before the Commission. I have the photocopies that show the killings by guns. There was a village where, people were killed. I cannot really ascertain the number. They were called Gafur; all of them are in Wenje division. The first of the 17 people, who were killed in one day, at one time, by guns, was called Handampia. Up to date, they were buried. The people, who did the act, are the prison officers and APs, who were really known by the victims. Their names have been taken. But from 2001, no step has been taken.

After the killings, children were left behind. Widows were left behind, and it really became a burden to the community. It was on 8th December, 2001.

The police and the CID knew. We have presented some of the minutes that were written by some of the leaders of the location of Ndura, and also the councillor about the incident that happened, and also about lack of security. But we were neglected by the police, and also security forces in the district. At the time the OCPD was Charles Mukangi, and the DC was called Bw. Wasike. We took the information on the conflicts between the Pokomo and Wardei due to pastures, and water. But in 2001, the conflict was not about water or pastures. We thought, perhaps, there could be a different thing that was from outside, but not within the district. Perhaps, it was corruption of the Government, or people from the Government, in the district-- We thought this issue could also arise from Somalia. There were tribal conflicts in the past, but they did not cause a lot of death like that one of 2001. In 2001, people were killed from Kipini to MMbalambala, between 60 to 100 people were killed. We thought it was from the other side of Somalia. It was not
about pasture, because Pokemos allowed the Wardei from Somalia to bring their livestock to their farms.

There were also water corridors, whereby the elders from different tribes, could sit down and set aside a certain place, so that the animals could go to the river to take water. We really think this situation was contributed by the Government, who did not care at that time. When there was a new DC and OCPD in 2003, the citizens sat down and spoke with the leaders. We have not witnessed such incidents again. The Oromo and the Pokomos are staying together, and inter-marrying. At that time, it was due to people not taking care, and corruption in administration offices. The Chiefs of those locations understand about the massacre. We call them Handapia massacre, and Gafuru massacre.

In Gafuru, we could not ascertain the number of the people, who died, because it was hidden. But for Handampia, we have the names, houses that were burnt, livestock that were taken, publicly in front of the police. When people were taken, the AP came but could not take any step, to make a follow up and know who they were.

The following morning, before the raids of Handapia by the police of Hola, one AP from Hola camp came, and right now he is a body guard of an MP of Galole, who is called Johnstone Hamaragoli. He came to Handampia. In that particular village, there is a side, where there are Christians, and Muslims. The police from Hola Police Station, came to that village, and told the people, please, today - he is a pokomo - but today, there could be deaths, move away from the village.

The people asked him “we move to where? You are the police; why do you not bring security if you understand the situation? These persons went and moved the people from the other side of the Christians. That is when the people of Handampia, who were Muslims were attacked. On the side of the Christian, no single person was affected, because he moved them away. He went back to the police station. The houses were burnt down. This is about 12 kilometres from here. We could see the smoke of the thatch grassed houses. We went to report to the police, but we were told there are no policemen, and there is no vehicle. The police had gone to the forest. People were being killed near the police station, but the police and the OCS told us there was no one to assist that particular area. We have photographs of those people who were shot. They were in wards, where they were being treated. We really believe that the tribal conflict is well known by the Government. It is our prayer that the Government of Kenya should come and do some assessment of the people, who lost their lives, and those who died. Those who were injured should be assisted, and should be compensated. There should also be a monument in commemoration, for coming generations to remember and to see the effects of tribal conflicts.

I would also like to talk about conflicts about animals. We live near the river, but we do not have clean water. Residents of this place depend on the water of river Tana, and we have hippos. These hippos are really affecting us. Even yesterday, when we came here, there is a certain young man in Wenje who was killed by hippos. But the Government has
not looked into this situation, perhaps to give compensation, or to find a lasting solution that can help us, so that the residents of this place can live in harmony.

We have a game reserve that has brought about cases. There are cases of human-wildlife conflict, as was mentioned here in the morning. Some people were killed by wild animals. You lose your leg and hands, and you are being paid, Kshs500, 000. So, we are recommending that the Government should look into this compensation issue.

There were also evictions as a result of land ownership. The residents of Tana primate reserve were evicted from their homes, and the reserve was established. They were taken to a place, where they were not assisted with anything. Some of them are right now dead, others are sick. As you have heard earlier on, there is a case that has been presented in court from the torture that our people under went. Astonishingly, we still have the culture of impunity. The judgement of the court has been released. The KWS should move away, and the residents should go back to their farms. But these people have become adamant, and do not want to move from the place. Right now, they have called a certain organization on community conservancy from North Eastern. It is intruded into Tana River, and they are continuing to conserve the natural resources of Tana River, and benefiting the people of North Eastern. That is one of the violations that are continuing. So, we request this Commission to look into.

Lastly, I would like to say that we have additional documents so we request you to look into these documents to ensure that justice is done.

Ms. Emily Kimani: Thank you very much, Bw. Iddi, for your well crafted presentation, and further buttressing the testimonies of our previous witnesses.

I do not have so many questions, but a few. On the issue of the human-wildlife conflict, I know you have raised concerns about crocodiles killing, and injuring people, and people getting inadequate compensation. What recommendation would you give to these very sensitive issues of human-wildlife conflict?

Mr. Khalif Bahola: On human-wildlife conflict, perhaps conservancy organizations should look into this so that they can conserve the hippos. As for crocodiles, they lay eggs. One crocodile can lay around 50 eggs, those are very many.

People should take care of crocodiles. Apart from using the river water for irrigation, we should also use that water. We do not have tap water since independence. We have been marginalized by the Government. Right now, you are lucky, you are carrying bottled water, but we do not have even a tap in this place. It is a violation, since independence. Even our hospitals do not have water. We should get clean water, and conserve crocodiles.

Ms. Emily Kimani: My next question is about the two massacres that you highlighted that is Handampia and Garfur massacres, where you said that security forces killed people, is that correct?
In those massacres, i.e. Handampia, and Garfur massacres, correct me if I am wrong, security forces were deployed, and many people were killed. There is a mass grave to that effect in Handampia; is that correct?

Mr. Khalif Bahola: Yes, that is correct. The main reason was corruption because most of the time, the two communities, when they have a conflict, they could not see the Government taking sides. But at this time, the Government was on one side. There were some rumours that we cannot ascertain that the DC and the OCPDs had some cows, which they wanted to feed on the side of the Pokomo. These people were being used due to corruption.

When we complained one AP was transferred to Garissa.

Ms. Emily Kimani: I know you also told us that as a remedy, you wish that monuments be put up in the area to always act as a constant reminder of the incident. Are there any other recommendations, to remedy this massacres that occurred in Garfur and Handampia?

Mr. Khalif Bahola: As a community, when the cases of the shiftas were on the increase, we had a committee that would have consultations with the Government to provide security. After the massacres of Handampia and… that you have in the memorandum--- When the Government took away guns from the villagers, they knew there were guns. So, the guns of the police were brought up. This could be a solution. At that time the OCPD came and disarmed the Pokomo, and the second day, Handampia was attacked.

The police said that the guns were being misused. This gave an opportunity for the policemen to come and kill people. So, the police should be given guns, and the Government should be responsible.

Ms. Emily Kimani: I now ask, if it is your wish that the same forms part of the Commission record.

Mr. Khalif Bahola: Yes. This concerns the torture of our people by the KWS. This is about the boundary. This is a memorandum of women. I have talked on eastern, and it is in conjunction with KWS. This is the court case, and the judgment that is not being respected by the KWS. This is the view from the elders concerning human wildlife conflicts, and then, here the names of the victims, who were killed at Handampia.

Ms. Emily Kimani: Presiding Chair, the witness has furnished the Commission with a wider ray of documents touching on various issues that he has tackled. I pray that the same be admitted to form part of the Commission’s record.

The Presiding Chair (Commissioner Chawatama): The documents are admitted as part of the evidence as prayed, collectively.
Ms. Emily Kimani: Thank you very much; I have no further questions for this witness.

Commissioner Farah: Khalif Bwana Iddi Bahola, the issues, which you have raised have also been raised by the previous speakers. In your recommendations, you have said virtually everything, which the previous speakers, have also raised.

However, on the issue of conflict between the wildlife and human beings, I do not know whether you people are aware, there is a Wildlife Act. In the Wildlife Act, if you are beaten by a snake, there is a form you get from the police, you fill them, give to them, and normally, you are paid, up to Kshs50,000.

If an elephant comes and tramples on your crops, or demolishes your house, you can be paid, up to Kshs500,000.

If an elephant or a lion kills you, your family would be paid Kshs1 million because the Wildlife Act is there. It is, therefore, out of ignorance that people are not filling in the right forms and in the right way. This may take a long time, depending on how much money the KWS has but at the end, you will be paid. So, beyond taking wildlife away from where people live and putting them in orphanages and animal reserves, injuries and grievous harm are compensated. If you ask, you will find that the Government gives reparation to people who were either killed or injured by wildlife. However, we take the one that has to do with people killed by Government agencies which you may have no proof. So, thank you very much for your presentation. I have no further questions.

The Presiding Chair (Commissioner Chawatama): We are very grateful, as Commissioners, for making time. Thank you for drawing our attention to things that have taken place that have affected the lives of people here. I was wondering whether Mr. Ayub is willing to give us a statement so that it serves to support what you have told us. It will be organized by the Assistant Co-ordinator and it will be done today. Thank you for bringing him. Though we may not see him, in the afternoon, we may go outside and shake his hand.

Thank you for bringing him. Thank you for coming. I do not have any questions because your testimony was very clear. You have raised issues that we will look into and make appropriate recommendations. I was wondering whether the person who had accompanied you, Rev. Michael, has a statement.

Mr. Khalif Bahola: Yes.

The Presiding Chair (Commissioner Chawatama): I do not want to make a mistake but I want to thank you, Reverend for the work you have heard. The testimonies we have heard today are related to the efforts that you have put in collecting testimonies, speaking to witnesses and emphasizing the importance of the work of the Commission. So, we thank you very much for your efforts. Leader of Evidence, thank you. I suggest that we break for lunch and we continue with this hearing at 2.00 p.m. This hearing stands adjourned until then.
The Presiding Chair (Commissioner Chawatama): I welcome everybody to this afternoon hearing. Could the Leader of Evidence, please, tell us the name of this witness and the number that he appears on the cause list?

Does the Leader of Evidence need the interpretation of the Commissioners so that we make progress and move on? Apart from the witness who has come, we have others waiting. Maybe there is something that we need to explain to the witness in terms of how we will proceed.

Ms. Emily Kimani: Presiding Chair, the situation is that the witness sitting on my immediate right is the one on the record. He is a community leader and he is accompanied by another gentleman who is stating that he has to read a memorandum for us. So, I am trying to advise that we follow the list. Being a community leader, he is in a position to highlight the issues and then forward to us the memorandum as part of our record from which we can derive what they want to say.

The Presiding Chair (Commissioner Chawatama): I think the witness needs to understand that prior arrangements for something outside what we have established should be made so that we know how to accommodate additional witnesses. There are other people who have slots and who have already been informed that we will hear from them. We will proceed to hear from them and then get to the memorandum.

Ms. Emily Kimani: Presiding Chair, the witness seems to be in disagreement with your ruling. I am trying to make him understand.

The Presiding Chair (Commissioner Chawatama): Does the witness understand that there are other witnesses apart from him?

Ms. Emily Kimani: Yes, he does.

The Presiding Chair (Commissioner Chawatama): What he is asking is that he speaks and the gentleman next to him reads the memorandum. No!

Ms. Emily Kimani: Yes.

The Presiding Chair (Commissioner Chawatama): If he can highlight the points in the memorandum, we will give five minutes to do that but not to read it. How long is the memorandum?

As the first witness gives his testimony, prepare yourself. We will give you five minutes to highlight the key points because the memorandum will be with us and we will have an opportunity to look at it.
Ms. Emily Kimani: Mr. Bocha, how are you this afternoon?

Mr. Abdi Deri Bocha: I am okay.

Ms. Emily Kimani: Before we proceed further, kindly, tell us your full names for the record.

Mr. Abdi Deri Bocha: My name is Abdi Deri. I am a community leader of Wardei community in Tana River County.

Ms. Emily Kimani: You recorded a statement as the Chairman of the Wardei community in Hola in order to tell us how the police used force to disperse people in your community, who were protesting about companies that had left excavation grounds open. Is that correct?

Mr. Abdi Deri Bocha: I cannot hear properly. Therefore, can I start making my statement?

Ms. Emily Kimani: Mr. Bocha, I was telling you that you are seated before us as the Chairman of the Wardei Community and you are here to tell us how the police used force to disperse people after they protested about grounds that had been left open. Is that correct?

Mr. Abdi Deri Bocha: To be honest, on 21st May, 2008, in Konotu Village, Naningi Location, in Jarinde area, there was a company which started mining gypsum. One of the companies was called “Fataha” and it had rented land from another company. The owner was Fataha. He had rented out Nyamata Company without involving the community. The company started mining gypsum which has polluted the environment. The two companies had a disagreement and after the disagreement, they wanted to move out of the area without covering the mines and yet the dust that was coming from the gypsum was affecting people.

We told them that there would be no company moving out without covering the areas because we had lost many animals like cattle because these were beside the manyattas and sometimes children would even drown there. When the two companies disagreed, one of the companies brought in security personnel to help them guard and remove their equipment. They had about four excavators which they wanted to move by force. The community blocked their way and told them all the mines had to be covered before any company left the area. A little later, the company went and came with policemen from Bura. I do not remember the name of the OCS but I think it was something like a Mr. Meto and a few GSU personnel who stay around Jarijiendo. I do not remember all the
names of the leader of the GSU personnel but I think he was called Jack and he was from Embu. His officers did not want to talk. They started to shoot and they killed a youth by the name Rashid Aman Aris while Abubakar sustained broken limbs. He is still alive but one of his legs was shot at and he has to use crutches. Another resident, Jilo Abdile had his leg broken and stayed in hospital for long. However, Abubakar is still in bed and cannot move. We could not bring him here but you can see him if you passed through the Jarijiendo area. There are others who sustained minor injuries, for instance, Abdirahman Yakub and Jahan Rashid. Their elder Jaked Haran also sustained minor injuries and a few others whom I will not mention their names. I was in Hola when I got that report from the area councilor. We left with a council vehicle and got here before the area DC, Mr. Wanyama and the OCPD, Mr. Iregi. We found the policemen had left and the excavators had been burnt after one person had died. The citizens did not want to move away. They told the policemen that they should kill all of them.

The companies, both Nyamata and Fataha have come back to apologise to the citizens. They have also compensated the victims slightly. However, none of the police officers has been arraigned in court for the offences they committed. I do not see any injustice in Kenya that is more than this one. We want the TJRC to follow up this case so that those officers can be arraigned in court so that the person who died, the one who is bedridden and those who were injured can get compensation from the Government because the injustice was visited upon us by the Government. The companies have since come and apologized.

Ms. Emily Kimani: If you do not mind, could you give us your full names for the record?

Mr. Ibrahim Salim Ahmed: Thank you very much. My name is Ibrahim Ahmed Salim. I come from Mwenje Division. I am a social worker and I work for the community.

Ms. Emily Kimani: Make a very brief presentation of the issues facing the Wardei community. Is that correct?

Mr. Ibrahim Salim Ahmed: That will be okay because I have to follow what I have sworn to do.

Ms. Emily Kimani: Carry on with your presentation.

Mr. Ibrahim Salim Ahmed: First of all, I would like you to know that I sent this memorandum by e-mail on 7th January, 2012. It is my hope that it has come to you. It had some scanty evidence accompanying it. I request that I use Kiswahili because I am not good in using the local language. I will be brief and will not go into the details of the documents. My document is related to torture, violence, harassment, killings, assassinations, land related issues, education and many others.

I will start with September, 1984 when there was a police operation that targeted the Wardei community in Garsen Division. The police rounded up 430 men from the Wardei
community. They were taken to Witu Police Post where they were kept for four days without water and food and later released without any charges.

In 1986, the area councilor for Salama, Mr. Abde Roble, was arrested and charged in Hola Magistrate Court because of reporting a rape case by police officers at a village called “Kambole” in Salama Location. Many people were killed during the Ogaden-Wardei-Oromo clashes that happened between 1991 and 1992. To add insult to injury, when we sought security from the Government of Kenya, it was unfortunate that our girls and women were raped in the name of operation.

In those clashes, Mr. Musa Abdi Balali Dera, a resident of Nigi Division of Bura Constituency was killed by Kenya Army officers. They arrested him in his home, took him away and later the body of Mr. Balali was found buried in a valley. When the villagers identified his body, they reported the matter to the then OCPD, Mr. Nyambara. Mr. Nyambara accompanied by the DCIO, Mr. Kazaa visited the area and witnessed the incidence. Having seen that, the OCPD transported the body of Mr. Balali to Nanigi village where official burial was carried. Unfortunately, the brother to Balali followed the case in court presided by Mr. Ndegwa who was a magistrate. When all investigations were through, Mr. Kassim who had filed the case was chased from court and told not to step in that court otherwise, he would face dire consequences. Many people were injured but I would like to mention Kusai Khasim, Shukru Khalifi, Hassan Adomo and Khasim Godana.

Khasim was brutally killed. He was wrapped in a polythene bag and buried by police officers alive. People found his body after hours. In 1992, Mr. Orago Duro was arrested by police officers at Garsen Police station. However, the painful thing that happened is that he was killed by police officers at the police station after being tortured.

The next is Mr. Gabb Ali Yare who was killed by Kenya Army officers of 5KA led by the then Lieutenant Njagi. On 24th of June 1994, Mr. Yare was arrested at his home in Boka village of Bangale Division. After three days, the body of Yare was found hanged on a tree and stabbed on the stomach. All these by Government officers who we thought could provide security to wananchi. In 2006, during the Orma-Wardei clashes, when I read this statement, I got emotional to see an officer who perpetrated the rights of wananchi serving in the Government and we use public resources to pay him. The PC, Mr. Ernest Munyi, whom we fail to understand how he has served for eight years in Coast Province in the company of provincial security team including the PPO Mr. Kingori Mwangi, carried out an operation in the village in Bura. The PC, Mr. Munyi, commanded the officers to evacuate the villagers from that area branding them members of an Islamic Courts Union in Somalia. To date, we still do not know where some of the members of that village live and the rest have feared to come back to their village. In addition to that, the police officers under the command of Mr. Munyi demolished the mosque at that village. That covers assassinations, killings and murder. I am putting things in summary and you will read the details.
On land issues, our land has been allocated to ranches, national parks and Government projects without consulting the community in question and without considering the rights of the community or conducting an environmental impact assessment for such large projects. To name a few ranches like Idasa Godana Ranch, Giruti Ranch, Kibusu Ranch, Hangada Ranch, Kilaisasa Ranch, Wachuoda Ranch and Galana Ranch. These are areas where the Wardei community lives and they are not members of these ranches. Game reserves and national parks include Tana River Primate National Reserve in Hauuenjue Division, Kora National Park in Bangale Division and Tsavo East National Park at Garsen Division. The Kenya Wildlife Service has displaced the residents in the Tana Primate National Reserve without any compensation or resettlement, denying the judgment of the High Court in Mombasa ordering KWS to leave the land in Tana Primate National Reserve. Government projects that snatched our large land include National Irrigation Board at Bura and Hola. This irrigation does not benefit the local people. Plots and shambas were allocated to people from upcountry. The local people, including the Wardei and Pokomo own only 10 percent of the farms in Bura and Hola. We do not understand the benefit of this irrigation schemes to the local community. When was environmental impact assessment done especially in the expansion of Hola Irrigation Scheme? Tana delta irrigation project by TARDA also displaced people especially the entire village of Gamba, destroying houses, business premises, institutions like mosques, schools and graveyards.

In education, our villages were ignored by the Government. We do not see officers from the Department of Quality Assurance in our villages and schools. Hussein Shambaro in the company of the DO, at one time in 1989 raided Wardei village in Haraesro sub location where they burnt houses because the villagers wanted to build a school.

On citizenship, the Wardei community is not Somali. They are originally Orma speaking but we were forced by the Kenyan Government in 1989 to acquire screening cards. The screening card shows the tribe, the sub tribe, the clan and when you indicate Wardei, Irdid and Ilani, all these are not clans of Somalia. Why should a lot of suffering be subjected to our people, including forced deportation of men to Somalia? Our national ID cards bear names that were forced on us, especially the surname and the middle name. Women were forced to acquire names from the Pokomo community. Majority of women who acquired IDs in 1975 carry the name Guyato to be assimilated into the local community of Pokomo.

**Recommendations:**

1. All historical and human rights violations against this community by the Government and other communities should be mitigated and compensated.
2. The community should be given a national code as soon as possible like any other community in Kenya and a census exercise carried for this community.
3. Consideration in the Government launched 2030 projects should accommodate us.
4. The community should be given a priority to enjoy equitable services and opportunities. By this I mean that all kinds of employment, be it local or national.
5. Return our land which was given to TARDA and the rest.
The Government should review and rename the locations named after Pokomo sub clans; these should be given our names which are conducive and acceptable by all Kenya citizens. I mean locations like Mila Lulu, Zubaki, Ndura, Kinakomba, Ndera and Mwina. These are names for sub clans and when I go to the DC for an interview I am asked whether I belong to Gwano but when I say no, I am disqualified.

Lastly, mass correction of national identification cards of our community members whose identification details especially names and locations bear pokomo clan names; these should be corrected. Truth is here, where is justice for reconciliation? Thank you and I wish you the best.

Ms. Emily Kimani: Thank you very much for that articulate presentation on behalf of the Wardei community. I wish to request you if you wish your memorandum and the attachments thereto be admitted as part of the Commission’s record.

Mr. Ibrahim Ahmed: Yes, I do wish so.

The Presiding Chair (Commissioner Chawatama): The same is admitted as prayed.

Ms. Emily Kimani: I have a few questions for the two of you and I will be starting with Mr. Bocha. Mr. Bocha, you took us through an incident in mid 2008 and you gave us the impact of the gypsum excavation to include environmental degradation where even the water sources were poisoned. Was the same reported to any relevant authorities? I know you talked about police coming to assist one of the companies to move out but did the residents of the area make a complaint about the impact of this to the relevant bodies such as the National Environment Management Authority and also the police?

Mr. Abdi Deri Bocha: Our complaints went to all offices. The case was with the county council and the councilor himself and the chairman of the county council visited the area when they were coming back from Garissa. The area councilor took the complaints to the county council. At the moment, the MP has taken this to Parliament but we cannot see any success. He even brought the previous concerned Minister before the current minister took over and she witnessed it but we see that the NEMA people have given them the go ahead despite the opposition by the community.

Ms. Emily Kimani: My next question is for Mr. Salim. You have taken us through various historical injustices that have faced the Wardei community. You have talked of various police operations in September 1984 and another one in 1986. Maybe just to pick one, the 1984 operation, what was the objective of this operation?

Mr. Ibrahim Salim Ahmed: The one for 1984 was intended to intimidate. It was towards the election so they were intimidating the Wardei community to support and vote for the Government choice.
Ms. Emily Kimani: What of the subsequent operations? Have they all happened during electioneering years or what is your opinion on the same?

Mr. Ibrahim Ahmed: There are some that coincided with resolving of the issues of tribal clashes but most of these operations target the Wardei community. In 1992 when the Wardei were fighting with the Ogaden community, we were beaten by the Kenya Army officers because the commander was an Ogaden. I have noted the name in the memorandum and he is Major Retired Suo. The former political leader in Fafi constituency is the one who was spearheading the Ogaden community and he was using his power.

Ms. Emily Kimani: You have talked about conflict between the Ogaden and the Wardei and the conflict between the Wardei and the Orma. In your opinion, what is the cause of these conflicts and what is the long term solution to the same?

Mr. Ibrahim Ahmed: The main reason is lack of resources especially in the hinterland where two pastoralist communities collide because of pasture and water. When it comes to the farmers, it is the pastoralists because of access to the river Tana where the farming community claims that it is their land. I would recommend that the Government should create permanent and more accessible watering points in River Tana. The Wardei community should be integrated into ranches as members and the communities consulted. Most of the time, the government ignores environmental impact assessment and that is the only time you can know what the impact of that particular thing is.

Ms. Emily Kimani: Thank you very much Mr. Salim and Mr. Bocha. I have no further questions. I just want to thank you once again for coming before the Commission and sharing with us your respective testimonies and may Allah bless you both.

The Presiding Chair (Commissioner Chawatama): Thank you very much for appearing before us this afternoon. Your testimony has indeed enlightened us on the plight for people of your community.

I wish to ask Mr. Bocha one question. On the companies that you referred to, do you know whether these were local companies, were they Kenyan companies?

Mr. Abdi Deri Bocha: They are all Kenyan companies.

The Presiding Chair (Commissioner Chawatama): What is the position now? Are they still operating in your area?

Mr. Abdi Deri Bocha: One of them is bankrupt and the other one is still in the area but they have come back to the community and asked for forgiveness and the community has accepted. There are other companies that are coming in without consulting the community and they just start mining in the area. We do not know who gives them the permit to use this land that belongs to other people.
The Presiding Chair (Commissioner Chawatama): Is the community happy with the compensation that has been given? Do they consider it adequate or are there some areas even in asking for forgiveness where the company has fallen short?

Mr. Abdi Deri Bocha: For the two companies, we have no claim against them. Our claim is against the injustice from the security personnel.

The Presiding Chair (Commissioner Chawatama): Being a Judge I know that there are times when a person can be compensated there and then, but there are long term effects to some of the actions that are taken by companies. Are there any such long term effects as a result of the work that companies are doing in your area? For example, are people being sick for long periods and maybe the livestock also being sick, maybe water not being safe to drink and issues like that?

Mr. Ibrahim Salim Ahmed: The mining activity in Nanigi Location has violated the Government law. It has violated the people’s rights and it has a negative impact. We have a lot of valleys created by miners which are not reburied as the law requires. The people who do the donkey works are suffering and there is even an incident where one was seriously injured by the machines at work and did not get any assistance. It has destroyed the environment and our grazing land and we do not know the benefit. Even the county council does not benefit and we believe that there is corruption going on. So the Government revenue is very little in that area. It has negative long term and short term impact.

The Presiding Chair (Commissioner Chawatama): Could you please prepare a memorandum for us on that so that we have a better understanding? You mentioned the fact that there were 430 men who were rounded up and they were made to sit at the police post and after which they were released. Did they try to collectively take the matter to court for unlawful detention?

Mr. Ibrahim Ahmed: To answer the question, I will try my best to prepare the memorandum. Right now, I have a short memorandum in my files concerning the environment in Nanigi. I will add more information and get it to you.

Secondly, the 430 men who were put in custody have not followed the case in any government office because they believed that it is the government that was responsible. So they were told to leave after the fourth day and they were not to ask any questions. They were intimidated so that they could not make a follow-up, besides being illiterate.

The Presiding Chair (Commissioner Chawatama): After an operation such as this one and other operations, I do not know whether you had an opportunity to observer some of the victims and their behavior and maybe the loss of confidence in themselves or in the system. Did you make any observation as to how they carried on their lives after such experiences?
Mr. Ibrahim Ahmed: I am a victim. I have not been beaten or tortured but in 1994, police carried an operation early in the morning at Tahara village and my cousin was seriously beaten and they forced him to eat pieces of bar soap. This old man ate two bars of soap and from that day, he has to go to hospital every year and as I speak, he is in Hola District Hospital. He was admitted three days ago and this is due to the effects of the soap. We have to give three or four pints of blood every year to that old man. There is a man outside who was shot by police officers and he tried to pursue the matter in court in vain because the investigating officers are the same people who shot him. There are many others who I know.

The Presiding Chair (Commissioner Chawatama): You mentioned an incident where someone was killed and then the brother went to court and he was chased by the Magistrate. What are your thoughts on the judicial system in your area?

Mr. Ibrahim Ahmed: I will not fear and I will not be intimidated to say the truth. The judicial system in Tana River District is rotten. You can even see where a judge pre-determines the judgment when he feels that you misbehaved in court. There are no hearings in Hola court because all cases are concluded and determined in the chambers of the court meaning that you have to fill your pocket and go to the chambers court to conclude it. We buy justice in Tana River County.

The Presiding Chair (Commissioner Chawatama): Thank you very much. There are a lot of issues that you brought up. These are issues that we also need to look into if we have not already done so. One of the things that has happened, leader of evidence, is the fact that the witness either maybe because you did not have the memorandum before you, mentioned the names of several people. Having mentioned these people, we must ask them to appear before us because their names are now in public and they need to be given an opportunity to be heard on this matter in Nairobi.

We would like to thank you for your testimony and should we still have some gaps that we wish to fill, we will call you up. I am sure we have your contact but thank you for taking time and coming to appear before the Commission this afternoon. The Commission has heard you and will make the appropriate recommendations.

Ms. Emily Kimani: Commissioners, our next witness is code 3 as per the cause list.

(Ms. Fatime Aboya Hodha took the oath)

Ms. Emily Kimani: Kindly tell us your full names once again for the record.

Ms. Fatime Aboya Hodha: I am Fatime Aboya Hodha.

Ms. Emily Kimani: You are before us today in your capacity as the Chairlady of Maendeleo ya Wanawake in Tana River County. Is that the position?

Ms. Fatime Aboya Hodha: Yes.
Ms. Emily Kimani: I invite you to make your presentation on the issues that face women in Tana River County after which you will tell us the recommendations thereto.

Ms. Fatime Aboya Hodha: I want to talk on violence and women rights. I will first talk about our district hospital. We have problems as women because we do not have adequate equipment in Hola District Hospital. When a mother is pregnant, we have to take her to Garissa District Hospital for scanning. We do not have the modern equipment needed for delivery in our hospital in Tana River County. We do not have specialist doctors to check the reproductive system of women for cancer.

Secondly, it is about FGM. In our district, female genital mutilation is on the increase because of traditions and culture. Women have taken a step but we cannot make any headway because of the traditions of our fathers and forefathers. We are oppressed because women have no voice and since the colonial period, our husbands have oppressed us as women.

Thirdly, after the promulgation of the Constitution, different opportunities were created but the men do not allow us to go to their meetings.

Rape in this district is rampant and our men are raping our girls and if you try to fight for your rights, you are beaten and then you are divorced. Women are beaten by their men and the teeth are taken off. They destroy our organs and when we go to report to the Kadhi’s office in Hola, the Kadhi will only listen to the men. The Kadhi says that the man is the head of the house and the woman has no rights.

Another issue is about early marriages of our girls. In our district, our girls are married off when they are young because of our culture. When a girl reaches 12 years of age, she is married off and the mother has no say in the decision. The culture is really oppressing us in this area.

A woman in Gasa has no right to inherit land even in our matrimonial homes. When a woman’s husband dies, the woman will be chased out of her home by the family and then they inherit the property of that woman. In government tenders in our district, women are not given any tenders because they are illiterate. Divorce is rampant in our County especially among the Muslim women. Our husbands are leaving us for their mistresses and other women who are not identified and HIV and Aids is on the increase because the women who are left are just roaming in town. Our Kadhi court depends on men, and women have no rights. Women are kicked out of their homes with the children and the children are just suffering.

In Tana River District, women do not have equal opportunities with men in terms of jobs. In our culture, the girls are not taken to school. It is the girls who chop firewood to sell and the boys are just left to play. The girls from the Orma and Pokomo community fetch firewood and they are the ones who feed the whole family.
In our culture, to bear a child is just the will of God. A woman is married for ten or 20 years but if the woman cannot bear a child, she is chased away like chicken. In our Government there is a day set aside for women but what amazes me in the district of Tana River, on that day women just walk in town begging. That is injustice because there is no money for women to celebrate the Women’s International Day.

We expect these cultures to be gotten rid of. There should be fairness in employment, a step should be taken to deal with rapists and early marriages should not be allowed in our communities. When a parent marries off a daughter early, it should be reported.

Divorce by the Kadhi Court should not be a solution because this is what encourages the spread of HIV; when people divorce. Our elders do not allow us to participate in politics. The Government should intervene so that men can be sensitized and told that women have a right to inheritance and leadership.

Although FGM rates are reducing, in interior parts it is still being practiced. The chiefs should take a step to stop FGM.

Ms. Emily Kimani: Thank you very much Mama Fatime for your every articulate presentation of the issues facing the women in Tana River County and also for the recommendations you have given which will for sure be taken on board. I have a few questions from what you have testified and told us today. Now, you have talked about rape cases, given your position as the chairperson of Maendeleo ya Wanawake in Tana River County are you aware if these rape cases go to court?

Mrs. Fatime Aboya Hodha: Yes, I am aware.

Ms. Emily Kimani: When these rape cases are taken to court, is there justice?

Mrs. Fatime Aboya Hodha: For a few cases there is justice. Others cannot even go to court because of the culture of our men who stay at home.

Ms. Emily Kimani: You have also raised the issue of positions in elective posts; do you, maybe, have examples of what has happened to some women who have attempted to vie for elective positions in previous elections?

Mrs. Fatime Aboya Hodha: Yes, I have an example; there is one lady who wanted to vie for a position but the men did not give her a chance.

Ms. Emily Kimani: Was she assaulted or what happened?

Mrs. Fatime Aboya Hodha: Our men oppress their wives so that they cannot vote for the woman. Even the woman is given a certain amount of money to pay which she cannot find.
Ms. Emily Kimani: What has your organization done to alleviate some of these issues that you raised?

Mrs. Fatime Aboya Hodha: My organization sensitizes every village but when we arrive in the villages it is the same culture. They oppress us and cannot listen to us. Even the leaders do not want us to call the women to explain to them some of these challenges.

Ms. Emily Kimani: Thank you for your testimony; I have no further questions for you.

The Presiding Chair (Commissioner Chawatama): I do not know whether you have had an opportunity with the police or talked to victims who have gone to the police to report an offence like rape or defilement. How are women received and treated by the police?

Mrs. Fatime Aboya Hodha: The police receive them well but the problem is in the community. The tradition and culture is really a problem.

The Presiding Chair (Commissioner Chawatama): Do you have any female doctors at the district hospital?

Mrs. Fatime Aboya Hodha: Yes, there are but they are from outside; Kikuyus, Kambas and others. The Pokomos are very few.

The Presiding Chair (Commissioner Chawatama): In some of the areas where we have been we are informed that the people who really push for FGM are the women. A few times we have heard that it is the men and very many times we hear that it is the girls themselves because of the stigma that they face if they are not cut. In your community, where would you say most of the pressure comes from?

Mrs. Fatime Aboya Hodha: In my district, the pressure comes from the parents and husbands. The woman has no voice. Even if she refuses, she has no voice.

The Presiding Chair (Commissioner Chawatama): Have you heard of instances where a woman has failed to get married because she has not undergone the cut?

Mrs. Fatime Aboya Hodha: I have not heard. Some people even have some wives who have not undergone FGM.

The Presiding Chair (Commissioner Chawatama): On rape you said that it has really taken root in this county, how did you arrive at this? What is happening now that did not happen five or ten years ago?

Mrs. Fatime Aboya Hodha: In the past the Government did not come in but now if a girl is raped and we report, steps are taken. However, those who live in the interior are not well educated and even if a girl is raped, if we want to take a step, the elders and men have hatred for us. They do not even want to speak to us and even abuse us.
**The Presiding Chair** (Commissioner Chawatama): What do you base the fact that rape has taken root in this community? Do you have statistics or where does this knowledge come from?

**Mrs. Fatime Aboya Hodha:** We have been educated and we should educate others. The most astonishing thing is that even if we sensitize the women we do not have the strength.

**The Presiding Chair** (Commissioner Chawatama): You also talked about divorce that seems to be on the increase. What are some of the reasons that you are hearing that divorce seems to be on the increase? For example, when the men leave their wives, what are some of the reasons that are being given?

**Mrs. Fatime Aboya Hodha:** In this district, I do not even see sufficient reasons because the men are just staying there. They are not responsible. Women are beaten when they want their rights and chased away from the house. When the women resist oppression, the men beat the wives and take them out of the house without any good reason.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much for coming this afternoon to share with us the experiences of women in the Tana River County. Our report will be richer because of your contribution.

**Ms. Emily Kimani:** Next we have witness code 05. I am also informed that other than this witness, we have two more left.

* [Ms. Scholastica Kiomo took the oath]*

**Ms. Emily Kimani:** Mum, how are you this afternoon?

**Mrs. Scholastica Kiomo:** I am fine.

**Ms. Emily Kimani:** I welcome you for our session this afternoon. Before we proceed, I will kindly request you to tell us your full names once again for record purposes.

**Mrs. Scholastica Kiomo:** My name is Scholastica Kiomo.

**Ms. Emily Kimani:** What job do you do?

**Mrs. Scholastica Kiomo:** I am a farmer. I was a teacher but I retired.

**Ms. Emily Kimani:** You are seated before us this afternoon because you recorded a statement about the killing of your husband.

**Mrs. Scholastica Kiomo:** Yes.

**Ms. Emily Kimani:** Give us your testimony and also your recommendations.
Mrs. Scholastica Kiomo: I am a wife to the late Ephram Kiomo. I come from Ngau. Although I am a Taita, I am married at that place. My husband was killed. After that, there is land that we inherited and built houses there. We had developed a farm of different crops. After some few years, we saw people we did not know come in the evening and start to build in the middle of the shamba. They built their houses and started living there. My late husband started to complain to the elders as to where those people came from and how could they stay at our farm. He went to the chief and the DO. I remember he took one of the elders and went up to the DC. When they went there, they were taken back to the elders.

He spoke to these people and asked them to move from our farm. They, however, resisted and did not move. They said they had bought the piece of land. When they were asked who sold them the land, they said it was the chief who sold the land to them. They said they had paid 40,000 and cows and, therefore, they could not move from the place. It was difficult for my husband to remove them. The chief used to tell him to let those people stay in the land and asked, “If they stayed in the land, how will it affect you?”

In the year 2000, there was land demarcation and when they came to our place, the Wardei refused to move. We were told by the people from the Land’s office that we should prepare so that the surveyors could survey our land. My son, husband and some two boys went to the farm. One of the boys was called Thomas Stephen and the other one was Emmanuel Semi Guyo. My second born son was called Nicodemus Bonaya. When they started working, some people came to them carrying swords. However, my husband continued to work. They surrounded them and asked him why he was working there and they had bought that piece of land. He told them that was his farm and he could not move. After some argument, they started beating him on the head, another one speared him and he fell down. My son ran and started screaming. People came but my husband had already fallen down and was unconscious. After that, we reported to the police and the chief. They came and saw the body. They took it to Ngau.

We then continued with the funeral arrangements. The postmortem was done after three days. He was killed on 7th March 2001. The doctor finished with the police and we were given the permission to bury his remains. After that, some investigators would come and ask what happened. At times, my son could be taken aside and be interrogated. After some time, the two people were arrested and taken to court. They were charged with murder. They were required to go to the High Court in Mombasa. When we got to Mombasa, the case was not even heard. At times, we were told those representing the others had not come. Sometimes their lawyer would say the case could not go on because the interpreter coming from Hola had not arrived. At times, we were told the lawyer was not prepared. At times, we were told that the prosecutor had not prepared the file. Instead of the case being murder case, it has been reduced to manslaughter.

We were told that the people were being funded by some big people and the case could not be mentioned. Every now and then, the case was being adjourned. For three years, we did not find a solution. When we saw there was no judgment, we went to the lawyer and
the office of Danson Mungatana. At times, we were asked to bring the original death certificate so that they could open a new file. I was left with children who were in school and college and could not manage to get money to start the case afresh. I decided to leave the case. I did not go to hear the judgment and do not know what went on.

My aim is for the Commission to help me educate my children. I should be assisted financially so that they can continue with their education. That is all.

Ms. Emily Kimani: Thank you, Mrs. Kiomo. I am very sorry about that very unfortunate incident that happened to your deceased husband. I now beg to ask you a few questions but before I do so, I know you have told us the person seated on your immediate right is your son, Nicodemus, if you do not mind telling us his full names.

Mrs. Scholastica Kiomo: He is Nicodemus Jasi Kiomo.

Ms. Emily Kimani: Is he the one who witnessed that very unfortunate incident?

Mrs. Scholastica Kiomo: Yes.

Ms. Emily Kimani: I have a few questions from your testimony. My first question is: What was the acreage of this land that was in contention?

Mrs. Scholastica Kiomo: The Ministry of Lands people have not measured it but it is around 20 acres.

Ms. Emily Kimani: You pointed out - correct me if I am wrong - that the same was inherited. Had the land been transferred to your husband?

Mrs. Scholastica Kimani: It is the people from lands offices who came to demarcate it. From 2001 to 2007, it was demarcated. We have the number and everything. The land belongs to us. We have been given everything but we have not received the title deed.

Ms. Emily Kimani: The men who invaded the land initially so as to bring all these scuffles, how many were they? I know you told us they were from the Wardei community.

Mrs. Scholastica Kiomo: They were more than 20 families.

Ms. Emily Kimani: You also told us that a post mortem was conducted on your deceased husband’s body, what were the results?

Mrs. Scholastica Kiomo: The result was head injuries and abdominal penetration.

Ms. Emily Kimani: You also talked of the matter being in court which you feel was interfered with and which up to date you do not know the outcome. Do you have the details like case number or some documents about the matter?
Mrs. Scholastica Kiomo: The bonds have numbers. After we saw that there is no solution, my son wrote a letter to the Chief Justice. The Chief Justice replied and said he would do some investigations. He did the investigations and handed the case to the office of hon. Danson Mungatana because at that time, he had already been elected an MP but the office was still there. Those who were there are the ones who started to say I should take the death certificate and money so that they could open a new file. However, I did not give them the money.

Ms. Emily Kimani: You told us that, in matter about your husband; the murder case which was later reduced to manslaughter, you would go to court and the matter would be postponed. You also feel that the bench was compromised. What would you want to see different in the judicial system?

Mrs. Scholastica Kiomo: In the judicial system, I saw there is some oppression for the vulnerable who have no power financially. There is a lot of corruption that is ongoing. Without money, you cannot be attended to or get justice. The falsehood is turned to be the truth and the truth turned to be the falsehood. I feel if something has happened, a person should be allowed to talk. I think this issue of lawyers is really making corruption to be high. If something happens, let the complainant stand up and speak instead of having assistance from a different person.

Ms. Emily Kimani: What I am gathering from what you are saying is that we should do away with advocates---

The Presiding Chair (Commissioner Chawatama): Yes, that is what she has said and it is okay. Sometimes they cause cases to be delayed. It is acceptable and we shall make the appropriate recommendation.

Ms. Emily Kimani: What other recommendation do you have in line with the corrupt judicial officers such as magistrates or judges?

Mrs. Scholastica Kiomo: The laws should be reviewed so that there could be justice in cases that can be taken to court.

Ms. Emily Kimani: Thank you very much, Mrs. Kiomo. I do not know whether you have any documentary evidence to buttress what you have testified before us today.

Mrs. Scholastica Kiomo: Yes, I have.

The Presiding Chair (Commissioner Chawatama): I have seen the death certificate is on the file.

Ms. Emily Kimani: Do you feel that the same should be part of the Commission’s record?
Mrs. Scholastica Kiomo: Yes.
Ms. Emily Kimani: Presiding Chair, I pray that the documents that the witness has furnished us with form part of the Commission record.

The Presiding Chair (Commissioner Chawatama): Admitted as prayed.

Ms. Emily Kimani: I have no further questions for the witness.

The Presiding Chair (Commissioner Chawatama): General, do you have any questions for this witness?

Commissioner Farah: I really do not have questions for her. I empathize with you because it is not easy to lose a husband. I am grateful to you for having restrained yourself because the emotion is very high. In fact, 2001 is not a long time ago. It is just the other day. We sympathize with you. We have heard your case and we will look into it and recommend appropriately.

Thank you for having been patient and thank you for telling us your story.

The Presiding Chair (Commissioner Chawatama): Thank you very much for coming and thank you for sharing with us a very heart-breaking testimony. We have heard from a number of women in Kenya who have lost their husbands, may be not in the same way, but in similar circumstances. We have heard some of the hardships that you have had to endure because the head of the home is no more. We have also heard you on the impact that this has had on your family and your desire to educate your children and how, because of lack of finances, you have been unable to do so. I will ask one thing and that is for the son to be sworn in for just a few minutes just so that, may be, he could tell us what the impact on his life has been on seeing his father being killed; that is if he is up to it. Is it Gideon?

Ms. Emily Kimani: No, he is Nicodemus.

The Presiding Chair (Commissioner Chawatama): Nicodemus, would you want to talk for a few minutes? Are you able to talk?

Mr. Nicodemus Kiomo: Yes, I can.

(Mr. Nicodemus Kiomo took the oath)

The Presiding Chair (Commissioner Chawatama): Leader of evidence, there is one question and one question only and what we want to hear from this witness. His mother has already told us what he saw and the circumstances surrounding his father’s death. Now, because he was an eye witness to the incident, we just want to know how that impacted on his life.
Mr. Nicodemus Kiomo: This incidence has really affected my life. First of all, I could not manage to continue with my education. The other issues are to do with adjudication of the land and my father’s property. It means I must be there to defend them. Right now, I consider myself an adult because of what I am going through. The issue of land, especially, was not easy. We have gone to court many times; we started from down going up, speaking out everything that my father used to tell me so that I could defend the property. So, there have been a lot of challenges in life. Up to date, I can say that I have a lot of enemies. I have got a lot of friends. It was not possible to defend the land as the people also wanted to attack us. We went to court and we were successful in that the property has remained in the family. I am thankful to God for the faith and the strength to persevere. I am very grateful for that.

Ms. Emily Kimani: Thank you very much. I have no questions for you.

The Presiding Chair (Commissioner Chawatama): Nicodemus, thank you very much. You are a fine young man. I hope and pray that opportunities come your way in order for you to live the life that your father had hoped you would live. Never ever give up; you are now a man and you are able to make decisions for yourself as well and assist your mother. We are really sorry as well for failed systems. I do not know why your matter took so long in court because I can see that as a family, it was difficult to bring this matter to a closure because of that. I hope that through your coming here and testifying and through the work that this Commission is going to do, there would be some closure and that you will be able to carry on with your normal life, but I know that it will never be the same in the absence of the head of the family. But we would like to thank you, all the same, for having come and testified before us this afternoon. We wish you God’s blessings all the days of your lives.

Thank you.

Mr. Nicodemus Kiomo: Thank you.

Ms. Emily Kimani: Presiding Chair and Commissioners, before us is witness Code 12.

(Mr. Patrick Bonaya Dulu took the oath)

Ms. Emily Kimani: Mr. Bonaya, how are you this afternoon?

Mr. Patrick Bonaya Dulu: I am very fine.

Ms. Emily Kimani: Do you mind telling us your name, once again, for record purposes?

Mr. Patrick Bonaya Dulu: My name is Patrick Bonaya Dulu.

Ms. Emily Kimani: What do you do for a living?

Mr. Patrick Bonaya Dulu: I am a teacher by profession.
Ms. Emily Kimani: I welcome you to our session this afternoon. Before we proceed, I can see a gentleman seated on your immediate right. If you do not mind, introduce him to us.

Mr. Patrick Bonaya Dulu: On my right hand side is my father, Paul Ayub Dulu.

Ms. Emily Kimani: Thank you very much for that introduction. The reason that you are before us today is to make a memorandum presentation about a land dispute in Ngao Village. Is that correct?

Mr. Patrick Bonaya Dulu: Yes.

Ms. Emily Kimani: Now, we thank you for having given us a very detailed memorandum and also supporting documents thereto. Having done so, I kindly request you to briefly pick out the issues and also give us the recommendations thereto.

Mr. Patrick Bonaya Dulu: Okay, I am speaking here as Paul Dulu. So, Paul Dulu was born by Ayub Nicodemo and Remini Daido. Ayub died before I was born. After some six years, my mother was inherited by my uncle, Yohana Nicodemo. They gave birth to Kezia, Kopessa, Kiomo and Sampuli.

Ms. Emily Kimani: Now, with your kind permission, Presiding Chair, I wish to reiterate what I have just told Mr. Bonaya. We have all that history in the memorandum that he has given us. So, if he could go straight to the issues and also give us the recommendations, we would be more than glad.

Mr. Patrick Bonaya Dulu: There is a point here that I want to highlight before I move on the other bit.

Okay, I constructed a house when the Shiftas announced that they were coming. Now, after a period of one year, this house was demolished and two smaller houses were constructed---

The Presiding Chair (Commissioner Chawatama): Sorry. I know you said that you are speaking as---

Mr. Patrick Bonaya Dulu: Paul Dulu.

The Presiding Chair (Commissioner Chawatama): Meaning that you are speaking as your father?

Mr. Patrick Bonaya Dulu: Yes.

The Presiding Chair (Commissioner Chawatama): I think for the purposes of recording, especially on the HANSARD, it is better that you say who you are and that you are speaking on behalf of your family and that you are speaking on behalf of your father.
Refer to him as “my father” because whoever is listening to that recording should be in no doubt as to the person they are listening to. For us, it is okay because we are here and we can see you. So, just refer to him as “my father” and state that “I am speaking on behalf of my father” and then “this is what my father did or said.”

Mr. Patrick Bonaya Dulu: Okay. I am speaking on behalf of my father, Paul Dulu. Now, when those houses were demolished, two smaller houses were constructed. It has to be said that they belonged to Kopesha. Kopesha is the first born of my uncle, Yohana. After some time, Heremini noted that there was something like segregation or sidelining between Paul and the other children. So, she advised Paul to tell his uncle to get a piece of land for him so that he can stay alone with his family. So, after that, Paul did the same--

The Presiding Chair (Commissioner Chawatama): That is your father?

Mr. Patrick Bonaya Dulu: Yes.

The Presiding Chair (Commissioner Chawatama): Paul, your father?

Mr. Patrick Bonaya Dulu: Yes. My father did the same. So, he converged with Heremini, my grandmother and Yohana. My father, Paul, raised the issue.

Commissioner Farah: Excuse me. You are doing very well, only that you keep on forgetting. What the Judge told you is that, every time you say “Paul,” say “My father.” Every time you say “Heremini”, say “my aunt.” Every time you say somebody’s name, except yours, say the relationship.

Mr. Patrick Bonaya Dulu: Thank you.

So, my father, my grandmother, Heremini and my grandfather, Yohana, sat. So, my father raised the issue and my grandfather, Yohana, accepted that. He further said that he will also look for other pieces of land for the rest of the children. So, this is because it was very difficult for a child or a son to acquire land without the parents. So, in 1961, some 10 acres were obtained and I used my money because I was employed by then to remove the vegetation. I also planted a few plants. I constructed two houses; one for the workers and one for me. Some animals were also there and I used to post the wages for these workers through my grandfather. But, at times, he was not giving them their money, so they used to abscond.

Now, in 1986, there was a need to start a secondary school. Therefore, the village elders – the Gassa Elders – were looking for a piece of land. Actually they usually have the excess powers that they can just come to a land and pick the portion they want. So, they came into my land, grabbed a portion. They started clearing the bush. By then, Kopesha was a teacher at Ngao Primary School. He was the head teacher. So, he stopped them. Now, before that in 1975, Kopesha started constructing a house on my land. So, through the village elders, I managed to stop him. He was told to stop constructing but, instead,
construct the house at his land in Mwachakote. So, what happened is that Lisania Abuya was, by then, the Board of Governors Chairman. Now, when Kopesha stopped these people from removing the bush, the Gassa Elders told Lisania Abuya to travel to Mombasa so that he could talk to my father about the land. He did that. After some few days, Paul came to Ngao and together with a few elders and school workers and gave him some three acres. At that time, Yohana and Kopesha were there at the village. They did not take a very active role in doing that. Paul, my father, was given an acknowledgement letter for what he did for the school.

In November, 1986, Lisania came home to the same plot and he had a lengthy discussion with my mother that is Maria Haderera. When I got into the house around lunch time, my mother told me to go to the bedroom and get an acknowledgement letter that was given to father and give it to Lisania so that he can go and start working on compensation. I went in, got the letter and gave it to Lisania Abuya and he left.

My father retired in 1993. So, when I came home, I had to farm on a piece of land that the four of us were given. My grandfather, Yohana, was not willing. So, through the village elders, my father managed to have that piece of land sub-divided. My grandfather, Yohana, drew a will to the plan and in that plan, he showed the parcels of land under him and he allocated all those pieces of land to every child. But this land that is in dispute was not reflected. Kopesha’s piece of land at Mochakote was also not reflected. This shows clearly that he knew that those pieces of land belonged to Paul while the other one belonged to Kopesha. I beg to show you the will.

I think I will leave you with this document to prove to you whatever he wrote. In these tribunal court proceedings, Yohana said that this document came from him. So, in 1994, uncle Kopesha died and he was buried near his father’s home close to the Methodist Church. In 1997, my mother, Haderera, died and she was buried in the disputed land. This is because when somebody has a piece of land, he is usually buried there.

In 1998, my father, Paul, fenced this piece of land and after a few days, two of my uncles came – uncle Sampuli and Kiomo – and claimed that the land belonged to his father that is Yohana. So, they were allocating themselves another piece of land within my fenced land. Paul refused this. In 1999, I had a case with Yohana before the elders so that we could establish the owner of that piece of land. Well, Yohana was a Matabule by that time. “Matabule” is a person who is elderly and has many years within that community. Whatever he says remains true, whether it is false or not. His juniors cannot correct him in any way. So, the Gassa elders who used to quarrel Yohana about Paul had long gone. Being the eldest, I tend to think that he misused his powers. So, in that case, the verdict was that the land is called by the father’s name. So, I asked myself; why is it that Kopesha’s land at Mochakote is called by Kopesha’s name and then my land is now being called by somebody’s name. That is the question I am still asking myself.

On 6th December, there came two men – Subo Mered and Komora Samuel – who cut the fence and started clearing the vegetation that was there. They told us that, that was hospital land and that is why they were clearing the bush. Patrick was there by then and I
managed to stop them. I then went to the hospital, saw the hospital secretary and questioned him about what he was doing. I asked him: “Why did you not come to that house that is over the fence to inquire?” So, we had to contract our lawyer.

The same December, Yohana went and drew a will which is more or less the same as the one that was drawn in 1983. Once again, this piece of land was not reflected. As we had these cases, witnesses would come and say that, that piece of land was sub-divided among the four sons while the land adjudicators sub-divided that land into three. A portion of land was given to Kopesha. The other portion was left for my father, Paul – a very small bit – and the third portion, where the other two said that they were allocated by their father, was allocated to the hospital. That is where my house and my brother’s house are.

So, we started having cases, but they say that they always listen to the elders. We are not happy with the issue. Our expectations and recommendations are that the Government, through the Commission, should reveal the truth so that we do not suffer. Because some of the Gassa Elders, like Udhina, have told my father to tell us to pull down our houses and yet he is about 75 years old right now and he has never constructed a house in this world.

Secondly, I think that the powers of the Gassa elders should be reduced. If I may suggest, the sub-chief should be monitoring them so that should there be a problem, somebody will have to account for the law.

I gave land to Ngao Girls Secondary School and they were to compensate me. At that time, they were to give me a piece of land elsewhere or Kshs100,000. But now, this is 2012 and I am requesting for Kshs3 million.

Now the land officers – let them do their work – came, they were briefed by the chief and the Gassa elders and up to this moment, they have not come to Paul, my father, to ask where his land is or to show the boundaries of his land and we are almost getting towards getting title deeds. Most of the elders are younger than my father, but they talk a lot concerning a piece of land as if when my father, his uncle and mother were discussing about the plans of the family, they were there. Lisania destroyed evidence. We wish that he be tried because he has put us into problems. It is now over 20 years and we are still struggling for that piece of land. We have not constructed houses because we do not understand what will be the outcome.

That is all.

Ms. Emily Kimani: Thank you very much for your testimony. You have furnished us with various documents in support of your testimony before us today, and my question is if you are willing that the same forms part of the records of the Commission.

Mr. Patrick Bonaya Dulu: Yes.
Ms. Emily Kimani: I pray, Presiding Chair that the documents that these witnesses have furnished us with be admitted as part of the records of the Commission.

The Presiding Chair (Commissioner Chawatama): They are admitted as prayed.

Ms. Emily Kimani: Thank you very much. I have no questions for this witness.

The Presiding Chair (Commissioner Chawatama): General?

Commissioner Farah: Patrick, Paul is your father?

Mr. Patrick Bonaya Dulu: Yes.

Commissioner Farah: Yohana is your grandfather?

Mr. Patrick Bonaya Dulu: Yes.

Commissioner Farah: Haderera is your mother?

Mr. Patrick Bonaya Dulu: Yes.

Commissioner Farah: Who is your grandmother?

Mr. Patrick Bonaya Dulu: Heremini Daido.

Commissioner Farah: Is she alive?

Mr. Patrick Bonaya Dulu: She died in 1977 and since her death, there has been no peace.

Commissioner Farah: Who is Kopesha?

Mr. Patrick Bonaya Dulu: He is my uncle; the first born to Yohana.

Commissioner Farah: He is older than your father?

Mr. Patrick Bonaya Dulu: No! Paul is the oldest.

Commissioner Farah: But Yohana is your grandfather?

Mr. Patrick Bonaya Dulu: Paul’s father is Ayub, but he died before Paul was born. So, Yohana was forced to inherit Paul’s mother.

Commissioner Farah: I see. And Sampuli, Kiomo?

Mr. Patrick Bonaya Dulu: Kiomo is the second after Kopesha.
Commissioner Farah: Sampuli?

Mr. Patrick Bonaya Dulu: The last born. All those are my uncles.

Commissioner Farah: Lisania?

Mr. Patrick Bonaya Dulu: Lisania is somebody from the village.

Commissioner Farah: A village elder?

Mr. Patrick Bonaya Dulu: By then, he was the Board’s Chairman. I think he had just retired from education or something like that.

Commissioner Farah: This is a very tight family matter. What is your expectation with us?

Mr. Patrick Bonaya Dulu: Somebody is playing with our rights. Paul’s assets or inheritable assets were being held by Yohana, but even from the wills you are seeing there, those assets are not being distributed fairly. And foremost, this piece of land that I cleared using my money is also going.

Commissioner Farah: Yeah, but what I am saying is that, is this not a typical court case?

Mr. Patrick Bonaya Dulu: At first, we had not known our enemies. In fact, when we shifted to that place, we were living in harmony. But when these land people came, it seems as if there are some things which were done behind our back. That is the time we started getting these problems and we, therefore, had to go to court to find who our enemies were.

Commissioner Farah: And you find it difficult now to continue with the court case?

Mr. Patrick Bonaya Dulu: At that time, the land was under adjudication. So, we were told that there is no other court that can be very active.

Commissioner Farah: I am not an expert on land issues, but I think the Chairperson here is an expert on court cases. I will leave the matter to her.

The Presiding Chair (Commissioner Chawatama): You mentioned that you were almost close to getting a title. For which land is the title?

Mr. Patrick Bonaya Dulu: For this land in dispute. Up to this moment, part of this land in dispute has been allocated to a hospital. The other portion was given to Kopesha who is the first born to Yohana. My father, Paul, was left with less than three acres down from
ten acres. At times, we are told to pull down the houses because they are already bringing construction materials for the construction of houses for the hospital staff. We complained this to the PC.

**The Presiding Chair** (Commissioner Chawatama): For how long has the land been in possession of your family?

**Mr. Patrick Bonaya Dulu:** From 1961.

**The Presiding Chair** (Commissioner Chawatama): When was the school offered a portion of the land?

**Mr. Patrick Bonaya Dulu:** It was in 1986.

**The Presiding Chair** (Commissioner Chawatama): The hospital was not offered the land. It is just trying to grab the land. Is that so?

**Mr. Patrick Bonaya Dulu:** The hospital was not there before. The elders came and said that the hospital will be occupying that portion.

**The Presiding Chair** (Commissioner Chawatama): Why has it taken you so long to normalize the situation by getting titles especially when you realized that you were getting difficulties dealing with the family?

**Mr. Patrick Bonaya Dulu:** The land was not under demarcation. The demarcation process began in 2000. That is when we started experiencing these problems. However, before that, we were very peaceful.

**The Presiding Chair** (Commissioner Chawatama): Thank you very much. I have no further questions.

**Ms. Emily Kimani:** Presiding Chair, our next witnesss is Witness Code 14.

*(Mr. Shadrack Mchawala Chaso took the oath)*

**Ms. Emily Kimani:** How are you this afternoon?

**Mr. Shadrack Chaso:** I am fine.

**Ms. Emily Kimani:** For purpose of the record, please, give us your full names and what you do.

**Mr. Shadrack Chaso:** I am Shadrack Mchawala Chaso. I am a farmer presently.
Ms. Emily Kimani: You are before us today because you recorded a statement being a victim of the 1982 coup. Is that true?

Mr. Shadrack Chaso: Yes, that is true.

Ms. Emily Kimani: I want you tell us how the coup affected you and your family and give us your recommendations thereto. Welcome.

Mr. Shadrack Chaso: The coup affected me. When I was released from prison, I realized that my wife had gone and my kid who was two years old when I was arrested had died. My property was taken away. I did not get anything.

During the investigations, I was beaten. I have a scar on my forehead. The coup affected my entire life because since then, my life has never been the same again. If you went to my home you would be astonished. I live in a single room. My first wife is married to another man. We separated and I married another woman with whom I have six children. I only have three acres of land. Most of the times, my kids are sent away from school because I cannot afford their school fees.

In my certificate of service, the comments therein have made me not able to get a job. I have been without a job for 31 years now. I have tried to look for employment, but in vain. The employers say that they cannot employ somebody whose services are not required. Those are the words in my certificate of service. I have a copy of it with me. So, employers look at me as a bad person.

I have been elected by my village to come over and represent them as the Kenya Police Reservist. When I went to the OCS he told the chief, “You have even brought this one?” The chief wondered why the OCS was making those remarks. The OCS said that if he gave me a gun, he would be fired. He said that I was part of the 1982 group of rebels. There was a time the Tana teachers wanted a watchman. I wrote an application letter and took it to them. They saw my certificate of service which has the words “services not required”. They told me that they could not employ me. So, I can only do farming and small construction work. This issue of the 1982 coup has affected me mentally also.

I recommend that through this Commission, the Government should compensate me for my physical and mental suffering. I was employed in 1980. In 1982, I was discharged. I was there for a very short time apart from the six months of training. I knew nothing with regard to the army but I was punished severely. I was jailed for seven years. The judge said that I did not merit service benefits.

I cannot forget the experience when I left jail for home. I was in Kodiaga Prison in Kisumu. I was given a Kenya Railway warrant to come to Nairobi and yet I was to get to Hola. When I got to Nairobi, I experienced a lot of problems. I was baffled. I did not know where to go. I saw a person at the railway station; I explained to him my terrible situation and sought help from him. I told him to assist me get to Kenya Airforce camp in Eastleigh. He gave me bus fare and I went there. I started looking for people. I found a
young man who assisted me. He put me on a bus to Hola. The Government did not recognize me as a citizen. The Government just dumped me. I have not had any justice from the Government and it should compensate me.

I do not have much to say.

Ms. Emily Kimani: We are sorry about the tribulations that you underwent. Now, you stated that you were enlisted at the Kenya Airforce in 1980 and posted to Nanyuki Garrison as a steward. Is that true?

Mr. Shadrack Chaso: That is true.

Ms. Emily Kimani: You also said that you were in jail for seven years?

Mr. Shadrack Chaso: That is true.

Ms. Emily Kimani: During the trial, how was it? Did you feel justice was served on you?

Mr. Shadrack Chaso: I do not think there was justice. This is because I was not given a chance to defend myself.

Ms. Emily Kimani: Were you tortured in prison?

Mr. Shadrack Chaso: When in prison, I appealed. A letter came from the court martial. We were taken to Kakamega. The presiding judge was Evans Gicheru. He read the letter from the court martial. He told us that we should not interfere with the decision from the court martial. We were told that our issue would be looked into. We were 22 people who had sought appeal.

Ms. Emily Kimani: Upon your termination of service, were you given any benefits?

Mr. Shadrack Chaso: The judge had declined to award me service benefits. I have received none up to today.

Ms. Emily Kimani: Have you followed up on the matter?

Mr. Shadrack Chaso: I tried, but every day I went to Ulinzi House, I would be taken round in circles.

Ms. Emily Kimani: Thank you for your testimony. Earlier on, you had furnished us with documents to further buttress your testimony today. Would you wish the same to form part of the record of the Commission?

Mr. Shadrack Chaso: Yes.

Ms. Emily Kimani: Presiding Chair, I pray that these documents be admitted to be part of the records of the Commission.
The Presiding Chair (Commissioner Chawatama): Admitted as prayed.

Commissioner Farah: Where were you a steward in the Nanyuki Camp?

Mr. Shadrack Chaso: I was trained as a steward, and I worked as one.

Commissioner Farah: In which mess?

Mr. Shadrack Chaso: I was in the catering section.

Commissioner Farah: Catering people deal with food and plates. How come you were sentenced for seven years? Were you armed at the particular time of your arrest? Where was your duty station and what were you doing?

Mr. Shadrack Chaso: At that time, I was at home asleep. In the dead of the night, I heard a siren. The rule in the army is that if you hear a siren, you rush to the armory. When I went there, I found that everybody was armed. I entered the armory and took a gun and went to the parade. So, I had a gun as well.

Commissioner Farah: It is an unfortunate case like the others we have heard. We will take up your case.

The Presiding Chair (Commissioner Chawatama): You have said that you were tortured. Did you receive any treatment at all?

Mr. Shadrack Chaso: We were given treatment while in prison. There, you do not keep the medical records. One is treated and told to go back to the cell. They keep the records themselves.

The Presiding Chair (Commissioner Chawatama): Again, in your statement, you said that when you were taken before a court martial, you were not given an opportunity to give your side of the story. Was anybody’s testimony at the court martial the basis for your sentencing for seven years?

Mr. Shadrack Chaso: There was nobody who testified against me. They just read out trumped up charges. Whether you pleaded guilty or not guilty, you were to wait for judgment at 2.00 p.m.

The Presiding Chair (Commissioner Chawatama): They did not give you particulars of the charge?

Mr. Shadrack Chaso: During the judgment, the judge said that the court had found me guilty of mutiny. I heard him mention the word “mutiny”.

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The Presiding Chair (Commissioner Chawatama): Were you given any typed judgments to take with you?

Mr. Shadrack Chaso: I was never given any typed document.

The Presiding Chair (Commissioner Chawatama): Even after your release, you were still pursued in 1987 and 1988. Why was that the case?

Mr. Shadrack Chaso: I was also surprised I was being followed. I had a brief interview with those who were following me up all those years I have mentioned.

The Presiding Chair (Commissioner Chawatama): Thank you for coming. The testimonies we have heard of the victims of the 1982 coup, indeed, make a very sad hearing. We have dealt with men who are so broken. It is sad to see men who are helpless and unable to feed their families. Justice needs to be done.

We will make the relevant recommendations. We wish you well. We know farming is not easy, but we thank God that life for you has continued.

Please, stand down the witness.

Commissioner Farah will make the closing remarks.

Commissioner Farah: I want to thank all the TJRC members of staff for setting up this place in a very short notice. We have now come to the end of our session. We have heard nine cases. We heard Doyo Maru, Wilson Komora, Said Hamisi Obwoya, Khalif Bahola, Bocha, Ibrahim Sane, Fatime Hodha, Scholastica Kiongo, Nicodemus Kiongo, Patrick Bonaya Dulu and Shadrack Mchawala Chaso.

At this stage, I will call upon the mistress of ceremony to call upon the person who will pray for us. Thank you very much.

Closing Prayers.

(The Commission adjourned at 5.15 p.m.)