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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION HELD ON THURSDAY, 12<sup>TH</sup>  
JANUARY, 2012 AT TANARIVER COUNTY COUNCIL HALL**

**PRESENT**

<b>Tecla Wanjala Namachanja</b>	-	<b>The Acting Chair, Kenya</b>
Berhanu Dinka	-	Commissioner Dinka, Ethiopia
Tom Chavangi	-	Leader of Evidence

*(The Commission commenced at 10.00 a.m.)*

*(The National Anthem was played)*

*(Opening Prayers)*

**The Acting Chair** (Commissioner Namachanja): Please, be seated. Good morning, ladies and gentleman. On behalf of the Truth, Justice and Reconciliation Commission ((TJRC), I would like to invite you to today's hearing in Hola. I would like to thank the people of Hola for patiently waiting for this Commission to conduct its hearing here. I know that it is over one-and-a-half years ago since we started taking statements and memoranda from here and you have been waiting very patiently; we thank God today that at long last the Commission is here to hear about historical injustices and gross human rights violations that people from this region have experienced. In total, the Commission recorded 662 individual statements from this region, 18 memoranda concerning groups and communities that have experienced historical injustices together or collectively. On behalf of the Commission, I would like to thank the leaders from this region, our co-ordinator, the deputy co-ordinator and the statement takers who helped us collect the statements and facilitated us to be here today. I would also like to thank the Provincial Administration and the regional administration for being with us in this process; I am happy that in our midst, we have the District Commissioner (DC) with us.

Ladies and gentlemen, the Commission has only two and half years to complete its work. Due to the limited time that we have, we cannot conduct hearings of all the 662 individual statements and 18 memoranda. What the Commission has been doing is to select a few statements and conduct hearings on them. From these hearings, the Commission is then able to have a global picture of the violations that the region has experienced. That is what we have been doing and what we shall be doing today and tomorrow. We have selected a few statements from the statements that we received and we shall have people give the testimonies. But everybody who recorded statements with us, the information that you gave us is going to be part of the report that this Commission is expected to come up with at the end of our term. The testimonies that we are going to hear from my brothers and sisters, at times are very painful.

So, I would like to welcome you to journey with those people who will be giving their testimonies, to empathise with them, to affirm what they have gone through, so that at least they can feel they have been listened to; for us to do that, we need to put off our phones so that we do not continue disrupting the process. We shall also encourage you to limit movement in and out. About the people who will be conducting the hearings today, on the panel, we have two commissioners.

*(The Acting Chair (Commissioner Namachanja) introduced herself and the other TJRC Commissioner)*

We have two processes taking place and so we have other commissioners conducting hearings elsewhere. In terms of the procedure, the witness will be sworn in and then he or she will give the testimony. After that, the leader of evidence, who will be leading the process, will ask a few questions for clarifications. After that, commissioners will also ask questions for clarification.

Ladies and gentlemen, we are privileged to have our first witness who is a very important person in this nation of Kenya. Our first witness is Mzee Galana Menza. If you noticed, when we were playing the national anthem, the only person who was given the microphone to sing was Mzee Galana. I understand from history that Mzee Galana is the one who composed and gave Kenya a national anthem. It is a song that has been sung by about all of us and when I talk about all of us in Kenya, I am talking about 40 million people. Forty million Kenyans have sung this national anthem. I do not know what recognition Mzee Galana has had but in this gathering, we want to appreciate and thank him for giving us the national anthem. If we followed the words of the national anthem, it went “may justice be our shield and defender”; we should be investigating historical injustices, but because we did not take care of them, we are here. Before we start the session, in recognition of Mzee Galana’s role during our Independence struggle, I would like us all to stand and clap for him. Let us applaud him for the role that he played.

*(The public stood up and applauded Mzee Galana)*

I think Kenyans who are here, especially the young people, feel privileged for having met Mzee Galana today. With that, I invite the Leader of Evidence to proceed with the process. Thank you.

**Mr. Tom Chavangi:** Thank you very much, Acting Chair. I will lead the witness in Kiswahili.

*(Mzee Menza Moroa Galana took the oath)*

**Mr. Tom Chavangi:** Mzee Galana, welcome to the hearing. Can you tell us your names again?

**Mzee Galana Menza:** My names are Moroa Galana Abio. My home is in Lwano Location, Makere Village. I was born in Wenje. I was brought up in Wenje. I went to

school in Ngao. When the missionaries were sent away in the Second World War because they were Germans, the school in Ngao was closed. We were sent home. When I came back home, our old people gave me a job as a teacher. I was sent to Masalani Primary when I was married. I went for training and came back in about 1959 when a Whiteman, by the name Graham Hislop, came. He collected all music teachers from Lwano Location to Milalulu Location at Hola Village. Graham Hislop divided us into groups. By good luck, I was asked to choose lullabies. Then I sang about eight to ten songs. Mr. Hislop went back to his house. After that, the Mau Mau rebellion occurred. The first president Mzee Jomo Kenyatta was in prison. They gave us some duty to try and assist Mzee Jomo Kenyatta and his Mau Mau people.

At last, we won and Mzee Jomo Kenyatta was out of prison. When the time for *Uhuru* came, there was an English national anthem. I bought a radio so that I could hear if we in Kenya would also have a national anthem. When the day of Independence came at midnight, I heard an English song. After that song, I heard the second song, but the words were not of the Pokomo language. They were in Kiswahili and English but the tune was just the same. Then I thought I did not know what to do. Mzee Jomo Kenyatta was on the chair and Kenya had got Independence and I did not ask him anything.

After that, came the reign of Mzee Moi. We all suffered. After Mzee Moi, Mzee Kibaki became the President. Nobody remembered me and nobody uplifted my life. It was as if they took somebody else's tune but not mine but I got some visitors who came to me. They were brought by a warden. I will remember the name afterwards. When he came, he took my photo and went away. I never asked for anything and he just went. At that time, I was a retired teacher and I was just at home. After a short time, an Englishman called George Julius came. He brought a special message from Minister Nicholas Biwott. That gentleman came and picked me from home. He told me that the Minister needed me urgently. I was worried as to why I was being called by the Minister. However, after going to his office in Nairobi, the European from Greece explained to me his mission. He asked me whether I was Mzee Menza Moroa Galana and I said that I was the one. He told me that it was lucky for Kenya because the whole world should know about me while I was still alive. The gentleman gave me a present of a very big clock. It was presented to me by three girls in Bomas of Kenya. They gave me the clock in front of this European and the Minister, Nicholas Biwott. After he gave me the clock, I was given a ticket to come back home with my grandchild, Abio Galana, with whom I had travelled as my bodyguard. We were only given the tickets to bring us back to Hola and that was the end. At times, visitors come and take my photos. I have not refused anyone anything hoping that the Government will remember me, but up to today, nobody has remembered me. So, I am asking this Commission to hear me. When I cry, is it wrong for me to cry? That is the end.

*(The public clapped for Mzee Galana)*

**Mr. Tom Chavangi:** Thank you very much, Mzee Menza Galana, for explaining all that to this Commission. You have talked about that issue since when you were a teacher and concerning the issues that have affected the country after it got Independence. I would

like to ask you some few questions so that we can understand deeply the history you have just given. Mzee Galana, I am speaking as a youth. How big is your family?

**Mr. Galana Menza:** My father gave birth to seven children, one boy and six girls and all my siblings died. I am the one who is taking care of their families with my sibling who lives in Mombasa. I am the one who is taking care of all their problems and their wives. I educated them up to today.

**Mr. Tom Chavangi:** Thank you very much, Mzee Galana. You are really a hero for taking such a responsibility of educating the children of your brothers and sisters and their grandchildren. Do you have a wife and children?

**Mr. Galana Menza:** My first wife died a long time ago and we separated with the young wife. Right now, I am alone and I was left with two boys. The girls have all been married.

**Mr. Tom Chavangi:** Do you have grandchildren?

**Mr. Galana Menza:** Yes I have many.

**Mr. Tom Chavangi:** How many are they?

**Mr. Galana Menza:** At the moment, I cannot remember the number. They are more than twenty but I cannot know exactly how many they are because there are some who are in Suba Chini, Mnazini and Ganoni area. They are in different areas.

**Mr. Tom Chavangi:** That is why I said that you are a hero and you are courageous because there are very few people who have more than twenty grandchildren. Do you have any great grandchildren?

**Mr. Galana Menza:** Yes I have great grandchildren because my grandchildren have given birth to both boys and girls.

**Mr. Tom Chavangi:** Thank you very much, Mzee Galana. How did you come to compose the national anthem? When you composed it, how did you take it to Nairobi and how did they get the tune?

**Mr. Galana Menza:** As I had explained earlier, I did not think of composing the song despite the fact that I was a singer who was also a music teacher. An Englishman called Graham Henslowe came from Europe and he said that he had been sent to Kenya, Uganda and Tanganyika and one of the places he visited in Kenya was Tana River. He divided us into two sessions from Gwano to Wenje and from Minalulu; that is, Labakere and we were brought to Hola. When we came to Hola, the European gave each group traditional songs for the women when they are delivering, for the men when they are being circumcised and for the children. I was put in the group of the children songs and I was told to look for nice songs and I wrote the song. We stayed in Hola for five days and when we finished, we went back. The European took the songs but I do not know where

he took them. After Independence, I heard the song and later on, I saw people taking my photographs and calling my name. I do not know who took it to Nairobi but I know that there were musicians who met the then President, Mzee Jomo Kenyatta, and he selected the song. I do not know who took the song and just recently, I complained about it to this Commission. I did not compose the song because it is a song from my ancestors. When I was told to select a song, it is one of the songs that I selected from the lullaby and I gave it out.

**Mr. Tom Chavangi:** Do you confirm to this Commission that you are the one who composed the song and it was taken to Nairobi?

**Mr. Galana Menza:** I did not compose it. I had the tune in my mind. The words which I sang to Graham Henslowe were Pokomo words and if you like, I can sing it.

**Mr. Tom Chavangi:** You mean that when you sang the song to Graham, you sang it in Pokomo. Were the Pokomo words the same as the ones that were used in the song of the national anthem?

**Mr. Galana Menza:** The words have a different meaning.

**The Acting Chair** (Commissioner Namachanja): Please, let us listen to each another. There is important information that we are trying to get from the witness and we cannot do that when people are making noise. Let us have one meeting, please.

**Mr. Tom Chavangi:** I will repeat my question. What I am asking is that it is said that you are the one who composed the words of the national anthem in Pokomo language. Are the words that you composed in Pokomo language the same ones that are in the national anthem?

**Mr. Galana Menza:** No, it is only the tune. The words are different. My words are saying...

*(Mr. Galana sang the song and explained the meaning).*

**Mr. Tom Chavangi:** You composed a children's lullaby but your tune is the one that was taken and used in the national anthem and the words of the national anthem are not yours?

**Mr. Galana Menza:** No.

**Mr. Tom Chavangi:** You are an old man who can still teach up to now?

**Mr. Galana Menza:** No, I cannot teach. What I am trying to say is that from Baharia area to Kipini up to the end of Tana River District, I am the only old man and I am called here and there. Even now, I have a meeting that I am supposed to attend in Mbalambala area.

**Mr. Tom Chavangi:** What are you going to do in Mbalambala?

**Mr. Galana Menza:** I am going to give some elderly advice.

**Mr. Tom Chavangi:** I have two questions and then I will give the commissioners time to ask you questions. We have read your statement saying that there was injustice done to you and your people. What injustice would you like to speak about?

**Mr. Galana Menza:** The injustices are many. So, I voiced my complaint when I heard that a big commission will be coming. The tune will not end until Christ comes back; the way it is said in Christianity. If Kenya did not get any problems, the tune will remain the same until the end of the world and the composers of music festival songs are usually paid. Kenya knows where this tune came from and they know me and on 20<sup>th</sup>, I went and I was given a T-shirt and one material.

**Mr. Tom Chavangi:** Can you show us the T-shirt? Commissioners, these are the apparels that he was given during Mashujaa Day. You were given the T-shirt, the material and the watch in Nairobi. Are those the only things that the Government has given you?

**Mr. Galana Menza:** Yes, those are the only things I was given.

**Mr. Tom Chavangi:** My last question is: How would you like the Government to recognize you?

**Mr. Galana Menza:** It is not a must but I would like to be compensated and I do not want money. God kept me alive from the time we fought for Independence and I will give an answer when I get a chance to go back home.

**Mr. Tom Chavangi:** How long do you want us to give you?

**Mr. Galana Menza:** I want one month.

**Mr. Tom Chavangi:** These commissioners are the ones who will take your issue to Nairobi. So, you should say it here right now.

**Mr. Galana Menza:** If it is possible, they should give me one month and then they can come and ask. Even if you ask me on phone, I will answer. Thank you.

**The Acting Chair** (Commissioner Namachanja): Thank you, mzee Menza. I would like to ask Commissioner Dinka if he has any question for you.

**Commissioner Dinka:** I do not have any question for Mr. Galana but I would like to say that what he told us is a very sad story. In many parts of the world, people who composed or write the national anthem of their countries are not only compensated with material

reward but are also given things for the people of the country to remember them by for generations. For example, in the United States, the man who composed the so-called the Star Spangled Banner in which is the American national anthem, his name is Mr. Key. Mr. Key is now remembered by something extremely important in a very important bridge which connects Virginia to Washington DC. I am sure they do this in a number of other countries as well. You have only been given a watch by a Greek in the presence of a Kenyan Minister but still by a foreigner and what you got from the Kenyan Government are only two T-shirts. That definitely should not be your reward. The Presiding Chair said earlier that 40 million Kenyans have sung and continue to sing your composition but I think it is the whole world that is singing your composition. Everywhere Kenya has embassies or consulates and where Kenya celebrates its national holidays like Independence Day and so on, the national anthem is played. Whenever the President or the Prime Minister or an important Kenyan delegation visits a foreign country, the national anthem is played. Everywhere Kenyans gather which is all over the world now; I do not think there is any country that does not have, at least, one Kenyan citizen. Your tune is remembered and sung from time to time by even a single individual if it is only a single Kenyan who lives there. You deserve much better and much more and part of what the Commission can do is to put this record its final record in the archives of the country so that generations of Kenyans will continue to remember your name long after we are all gone from this planet.

**Commissioner Dinka:** I hope that would be a consolation for now but as I said, we will make an appropriate recommendation to the Government so that you will be given the necessary recognition by your country and by your Government. I would like to thank you and salute you as an African who has contributed such a monumental contribution to his country's independence and institution. The national anthem is as important as the flag in any country and you have done your job as a citizen. You should be proud of it and every Kenyan must be proud of you. Thank you very much.

**The Acting Chair** (Commissioner Namachanja): Elder Menza, I totally agree with what my colleague has shared with you but I out of curiosity, I would like to find out, when Graham came and asked you to share your songs, did he explain for what purpose he was doing that?

**Mr. Galana Menza:** I did not know what they wanted. I was called by the DEO and told that the music teachers should go to Hola and that is where I went but I did not know the reason behind it.

**The Acting Chair** (Commissioner Namachanja): When your tune was used in the national anthem, did anybody notify you that they were going to do that?

**Mr. Galana Menza:** I only knew after Kenya's Independence that my tune was used for such work but I did not know the reason why it was used. The Englishman just took the song and he went away and I stayed here.

**The Acting Chair** (Commissioner Namachanja): When you were invited to Nairobi by the Minister of Culture and given the T-shirt, did they take you to the place where the national flag was first hoisted and where the national anthem was sung for the first time?

**Mr. Galana Menza:** Last year on 18<sup>th</sup>, I got a letter from social services people in Hola asking me to go to Nairobi. I did not have the bus fare but they contributed some money and I went to Nairobi. On 20<sup>th</sup>, we went to Nyayo Stadium and I was given these T-shirts. We went to State House for lunch and 21<sup>st</sup>, I came back. I was given T-shirts in Nyayo Stadium and many people were called heroes. I was also put in that group despite the fact that I do not know the meaning of the word.

**The Acting Chair** (Commissioner Namachanja): Despite the fact that you are saying that you do not know the meaning of the word hero, you have heard this name. So, what does it mean to you?

**Mr. Galana Menza:** For me, a hero means different things. There are heroes in words and there are heroes of many actions. You can run and be a hero. How am I a hero?

**The Acting Chair** (Commissioner Namachanja): That is a very difficult question to everyone but we will continue to think about it and contemplate on it. I would like to thank you very much for coming in front of us to explain to us how you contributed to the national anthem and even though you are saying that you need a month to give out your recommendations, the Commission does not have the time. I would like to urge you to think about everything before we leave Hola tomorrow and then you can tell us in what way the Government of Kenya can remember you and all Kenyans. Thank you very much.

**Mr. Tom Chavangi:** Acting Chair, before I step down the witness, there are some requests I wanted to make from him in terms of exhibits. Mzee Menza, there are certain pictures that were in the album. Would you like to submit them to the Commission to scan and make copies and then we can leave you with your originals? Are there any documents that you would like to give this Commission to help in its investigations?

**Mr. Galana Menza:** These are the pictures of my first wife who died together with the one whom we separated.

**Mr. Tom Chavangi:** Acting Chair, there are four original pictures of Mzee Menza that we have marked. We will take a copy and leave him with the original for the sake of our records and a certificate of recognition from the Ministry of National Heritage and Cultural Services.

The next witness is Hola number 9. He is called Dahir Bile Abdullahi. He is on the second page of the course list.

*(Mr. Dahir Bile took the oath)*

**Mr. Tom Chavangi:** Mr. Dahir, kindly, for the sake of the record of this Commission, state your names again.

**Mr. Dahir Bile:** My name is Dahir Bile.

**Mr. Tom Chavangi:** Where do you live?

**Mr. Dahir Bile:** I live in Tana Delta and I am the chairman of Wardei Council of Elders.

**Mr. Tom Chavangi:** You have written a statement which you presented before this Commission addressing issues of your community. Kindly present the statement before the Commission.

**Mr. Dahir Bile:** I want to talk about Wardei Community. The Wardei living in Tana River County originally came from Galla and they are known as Somali Galla. They fought with Somali clans and they were captured and sent to North Eastern to Somalia. About 150 years ago, the Wardei also fought with other Somalis and they defeated the Somali. They came back to their original land in Tana River but the Somalis still followed them. The North Eastern Somalis refused the Wardei to come back to Tana River and we were told that we will not go back unless our wealth is divided by half. The Wardei accepted to pay half and they came back after they paid half their wealth. The population of the Wardei in Tana River is 68,000 but they are still marginalized. The socio-economic wealth of the Wardei is cattle, camels and cows and they live in mobile villages. Most of the Wardei started burning charcoal because of the harsh drought which killed most of the animals.

The Wardei are found in all parts of Tana County and the other tribes think that the Wardei are very few. The reason for the conflicts is land.

There are six ranches in this county; three belong to the Orma and two belong to Pokomos. The problems we have are to do with land. In Tana River County Council, they leased out the land for 45 years without consulting the community. There are many cases in court over the management of the ranches. 35,000 hectares belong to TARDA. 230 households of Wardei Community were leaving where the TARDA farms are now. They were evicted without compensation at all. They do not have a place to live now. People are now squatters. About 400 students are not able to go to school. People are like Internally Displaced Persons (IDPs) and yet they do not get any form of assistance. Some people live at the police station. There are organizations that come to their aid. There are 222 hectares that were offered by the County Council of Tana River to these organizations. When all these things were being done, they did not consult with the Wardei Community. That is why the community is now full of squatters. All the grazing land was taken away.

Regarding job opportunities in the Government, there is no single person from the Wardei Community who has been given the opportunity. When you go to the District Commissioner's Office (DC), you will find only one person from the Wardei Community

working as a clerk. They recruit people without even putting up advertisements and announcements.

In 1995, ten locations were divided in this region between the Pokomo and Orma but Wardei was left out. The reason is that there was influence from some powerful leaders. There was a person known as Fares Kuindwa who was powerful at that time. So, the locations were divided amongst the communities with powerful leaders. So, Wardei Community did not get a single location.

The other issue is Kenyan citizenship. The community gets a lot of problems regarding this issue. As a tribe, the Wardei community does not get recognized by the Government. Other Kenyans have identity cards but not the Wardei. Whenever there is population census, a code is not created for Wardei community. The reason is that we have been swallowed by other tribes. Even getting an identity card is a problem. There are people in that community who have never had an identity card. Another reason for this problem is that there are no chiefs from the Wardei Community who can identify the people from that community. Most people were registered with green cards from Somalia long time ago. Sometimes, people are asked to bring birth certificates of their grandfathers. It is very difficult for pastoralists to have those documents.

Regarding politics, 1974 was the last time the Wardei community was actively represented. In 1986, KANU expelled all the leaders from the Wardei Community from the party. They were sent to the disciplinary committee in Nairobi. They were asked why they wanted to vie for an elective post.

We also have problems with security. If there are clashes, other communities are considered but not the Wardei community. Even in the registration of voters, our youth are not given opportunity to serve as registration clerks. So, we live as visitors in this Tana River County.

In 1992 there were clashes in this county. Wardei and Somali were fighting. In 2001, there was conflict between the Wardei and Pokomo communities. The fight is due to the fact that we are still considered like visitors here. In 2007, the conflicts were because of politics. Whenever there is a conflict, the Wardei community is marginalized by the Government.

Regarding health, there is not even one dispensary for the Wardei Community. You have to walk for over 25 kilometres to reach a dispensary called Mnazini.

The education sector has also suffered because there are very few teachers in the community. People are not given employment opportunities so that they can teach the community. We request this Commission to make sure that Wardei Community is recognized from today. We also need to be given some locations. The Wardei Community should also be assigned ranches. Registration of persons should also be encouraged here and officers should be sent to do the work. We also want equality in

employment opportunities for our youth. Dispensaries should be put up for the Wardei community. Our youth should also be considered to be employed as teachers. Thank you.

That is the end of my statement.

**Mr. Tom Chavangi:** Thank you, Mr. Dahir. Would you want to present this memo as an exhibit before this Commission?

**Mr. Dahir Bile:** Yes.

**Mr. Tom Chavangi:** Acting Chair, I request that this document be presented as an exhibit before this Commission.

**The Acting Chair** (Commissioner Namachanja): So admitted.

**Mr. Tom Chavangi:** Mr. Dahir, I will ask you a few questions. You mentioned MAT International. What is MAT International?

**Mr. Dahir Bile:** It is an organization that is part of Mumias/Butere project. It is a firm dealing with sugar cane farming.

**Mr. Tom Chavangi:** So, they came and took your land?

**Mr. Dahir Bile:** They took our land which was a settlement. So, the people were told to move.

**Mr. Tom Chavangi:** When were you moved out of your land?

**Mr. Dahir Bile:** The Minister for Lands, Mr. Orengo came twice to the place and offered some advice to the community.

**Mr. Tom Chavangi:** Were you compensated for having been moved out your land?

**Mr. Dahir Bile:** No.

**Mr. Tom Chavangi:** Which county are you in?

**Mr. Dahir Bile:** It is the County of Tana River.

**Mr. Tom Chavangi:** How many constituencies are there in the county and who is the current Member of Parliament?

**Mr. Dahir Bile:** The Member of Parliament is Hon. Danson Mungatana. He is not from Wardei Community.

**Mr. Tom Chavangi:** Who are your neighbours in the county?

**Mr. Dahir Bile:** Our neighbours are Orma and Pokomo.

**Mr. Tom Chavangi:** Is there peace between you and your neighbours?

**Mr. Dahir Bile:** There is peace but the problem is politics.

**Mr. Tom Chavangi:** During the last census, under which code, were you counted?

**Mr. Dahir Bile:** We are counted among other communities, so we do not have our code.

**Mr. Tom Chavangi:** Is it under Pokomos or Ormas?

**Mr. Dahir Bile:** I do not belong to any one of them.

**Mr. Tom Chavangi:** I do not think that what I am asking is understood. What I am asking is; under which code are you counted?

**Mr. Dahir Bile:** We are counted under other communities in Kenya.

**Mr. Tom Chavangi:** Thank you very much. Commissioners, I have no further questions for this witness.

**The Acting Chair** (Commissioner Namachanja): Ambassador, do you have questions for this witness?

**Commissioner Dinka:** Thank you, Mr. Dahir Bile, for your testimony. You have eloquently and very well presented the case of your community. I have one or two questions to clarify certain aspects that you raised. You mentioned that Wardei does not have any division, location or a ranch and yet you are 68,000 people in Tana River District. You have also said that you are scattered throughout the district and living among other communities. Could you tell me what the highest concentration is in one place of Wardei?

**Mr. Dahir Bile:** The highest concentration of Wardei is Bura and Tana Delta. In Tana Delta, they have two sub-locations.

**Commissioner Dinka:** Is there any sub-location in which Wardei are the majority?

**Mr. Dahir Bile:** They do not even have one sub-chief.

**Commissioner Dinka:** My question is; out of the 15 locations, is there one location where the Wardei are a majority? So, to say that you have been marginalized, then we need to clarify the facts. If there are 15 locations in Tana District, is there any location in which the Wardei are a majority and yet some other tribe has taken the chieftaincy?

**Mr. Dahir Bile:** We have settled in different locations.

**Commissioner Dinka:** Let me change my question. How many locations of the 15 are the Wardei the majority?

**Mr. Dahir Bile:** We have Sera Location and Bilisa Location.

**Commissioner Dinka:** The Wardei are the majority but you do not have the chieftaincy?

**Mr. Dahir Bile:** In Sera, they have a sub-chief.

**Commissioner Dinka:** So, in the remaining locations, the Wardei are a minority?

**Mr. Dahir Bile:** We are equal in number with other communities.

**Commissioner Dinka:** Do you have a breakdown of population per location? Can you give it to us?

**Mr. Dahir Bile:** The problem is that every location consists of one clan. I think we cannot get the data now but it is possible later on from the chiefs' office.

**Commissioner Dinka:** You mentioned about evictions. You said that your people had been evicted and are living like Internally Displaced Persons (IDPs). Was that eviction as a result of 2007/2008 post-election violence? If not, then what was the cause of the evictions?

**Mr. Dahir Bile:** It was not because of the post-election violence but because of TARDA Irrigation Scheme. They wanted people to move so that they can farm.

**Commissioner Dinka:** Who owns TARDA? It is unfortunate that we have just seen your statement.

**Mr. Dahir Bile:** It belongs to the Government.

**Commissioner Dinka:** So, is it the Government that evicted people so that they can irrigate the area?

**Mr. Dahir Bile:** Yes.

**Commissioner Dinka:** Thank you very much. I do not have further questions.

**The Acting Chair** (Commissioner Namachanja): When the Government took over this land for irrigation; did it find any individuals from the Wardei people living there?

**Mr. Dahir Bile:** There were 230 households of Wardei living there.

**The Acting Chair** (Commissioner Namachanja): Were these households ever compensated in any way or given an alternative land?

**Mr. Dahir Bile:** There was no compensation. People were just evicted without any consultations. We were given only Kshs200.

**Commissioner Dinka:** Kshs200 only?

**Mr. Dahir Bile:** Yes.

**The Acting Chair** (Commissioner Namachanja): When was this?

**Mr. Dahir Bile:** It was in 1992.

**The Acting Chair** (Commissioner Namachanja): What was the Kshs200 for?

**Mr. Dahir Bile:** It was fare or transport to where people were going. There was another person who shouted and was given Kshs1,500 as fare.

**The Acting Chair** (Commissioner Namachanja): When they had given you bus fare, did the Government direct you where to go?

**Mr. Dahir Bile:** They were told to go and join their families somewhere else. So, most people went to Danisa and Njira in Garissa.

**The Acting Chair** (Commissioner Namachanja): Who was representing the Government when they distributed the Kshs200?

**Mr. Dahir Bile:** People were given that money in TARDA offices but the eviction was done by the Government. The notice was given by the Government.

**The Acting Chair** (Commissioner Namachanja): Are you able to get the name of the officer who was in charge and who distributed the Kshs200 to each household?

**Mr. Dahir Bile:** I cannot say it now but we can find out from the TARDA offices.

**The Acting Chair** (Commissioner Namachanja): When they came to evict you, in what form did they come?

**Mr. Dahir Bile:** They sent a notice to the chief to tell people to move. When the chief came with the notice, most people left.

**The Acting Chair** (Commissioner Namachanja): You mentioned that the Wardei Community does not have any ranch? If you do not have a ranch, where do you graze your cattle?

**Mr. Dahir Bile:** We do not have anywhere to graze our animals. There is another plan to take over the land so that they can start an irrigation scheme.

The reason I mentioned these ranches is because there is another plant known as jatropha which they want to introduce. If jatropha is planted in this area there will be nowhere to graze, and yet we are pastoralists. That is a very bad plant. They are just briefcase ranges which do not have offices where we can present our complaints.

**The Acting Chair** (Commissioner Namachanja): Are they again targeting the ranch that the Wardei community graze their animals or is that general?

**Mr. Dahir Bile:** There is no benefit that the Wardei community can get from jatropha. There is no ranch that belongs to this community. They want to plant this plant in these five ranches, but it will not benefit the Wardei community. It will benefit the owners of the ranches.

**The Acting Chair** (Commissioner Namachanja): Thank you very much. There is a question from Ambassador Dinka.

**Commissioner Dinka:** Again, just to be very clear in my mind, when the Government agents came and told the Wardei to leave this place, did they have a settlement or they were just pastoralists? Did they have their wives and children?

**Mr. Dahir Bile:** They had children and wives. In fact, children were schooling at that place. There were almost 400 pupils at Gambar Primary School.

**Commissioner Dinka:** When they told the Wardei to leave, were they not told where to go or what to do?

**Mr. Dahir Bile:** The place that the Government sent these people is almost 30 kilometres from where they were evicted. It is a place known as “Baridi”. So, it is a problem even for children who were schooling. So, the community decided to scatter and go where it was suitable for their settlement.

**Commissioner Dinka:** They are integrated IDPs who are not living in camps now.

**Mr. Dahir Bile:** Most of them scattered from that place and joined other places, but they are still feeling the pain.

**Commissioner Dinka:** What is the number of people affected by this eviction?

**Mr. Dahir Bile:** There are 230 households with a population of 900 people who were affected.

**The Acting Chair** (Commissioner Namachanja): But from the Ambassador's question and your answer, do I understand that the Government identified a place 30 kilometres away from where you were living for the evictees to settle?

**Mr. Dahir Bile:** The place that the Government sent these people was not suitable even for their livestock and children. So, they decided to scatter or leave the place.

**The Acting Chair** (Commissioner Namachanja): Apart from the infrastructure, including schools for children and hospitals how was this place unsuitable?

**Mr. Dahir Bile:** There was no drinking water. There was insecurity and the grazing land was not suitable. Even if they were to develop the place it would take ten years.

**The Acting Chair** (Commissioner Namachanja): Thank you very much, Mr. Dahir for your testimony. Although we have received a memorandum from you, please, kindly rework it, bearing in mind some of the questions that we have asked you so that it will be clearer when we come to writing the report.

Leader of evidence, please, step down the witness and bring in another one.

**Mr. Tom Chavangi:** Commissioners, our next witness is Samuel Bonaya Buya; Hola No.15.

*(Mr. Samuel Bonaya Buya took the oath)*

For purposes of our record, kindly state your names.

**Mr. Samuel Bonaya Buya:** My name is Samuel Bonaya Buya.

**Mr. Tom Chavangi:** What do you do, Mr. Buya?

**Mr. Samuel Bonaya Buya:** I am a teacher.

**Mr. Tom Chavangi:** You are a teacher in which school and in which discipline of education?

**Mr. Samuel Bonaya Buya:** In Ngao Girls Secondary School. I am a Mathematics and Physics teacher.

**Mr. Tom Chavangi:** You presented a statement before this Commission relating to an incident that took place on 26<sup>th</sup> December, 1986 in relation to Joab Shari.

**Mr. Samuel Bonaya Buya:** That is correct.

**Mr. Tom Chavangi:** Kindly go ahead and present the statement before this Commission.

**Mr. Samuel Bonaya Buya:** I will not present what happened before 26<sup>th</sup> December, 1986 because I was not there. But in the morning of December, 1986 at around 6.00 a.m. some police officers came to our house while we were still in bed but my younger brother, Bonaya, who is here had woken up. They started cocking guns and I questioned whether it was normal for them to do that. They threatened to shoot but I just told them that that was not in order. They went out and headed to Mr. Isania Bula's house and shortly came with the District Officer, Mr. Castro Gitonga Mwai. They started beating us seriously without any reason. I will request my brother to explain his part. I was with my brothers Ipu Bonaya, James Bonaya and Komora Bonaya and my mother, Clara Bonaya. We were finally gathered in a central place somewhere near the house of a deceased man, Caleb Majao. That is where the real commotion begun. Without any reason, the DO hit me on my bowels until I fainted. My brothers and mother carried me to hospital, but when I regained conscious they left me to rest. Those policemen still came and took me where other people were. The DO hit me on the forehead with the butt of his pistol. He actually threatened to shoot me. He even held the trigger of his pistol. After that I did not know what was happening. I will ask him to present something on what happened, because I will leave out some other details. While blood was oozing from my forehead, I heard gunshots. Mr. Shari Joab who was an adult education officer was killed. Among the people who were gathered there forcefully, were my close friends. There was the Provincial Director of Veterinary Services, Dr. Joel Achiba. There was also a teacher from Wema called Hesbon Kitana and many others. After that incident that man was taken to hospital. All of us who had gathered there were ordered to march to Tarasaa. When we reached there we were made to sit for quite some time. Then a vehicle came and I was commanded to get into it. I entered the vehicle together with my brother, Joel Achiba and many others. When we reached Garsen Police Station they started molesting and hitting us. After some time riot policemen were brought. It was brought to my attention that I had called for a riot in the village that caused the murder of Shari Joab. One policeman actually asked: "Is this the *karate* person?" He was trying to actually exercise on me, but one of the police officers was merciful. We were put in a lorry after 2.00 p.m. and taken to Hola. We were 52 of us in a small cell without a window. For three days we were confined in that room. We were released on the seventh day. I remember the first night I slept while standing. People would defecate and do everything there. It was terrible torture. On the third day some were called out and others cowed.

I cannot remember the name of the District Commissioner then, but I was interviewed. He was accusing me of causing a riot. They were trying to force charges against me. Finally, when they were unable to get any charges, I was sent back to the cell together with all those who bore the name "Bonaya." There was James Bonaya, Amos Ipu Bonaya... I think there were about seven of us who remained while the rest were released. On 1<sup>st</sup> January, 1987, some CID officers came from Nairobi. They told us that whatever happened on 26<sup>th</sup> December was a chain of events that begun on 19<sup>th</sup> December. So, we were to give evidence of what we saw or heard individually. So, they took statements from each one of us and then we were taken to hospital. We were given P3 forms but, unfortunately, the police officers took them away from us. When they were finally required from me those police officers told me that they were with the Commissioner of Police.

Later on, of course, I went to Nairobi and we were asked in 1987 to appear before court because Castro Gitonga Mwai, at least, had at that time been arrested. We went to the bus station, we saw Castro Gitonga Mwai and we were to travel in the same bus, but he cancelled and travelled on another bus. We met outside the court. Unfortunately, all of us who went there were never called in court. They made their own deliberations. Later on, Martha Shari, who is the widow of the person who was murdered, was called. I think there was a civil case and she was given little money and that is how the case ended. Of course, it was a traumatizing event not only to me, but the others. There are those who witnessed Castro Gitonga Mwai take a gun from a police officer and kill Shari Joab. Because of bad governance they decided not even to follow the case. I believe that, that is a serious offence that was done against us. I believe that the Government has a responsibility of compensating some of those who were illegally... Some of us were in jail for those days in very bad conditions. We were also hit and as much as today, when it comes to my memory of people's names, sometimes I have a problem. I believe that, that could have been an indirect effect of being hit badly on the head. The Government decided not to aid me or get those P3 forms. I believe that it was due to bad governance and administration structure. Such things should not happen.

My recommendation to the Commission is that the widow should, first of all, be compensated appropriately. As far as I am concerned, Shari Joab who was born in 1948 was still a Government servant in 1986 and Kshs369, 000 cannot help anybody.

I was also traumatized and affected. Therefore, all of us should be compensated so that the Government can ensure transparency.

There are very many issues but I have come specifically for this particular issue, where the Government has done injustice against people.

**Mr. Tom Chavangi:** Thank you very much, Samuel for that very sad presentation. I will ask you a few questions to clarify a few issues. Do you know the reason the police raided your homestead?

**Mr. Samuel Bonaya Buya:** There are some issues that I personally witnessed. You also asked me to bring a co-witness because he also appeared in court. Why can he not be given an opportunity?

**Mr. Tom Chavangi:** My question is: Do you know the reason your homestead was invaded?

**Mr. Samuel Bonaya Buya:** What I learnt later, because I came later than 19<sup>th</sup> December, is that there were some army officers who were brought by the DO to a disco hall and they started mistreating the ladies there. So, there was some commotion and the DO must have promised to revenge. I learnt from his classmates later on that before he became a DO he was in the forces and so, he brought them. I do not know the real chain

of events because I had come for my rest and was not interested in knowing many things. I was at home most of the time when the event took place.

**Mr. Tom Chavangi:** Was this disco hall within your locality?

**Mr. Samuel Bonaya Buya:** Yes. I think it was about 200 metres from my home.

**Mr. Tom Chavangi:** When they raided your home, did you identify any of the officers?

**Mr. Samuel Bonaya Buya:** The particular one identified was somebody who came from my home village. He is Jillo Manasse who has since retired. He had several police officers. We saw several police officers not just from Tarasaa but also from Garsen.

**Mr. Tom Chavangi:** When they got into this disco you say that those police officers previously had harassed women. Were they ladies from your locality?

**Mr. Samuel Bonaya Buya:** Yes, they were from my locality. Let me clarify that the police officers were different from the army officers. It is the army officers who came to the disco on that particular day.

**Mr. Tom Chavangi:** Can you identify or mention one of the ladies who were actually harassed in that locality?

**Mr. Samuel Bonaya Buya:** As I said, I was not there on the material day. So, I would not like to give second-hand evidence. All I know is that there are several people who were affected. They are living today and if there was a court case instituted, they can always give their versions of what they saw.

**Mr. Tom Chavangi:** What I want to assure you is that the rules of this Commission are that we can admit any form of evidence; whether hearsay or not. We admit that evidence and then it is within us now to determine what is true and what is not true. So, any information that you give us is very relevant.

**Mr. Samuel Bonaya Buya:** Many times I do not want to deal with hearsay. But my interest is the events that took place from 26<sup>th</sup> to 1<sup>st</sup> and then when we were called to the court. It was a Government officer who had done those things.

**Mr. Tom Chavangi:** How badly were you injured?

**Mr. Samuel Bonaya Buya:** I am glad that today I have recovered with an exception of a very small mark. But I am grateful and I believe that it was the power of God that healed me. But, of course, I believe that there were some internal injuries but I have recovered. It is only that as I get old my memory is a problem.

**Mr. Tom Chavangi:** You say that before 26<sup>th</sup> December, you were not within the locality.

**Mr. Samuel Bonaya Buya:** It was before 19<sup>th</sup> December. I cannot remember the date I came, but it was between 19<sup>th</sup> and 26<sup>th</sup>.

**Mr. Tom Chavangi:** If you were not there before 19<sup>th</sup>, the police raided your village and then the DO picked on you and not the people who were there before 19<sup>th</sup>, why did the D.O come for you?

**Mr. Samuel Bonaya Buya:** I was at the university then and at the time it was said that the university students used to cause commotion in the village. I do not know why that was so.

**Mr. Tom Chavangi:** Did you see the DO shoot Shari?

**Mr. Samuel Bonaya Buya:** What I know is that he was hitting me with the butt of his gun, but when he moved away from me I heard the gunshot. When I looked back I saw Shari Joab fall down. About, the other details maybe.

**Mr. Tom Chavangi:** Was the DO holding his gun?

**Mr. Samuel Bonaya Buya:** Of course, all this time he had his pistol against me, but from witnesses, he took a gun from a police officer and then shot him. Then, of course, it was the police officer who was told that he was the one who murdered Shari Joab. But it was actually Castro Gitonga Mwai. Later on, I learnt that he did the same in Taita.

**Mr. Tom Chavangi:** Were you charged in court?

**Mr. Samuel Bonaya Buya:** No, they never sent me to court. I was only falsely imprisoned for six days and released on the seventh day.

**Mr. Tom Chavangi:** That is a very good explanation. Now, that you were forcefully imprisoned...

**Mr. Samuel Bonaya Buya:** Not only forceful imprisonment but also malicious prosecution and torture.

**Mr. Tom Chavangi:** Did you, at any time, prefer any charges against the State?

**Mr. Samuel Bonaya Buya:** Yes, I preferred charges against the State although justice is delaying. Justice delayed is justice denied.

**Mr. Tom Chavangi:** Did you prefer justice against the State from 1996? Have you thought about suing the State for forceful imprisonment, malicious prosecution, and torture and so on?

**Mr. Samuel Bonaya Buyu:** Once in a while that came into my mind. We have been dealing with a dictatorial Government. That is why Government officers could do anything they wanted. We had a dictatorial system.

**Mr. Tom Chavangi:** Later on you, Castro and other witnesses went to Mombasa. Martha and Casto got into Chamber A, a decision was made and she was paid Kshs300, 000. Were you there when those orders were given?

**Mr. Samuel Bonaya Buyu:** We were outside those chambers for some time with other people. We never got in. In fact, I thought that the payment was decided then. But, there was another civil case that was called. That is a correction. That was when Martha Shari was awarded Ksh300, 000 plus.

**Mr. Tom Chavangi:** The civil case was for what?

**Mr. Samuel Bonaya Buyu:** The civil case was for suing the Government for the killing of Shari. Having not attended the civil case I believe that she must have presented the information she had. I believe that the information is in the Government files.

**Mr. Tom Chavangi:** Is it possible for us to access Martha Shari?

**Mr. Samuel Bonaya Buyu:** Martha Shari can be traced. She was not called here but she gave some evidence.

**Mr. Tom Chavangi:** Is it possible to get her and hear her tomorrow?

**Mr. Samuel Bonaya Buyu:** She wanted to come but she was not given an opportunity to come here.

We have others who have other information like Gitana, the ones who saw him being killed. Another one is called Kanana.

**Mr. Tom Chavangi:** There is a special women's forum tomorrow and Martha might benefit from it. So, if you can give the contacts of Martha Shari to our officers, then she can be contacted so that she can attend the forum.

**Mr. Samuel Bonaya Buyu:** I can get the phone number right away.

**Mr. Tom Chavangi:** Thank you Samuel. Commissioners have no further questions on this.

**The Acting Chair** (Commissioner Namachanja): Sorry Samuel for what you and other members of your family went through. That is very unfortunate. This is what we have been hearing, that in some places one person commits a crime but communal punishment is meted on groups of people or the entire community. This is very unfortunate. I do not

know whether there are other people who were tortured on that particular day so that they can stand and we recognize them.

*(A man stood up in his place)*

*Pole ndugu.* We have some questions for clarification.

**Commissioner Dinka:** Thank you, Mr. Samuel Bonaya Buyu. I would like to join the Acting Chair in expressing my empathy for your pain and the suffering of your mother and everybody that you have mentioned in your statement. Having said that, to clarify issues, I want to go back to what the leader of evidence asked you earlier. You mentioned that the DO had brought in APs and other police officers who came from as far as Nairobi. For them to do that there must have been something going on. So, I would like to get from you the context outside what was going on in the area that made you and Mr. Shari to be victimized. It is very difficult for me to position that out of the blues that these people came and started rampaging all over the place. There must have been something that made them use excessive force or abuse power. There must have been something going on. Could you tell us what that was? Tell us what you heard and what you know.

**Mr. Samuel Bonaya Buyu:** As I said, the CID officers came from other areas. They conducted their investigations. I do not know whether they were riot police because I saw them in Garsen. I do not know under what conditions they were brought in. As far as I am concerned, I do not believe that there was any previous grudge by the Government against the people of that community. I am a law abiding citizen and I have not been taken to court for any crime. Even the last time I drunk was in 1985 or somewhere there. So, I do not know anything. All I heard is that he was in Golbante and he was moving up and down throughout the night. The previous night, there was a disco in Golbante and he was caught in that disco. They moved him in a bus. When he alighted from the bus - his name is Hilbon Gitana - they wanted to arrest him in the bus. He told them that he was in Garsen in Golbante with them and asked them how they could arrest him. He met some police officers who did not know him and they started beating him. They hurt him badly. I wanted to take his personal details. On 22<sup>nd</sup> November, I went to his home but he was unwell. He had blood on his uniform. He was caught with us and he was among those who were detained for six or seven days. Up to now, I do not know what the community could have done.

**Commissioner Dinka:** The fellow that you have mentioned here is a teacher and you are a teacher?

**Mr. Samuel Bonaya Buyu:** Yes, he was a teacher.

**Commissioner Dinka:** And the late Mr. John Shari was a teacher? Why do you think that the teaching community was being targeted?

**Mr. Samuel Bonaya Buyu:** It was not only the teaching community because we also had other Government officers. Education began taking place in my village in 1887. There

are several people who got educated. I heard that he had an agenda of all those who had gone to school. He got to some places but some people heard and ran away. The DO had that agenda. Some people knew him while some did not. Therefore, they ran away from their homes before that took place. But they got John Shari.

**Commissioner Dinka:** When you come to something to do with education, why did you have that kind of agenda? Can you guess?

**Mr. Samuel Bonaya Buyu:** I cannot guess.

**Commissioner Dinka:** Is he alive?

**Mr. Samuel Bonaya Buyu:** I believe that he is alive. I was made to understand by his colleagues that he finished university in 1979 because I know my cousin who finished in 1977. He told me that he was a third year when Shari was a first year. I learnt that he became a teacher briefly in his home school but after that, I do not know what he is doing. I know that if you want to conduct an internet search you should get his name.

**Commissioner Dinka:** Internet?

**Mr. Samuel Bonaya Buyu:** Of course, if you wanted to search his name you would find him.

**Commissioner Dinka:** I want to express my empathy. I have no further comments.

**The Acting Chair** (Commissioner Namachanja): Samuel, why was the name “Bonaya” targeted?

**Mr. Samuel Bonaya Buyu:** I do not know. My father was also an educator and died in 1970. He is the one who started the first secondary school in the county. Previously, he was the first African headmaster of Maril Girls. So, he was among the first two people who went to the university then. He was born in 1932 but he died in 1970 when he was young. That is all for now.

**The Acting Chair** (Commissioner Namachanja): Did you belong to any political movement in the university?

**Mr. Samuel Bonaya Buyu:** There was nothing like that. I have never identified with any political movement.

**The Acting Chair** (Commissioner Namachanja): Where then did they get the impression that you were the one who had...

**Mr. Samuel Bonaya Buyu:** After they did a search, the next thing was that they had to justify such an action. They had to look for a reason to cover the *mzee*.

**The Acting Chair** (Commissioner Namachanja): Thank you Samuel for appearing before us. I am sorry for what happened to you and your dear ones. Those are all the questions from us.

Leader of evidence, step down the witness and welcome the next witness.

**Mr. Tom Chavangi:** The next witness is Shadrack Jara Kofa. He is Witness No.16.

*(Mr. Shadrack Jara Kofa took the oath)*

**The Acting Chair** (Commissioner Namachanja): Mr. Shadrack, on behalf of this Commission, please tell us your names again.

**Mr. Shadrack Jara Kofa:** I am Shadrack Jara Kofa.

**Mr. Tom Chavangi:** You gave a statement to this Commission concerning your daughter who got lost. She disappeared in 2006. She is Janet Mayajara. You would like to speak about this daughter and the issues that you have brought concerning this area. Please proceed and explain to the Commission.

**Mr. Shadrack Jara Kofa:** Janet Mayajara disappeared in 2005 when I took her to Malindi to learn for a period of three years. I wanted her to learn computer, accounts and take a secretarial course. She completed her education in 2005. In May, 2006 she told her uncle that she wanted to go to Mombasa but the uncle refused. He told her to go back to college. When she went back to college, she told him that she wanted to go to Mombasa for a day and that she would report back on the same day. The head teacher told her to go back to class which was on the third floor and she complied. At 9.30 a.m. when they went for break to take a soda or a snack, she did not return. The head teacher said that probably she had ignored the directive and gone to Mombasa. They went on with studies until evening and the following day in the morning, nobody had seen her. Her uncle was called to college and informed that the girl had not slept in the college.

The uncle said that she had also not slept at home. They all said that she had asked for permission but they had refused. So, they said that they did not know where she was. I went there and the head teacher and her uncle explained to me what had happened. They told me that I had to report to the police what had happened because the village had many issues. They told me that my daughter was a grown up and even if I was going to search for her in relatives' homes in Mombasa, I still had to report the case to the police. The police officers told me to search for her and they said that they would continue to search for her. They told me that someone had picked her from college and he would mess her life. I went back to the police station after some time and they told me to search harder. They told me that if I suspected anyone to have ill motive, I should report him or her and they would assist me. However, I have not even heard of any rumours concerning her.

This is now the seventh year and we are still in shock. Malindi is a place where there are Europeans and Coast girls are taken away by the Europeans who are rich. The police

officers told me to take to them her photograph. I took eight photos to them and they told me that they would distribute them in all police stations. They distributed them and made an announcement over the radio station. Up to-date, I have not found her. I have even gone to see the PPO in Kilifi and when I went to him, he told me to talk to the people in Malindi. I sat at his desk while he told me that the issue has been dealt with very slowly although finally I would find my child. I have now told him that I suspect that the wealthy people who have big cars are the ones who took my daughter. They said that even if that was the case, if they found her, I would be helped. I told them that was okay with me. I have been to church for prayers but we have not been lucky.

I have come to this Commission to see if I can find my daughter. If you mention the issue of this girl to my wife, she faints and cannot even eat. Yesterday, I told her to accompany me to this Commission but she declined. I am better off because I am a bit strong. It is up to this Commission, if possible, to work hard and search for my daughter. This is the seventh year and there is no hint as to where she is. When she left to go to college, I thought that there was somebody who was waiting for her. If somebody was waiting for her, then that person would not have done so using public transport. That is the problem that I am facing. I have reported the issue at the police station and I even have the OB Number from Malindi. I go there every time to explain to the police that I have not found her. They tell me that I should continue searching but I do not have the money to do so. They have money, cars and everything they need. How can I continue to look for her? However, I will continue to look for her because I worked for the Government as a driver.

**Mr. Tom Chavangi:** Mr. Shadrack, I would like to direct you a bit concerning this girl. You have spoken about her disappearance and how she has not been found. You have tried to look for help from the Government but you have not received any help. In your statement, you had said that you wanted to speak about tourism and how it has brought problems such as that of Janet disappearing. What would you like to say regarding that?

**Mr. Shadrack Jara Kofa:** There are visitors who come to Coast Province as tourists. From what I have heard from the radio, they destroy the lives of the girls. I am not against a European marrying my girl but if it is possible, I would like the Government to look into such issues.

**Mr. Tom Chavangi:** So, are you saying that there is a danger brought about by these people coming out of the country?

**Mr. Shadrack Jara Kofa:** Yes. One of them is that the girls disappear from Coast Province. I have taken this to mean that she is one of them.

**Mr. Tom Chavangi:** Thank you. Would you like to submit a copy of this photograph as a record of the Commission?

**Mr. Shadrack Jara Kofa:** Yes. This is the third time I am giving it out. I have given it to Lydia.

**Mr. Tom Chavangi:** We will produce a copy and then give it back to you.

**The Acting Chair** (Commissioner Namachanja): Sorry *mzee* for what has happened. It is very painful and it is the worst thing that can happen to a family. When a family member dies, a ceremony is done. There is mourning, burial and the family members can get to terms with what has happened. But in such a situation, it becomes very difficult and we have the photo of your daughter. We will also try to do our best. We will communicate with institutions that are involved in this matter. We will share the information and in case of any feedback, we will get back to you. For now, I will ask whether Commissioner Dinka has any questions for you.

**Commissioner Dinka:** I have no questions. I simply want to join the Acting Chair and express that we empathize with you and your family the suffering you have undergone because of your child. This is a very difficult thing and with these circumstances, it becomes even more difficult. We pray that the almighty will comfort you and as the Presiding Chair has said, we will do all that we can to assist. Thank you for coming.

**The Acting Chair** (Commissioner Namachanja): Thank you leader of evidence. Please, step down the witness and bring in the next witness.

**Mr. Tom Chavangi:** Commissioners, the next witness is Coast/Hola No.7, Ali Batula Ali, who could not attend this session. So, he has sent the Vice-Chairman of the organization, Jonathan Muryasa to testify before this Commission.

*(Mr. Jonathan Muryasa took the oath)*

Please, Mr. Muryasa, tell us your name again.

**Mr. Jonathan Muryasa Mutava:** My name is Benjamin Muryasa Mutava. I am the Deputy Chairperson of an organization called “Tana River Women against FGM and HIV/AIDS”.

**Mr. Tom Chavangi:** You gave out a statement through Mr. Batula with regard to issues affecting the girl-child to explain to the Commission. Please, go ahead and explain. What are these issues that affect the girl-child?

**Mr. Jonathan Muryasa Mutava:** The issues affecting the girl-child in Tana River are circumcision or FGM, early marriages and other cultures which are outdated. The Tana River group started in 2007. The Marwa, Wardei, Wayaya and Warta communities are pastoralists and most of them go on with the FGM. You will find that most of the time after circumcision a girl thinks that she has become an adult. They end up getting married and if a girl was in school, she ends up dropping out. The girls get involved with matters that concern adults.

Once FGM has been conducted, girls bleed a lot and sometimes they end up dying. When such a person gets pregnant, during delivery, she takes a lot of time to deliver because the pathway from the uterus is very small owing to circumcision. Most of the time, you will find that the person concerned is not happy with the marriage rites because the sensitive parts of her body have been removed. Therefore, when she is having sex, she does not enjoy it. She does not like having sex and most of the time you will find that she is being pushed into having sex. You will also find that during conception of a baby, the girl has to be cut further so that her husband can manage to go through. You will find that a girl-child or a woman who has been circumcised does not live happily because she feels pain during sexual activities. When she is delivering a baby, she has to be operated on. FGM also leads to the death of the baby being born. FGM denies girls a chance to grow and develop themselves because they drop out of school and get married. Therefore, FGM is not beneficial to the community. So, we pray and ask the Commission, which is here today to help us so that those who are involved in this, for example, law enforcers, chiefs and other stakeholders can come together to ban FGM. This is because the vice is going on today.

**Mr. Tom Chavangi:** Thank you, Mr. Jonathan Mutava for the statement you have just given.

**Mr. Jonathan Munyasa Mutava:** I think that is all that I have concerning that issue.

**Mr. Tom Chavangi:** Thank you, for your statement. It is true that laws are there to guard children against FGM. There are also laws which look into FGM which were put in place last year. Last year, we got a chance to listen to some of the children who were circumcised in Nairobi. So, this thing that you have said today, are things that are being worked upon right now. You have done good to come to the Commission and tell us about the issues that are affecting the girl-child in this area of Tana River District.

How many girl-children are going through this vice?

**Mr. Jonathan Munyasa Mutava:** About 95 per cent of the pastoralist girl-children go through FGM. So, it is something which stops them from continuing with education and also some things which can benefit them in their lives. For sure, there are many of them. For example, if you take the case of Government officers it is very difficult to find a girl who comes from the cushite community. This is because when the girl undergoes FGM she thinks that she is an adult or the father thinks that she is an adult so, she is married early in life.

**Mr. Tom Chavangi:** I have no further questions.

**Commissioner Dinka:** In your recommendations, you mentioned that the Government should do this or that. Yes, the Government laws are very effective sometimes. However, in a matter like this which has its roots in cultural inheritance of the population, sometimes civic education and working on your own community, particularly on the women, can become more effective than Government laws. When the law comes out,

sometimes people go underground instead of doing it openly. That can be dangerous even from the health point of view. But if you use the existing law mechanisms, I am sure you have some kind of council of elders or women's movement, they could be more effective in persuading the parents, particularly the mothers not to send their daughters to undergo this kind of painful and unhealthy process. Do you do that or are you only dependent on what measures the Government takes?

**Mr. Jonathan Munyasa Mutava:** For sure, that is the reason why this "Tana River Women against FGM and AIDS" was formed so that we can continue to teach the community to understand and stop engaging in such outdated practices. Since 2008 to date, we have continued to educate and enlighten the community. The challenge is that some of these practices are done secretly, as the Commissioner has said. We are asking the Government to help us as we continue to educate them, so that we can win our fight against this practice.

**Commissioner Dinka:** Thank you very much. I have no further questions. Probably the Government can do much better by funding your organization more effectively by giving you resources, so that you can reach more population.

**The Acting Chair (Commissioner Namachanja):** Jonathan, let me also thank you for your efforts in ensuring that negative cultural practices that affect our children are dealt with, especially FGM. I am happy that you are the one who came to present. Maybe the elders who are participating in this public hearing will take you more seriously than if a woman came and presented. As Commissioner Dinka has said, these are cultural issues and we really need the support of elders.

In December we had children's hearings. Children from communities that practise FGM came and cried before this Commission that despite the fact that there are laws against FGM, it is the elders who are affecting them even more. In some places, there are even rehabilitation centres where girls who do not want to undergo FGM run to. They stay there for three months. When they get back home, they are taken by the elders and are cut forcefully. So, my prayer is that the recommendations you have given us, the presentation that you have done before the public where we have some elders, we hope that they will support you in this process. We also want our girl-children from this place to ensure that they grow, get education so that they participate in the leadership process. Apart from that, you have also highlighted the dangers which I hope that for us who are here, we will take seriously so that our children do not continue suffering. Thank you so much and God bless you.

Leader of Evidence, please, swear in the next witness.

**Mr. Tom Chavangi:** Commissioners, this is Coast witness No.11.

*(Mr. Islam Jillo Komora took the oath)*

**Mr. Tom Chavangi:** Could you tell the Commission your name again.

**Mr. Islam Jillo Komora:** My name is Islam Jillo Komora.

**Mr. Tom Chavangi:** Where do you live?

**Mr. Islam Jillo Komora:** I live in Faza.

**Mr. Tom Chavangi:** You had given out your statement to this Commission concerning land issues. Please, explain to this Commission concerning this land which you said there was an injustice which was done.

**Mr. Islam Jillo Komora:** My father was known as Kinaji although he is dead now. My eldest brother is called Omari Jillo. The other one who has remained is Mohammed Mbela Bakari Yaya. After they were left, they sold our land without my consent. I am older. One day I went to the farm in the village and I saw a tractor cultivating our land. When I confronted the person who was driving the tractor he told me he was told by Salim Bayusuf to occupy that land. When I asked him on whose behalf he was doing that, he told me that he had bought the land. I informed the chief about the issue. The chief advised me to look for elders from Gaza and discuss the matter with them. I parted with Kshs200 so that they could listen to my case. The following day one of the elders was called there, but he did not attend the meeting. He brought his younger brother to listen to the case. He said he could not speak because he had not been given money. I gave out extra money so that the issue could be discussed. When the case was finally discussed, they told me that I was supposed to buy a piece of cloth as compensation for my wrong deeds. I went back to the chief's office, but I did not get any direction. The chief summoned the elder to his office but he refused to go. So, I wondered what I was supposed to do. I went to my family members and informed them that our land had been sold. After this, we went to see the council of elders in a place called Wachakole. They said they would not discuss anything unless they were paid something for convening the meeting. They said that I had to pay money, so that I could get the land back. I told them I could not do that.

The sub-chief, Mohammed Panya, said they could not talk unless I gave out money. I decided to take the issue to my area Member of Parliament and see whether he could help me. I went to Tola Kofa who was then an Assistant Minister and told him about the issue. He went to Nairobi and did a search. After this, I did not get any information concerning the matter. Hon. Tola Kofa received a letter from Nairobi. I wanted people to sit down and find out where the problem was but nothing was done. I just kept quiet and really suffered. Wherever I go I do not get an answer. They say they are still investigating the matter. So, I went to the District Officer and explained to him everything. He told me that they would look into the matter. I have not received any response regarding that issue. I am just an oppressed person. I am poor. I do not have any strength.

They continued to investigate the issue. I have not received any response regarding that issue. Nobody has told me let us sit down, talk and see the way forward. There is nothing. So, I saw that I am just an oppressed person. I am poor. I do not have any strength. I can

be beaten. I can be taken to the cells without any reason. So, I just decided to sit and relax. So, when I heard about this Commission I decided to come and bring my complaints here. I explained the whole issue and showed the documents which I had with me. I would like to ask the TJRC to assist me if it is possible, so that I can get back that land. That is the issue that I am complaining about.

**Mr. Tom Chavangi:** I will ask you a few questions concerning your grandfather's land. Does the land which is in Tana River have title deeds?

**Mr. Islam Jillo Komora:** No, they do not have title deeds.

**Mr. Tom Chavangi:** How did it come about that you understood that this is your land?

**Mr. Islam Jillo Komora:** It is because this land belonged to my grandfather and my father who sired me.

**Mr. Tom Chavangi:** This wealthy person called Bayusuf; does he have a title deed for this land?

**Mr. Islam Jillo Komora:** I am not sure.

**Mr. Tom Chavangi:** How many children are you in your family?

**Mr. Islam Jillo Komora:** In my father's family, we are four men. I am the eldest in my stepmother's home.

**Mr. Tom Chavangi:** So, that means that your father had two wives?

**Mr. Islam Jillo Komora:** Yes.

**Mr. Tom Chavangi:** Had your grandfather's land been inherited by your father and his two brothers who are your stepbrothers? How many brothers did your father have?

**Mr. Islam Jillo Komora:** They are four and all of them are supposed to inherit this land.

**Mr. Tom Chavangi:** How many acres is the land?

**Mr. Islam Jillo Komora:** I cannot confirm how many acres it is because it was not measured.

**Mr. Tom Chavangi:** So, this wealthy man took the whole land or only your portion of land?

**Mr. Islam Jillo Komora:** He took only our portion of land where the elders had sold to him. He took the portion which was inherited by our father.

**Mr. Tom Chavangi:** This means the other section which you are supposed to inherit also?

**Mr. Islam Jillo Komora:** Yes.

**Mr. Tom Chavangi:** At this moment, where do you live and which land are you farming now?

**Mr. Islam Jillo Komora:** The land where we are farming is near the river. The top half of it was sold. The small part which goes to the river was the one which we are farming.

**Mr. Tom Chavangi:** What size is it?

**Mr. Islam Jillo Komora:** I did not measure the size of the land. I do not have the equipment to measure it and know what size it is.

**Mr. Tom Chavangi:** Is there any time when you took steps to go to the court to stop the land from being grabbed?

**Mr. Islam Jillo Komora:** I went to court. I followed the procedure and I was told that they were not involved in those issues. I was told to go to the council of elders in Gaza.

**Mr. Tom Chavangi:** What court was it?

**Mr. Islam Jillo Komora:** There is a Government court here where there is a Judge who sits to listen to various cases.

**Mr. Tom Chavangi:** What is the name of the court? Is it Hola?

**Mr. Islam Jillo Komora:** Yes, it is Hola.

**Mr. Tom Chavangi:** You said a rich person is disinherit the local communities. This is a matter that can easily be decided by the courts under the current Constitution. But you can clearly see there are issues of laxity in terms of administration of justice because there are letters from the MPs to the DCs and the DOs to correct the situation. However, nothing has been done for the last 10 years. I have no further questions for this witness.

**The Acting Chair** (Commissioner Namachanja): Maybe before I ask Ambassador Dinka, you are our legal advisor. What is your advice to this Commission?

**Mr. Tom Chavangi:** The advice is clear. You cannot sell ancestral land without the consent of the persons living there. So, this witness was not consulted and that is why he is seeking redress for that particular land to be reverted back to them because they have been disinherited. Since that process in itself is illegal, they can move to court for the Land Control Tribunal or any administrative body to ensure that, that land is reverted back to them.

But considering his level of poverty, I do not think he has that capacity. So, issues of legal aid can come in as provided for in the Constitution. If people cannot afford to litigate using their money, then legal aid can be provided to them so that they can mitigate on these issues.

**The Acting Chair** (Commissioner Namachanja): Commissioner Dinka?

**Commissioner Dinka:** I have no questions for the witness. However, I would like to thank him for his testimony. I think his testimony will form part of the injustices that we are recording. Do not give up. Follow up your case in court. I would like to assure you that we have heard similar stories in a number of places where we have visited. As the Presiding Chairlady said, we will make note of this in our report and final recommendations. We will do appropriate recommendations on issues which includes your testimony. Thank you.

**The Acting Chair** (Commissioner Namachanja): Thank you, Mr. Jillo. I also do not have any questions for you. This is a clear case. Just to find out, how is Mr. Bayusuf making use of this land?

**Mr. Islam Jillo Komora:** He had planted mango trees. During the *El Nino* rains the trees sank and withered. I do not remember the date when this occurred.

**The Acting Chair** (Commissioner Namachanja): Our Leader of Evidence is a lawyer. Maybe at the end of the session you can have a one on one with him, so that he can guide you. Thank you and sorry for what you have gone through.

**Mr. Tom Chavangi:** Our next witness is Hola No.10. By the time we were taking his statement he had not presented anything to us. I believe he has something that we can use for today's purposes.

*(Mr. Dayow Ahmed Mohammed took the oath)*

**Mr. Tom Chavangi:** Could you tell the Commission your full name again?

**Mr. Dayow Ahmed Mohammed:** My name is Dayow Ahmed Mohammed. I am from Tana Delta District.

**Mr. Tom Chavangi:** *Umekuja kuelezea Tume kuhusu makabila 15 ambayo wewe ni mwenyekiti wa hayo makabila.*

**Mr. Dayow Ahmed Mohammed:** There is a problem that we have faced for a long time. We have faced injustices. We have even presented this to the district offices of the Government. We have suffered a lot.

**Mr. Tom Chavangi:** *Endelea kutuelezea kuhusu hizo dhuluma ambazo makabila haya 15 yanapata.*

**Mr. Dayow Ahmed Mohammed:** In 1990, we the community of Galjir, we live in Garsen. There was a notice that came. We as Galjir we are among the Wardeis. We were living within the Wardei Community who were living in Darisa. The Wardei were given the screen card. The screen card indicated which clan they belonged to. The screen card registration was among the clanism. As Galjir, we did not belong to any clan within Tana River. We are Galjirs alone.

The Galjir Community was wealthy in terms of cattle, goats and sheep. We were living in mobile villages because we normally go where there is pasture and water. Some of our people were arrested for no reason at all. These men and women were arrested. They were told that they must give out their wealth, that is, at least some of their animals. They were forced to give out their identity cards, almost 50 of them. The DO is the one who took the 56 ID cards. This incident that happened in Danisa with this clan of Galjir was broadcasted in the television.

We requested from the Government at least to be compensated for the animals that were taken from us. We requested the Government to be paid. So, the Government told us to just wait as it was thinking of what to do about our situation. We went up to Nairobi to see Mr. Yusuf Haji the Minister of State for Provincial Administration and Internal Security. So, we went to the office of Yusuf Haji but we were told to just wait and that the Government was still thinking about us. So, we just left. In January, 1999, we were in Danisa. Seventy children were schooling in Danisa Primary School. These children belonged to Galjia community. There was another man known as Hussein Dadhow who was injured by shiftas in a road raid. The Government came with force in our villages and beat up people thoroughly. Some girls and women were raped. The villagers were evicted forcefully from the place. We were evicted forcefully and taken to a place known as Ngumo that is our current settlement area. Some of our people were in Mombasa looking for lawyers to represent them so that they could claim for compensation. The human rights commission represented their issues and claims. The reporters came there to see what had happened.

In fact, they came to take photographs where this problem had occurred while the security agents were thoroughly beating the people. So, this thing was taken to the High Court and the High Court said that these people should not be ejected from that place. By that time the Member of Parliament for Galole Constituency came to that place and the Human Rights officers and the representatives of the human rights also arrived at the place. So, they said that these people have to go to up Somali because they were not wanted here. So, the court said “no” and they refused and said “no, you cannot do that, these people have a right to live in this place. So, they are currently at Naurumu and that was January, 1999.

In the year 2003, there was a helicopter of the Armed Forces...The DC at that time also accompanied them and there were sniffer dogs accompanying them. The helicopter

disrupted the place and we lost some cows and others broke their legs due to that harsh operation. The Government shied its eyes away from the issue that had caused disruption which had happened at that moment.

When we went to the DC's office and complained about the KPR guys, at least, we could employ our own security agents, those are the KPR. So, the guys were sent back to the police for the second time. They requested for the guns that they had been given. Again, they went back to the High Court, to the lawyer to report the issues and the letters were sent to the then District Commissioner. The DC said that they could not repeat such a mistake again. Therefore, at least, they begged to leave those issues. The lawyer said that, if at all the DC was saying that the matter be left. By that time the Member of Parliament was Danson Mungatana.

With regard to the issues of the helicopter and the illegal operation and, other issues that had occurred, he did not utter any word and he did not assist the community. When he came from the DC's office, the current DO was there. On the 28<sup>th</sup> of this month, there was a vetting committee for civil registration of the Identity cards. So, every committee should belong to the vetting committees. The DC said that you could not allow any committee from the Galjir community, who were the Somalis because they did not belong to these communities in Tana River. So, as the Chairman of Galjir Community, I went to the DC to ask why he said like; that we cannot belong or be among these vetting committees.

As you are aware, our children are here, they were born here and we have the right to join any committees that are formed in this place. He said that we do not belong to Kenya and that we do not have any code number in Kenya. So, he said, that during the population census of 2009, we the Galjir community were 700,000 people but those who are in the area are 350,000 people. So, we said that we were counted in the district and therefore, we belong there and any developmental issues or anything that comes to the people we deserve to be given because we belong to the community. And we asked him why he refused us to be part of these vetting committees. So the DC said that the issue was to be sent to the Provincial Commissioner and then he could answer me.

The 56 persons who were being taken from those people did not get their identification cards. Those who were alive did not get their identification cards back. So, it is still the same matter that is before the High Court, the issue of identification cards. The issue is still pending before the High Court.

So, before the TJRC Commission today, I as the Chairman of the Galjir Community, present to you the injustices facing the Galjir Community since 2003.

In 2006, I was again elected Chairman of fifteen clans or communities. These people are still living at the Tana Delta and they are the majorities. We are being marginalized and therefore, forgotten among the major communities. These communities do not have chiefs, sub-chiefs and any workers in the civil service or in the Government, in this county. They are just like parasites among the people depending on others. When the

Government is having meetings like the District Development Committees (DDC), they do not even consult or involve these communities. They have all the amenities, and when the funds come they do not even consider these young people from the community. We are not considered!

So, I am urging the Commission that we are fighting for our rights and we want to have justice in these counties. We request that we get involved in any issues benefiting the communities and any development issues in this district through you, Commissioners.

In Kenya, both the minority and majority communities have rights like the rest. So, we request that we the minorities be considered in any development issue in this county.

Thank you. This marks the end of my presentation. We will wait for your consideration.

**Mr. Tom Chavangi:** Thank you very much for your presentation. Commissioners, I have no questions for this witness.

**The Acting Chair** (Commissioner Namachanja): Thank you very much. I just have a few questions for clarification.

Mr. Ahmed Mohammed, at one point you said that your livestock was taken away. I just want to find out who took them and why.

**Mr. Dayow Ahmed Mohammed:** It was during the operation that all my cattle were raided because every thug and many other criminals and part of the Government were involved. People saw that those were free things to be stolen from us. Everyone was an enemy against this clan.

**The Acting Chair** (Commissioner Namachanja): The operation was in response to...

**Mr. Dayow Ahmed Mohammed:** When they went to Ngumo, it was not a suitable place for them because seventeen ladies were attacked by crocodiles. In fact, we have the evidence even now; the place was not suitable for them. It was a place for...

**The Acting Chair** (Commissioner Namachanja): You mentioned that identification cards for 68 people were taken away. Why were they taken away?

**Mr. Dayow Ahmed Mohammed:** We were told that we are not Kenyans and I think that was the reason. In fact, these people had everything that time. They had screened cards and everything. So, they were told that they were not Kenyans and their identification cards were forcibly taken from them. I have documentary evidence for that.

**The Acting Chair** (Commissioner Namachanja): Maybe if I can use an example; for how long have your family members lived in Kenya?

**Mr. Dayow Ahmed Mohammed:** I was born in Kenya and my father was also born here in Kenya.

**The Acting Chair** (Commissioner Namachanja): Where in Kenya?

**Mr. Dayow Ahmed Mohammed:** In Wajir.

**The Acting Chair** (Commissioner Namachanja): How about your grandfather?

**Mr. Dayow Ahmed Mohammed:** I was young at that time and I cannot say about my grandfather.

**The Acting Chair** (Commissioner Namachanja): Thank you. Do you have part of your community living elsewhere other than in the neighbouring countries?

**Mr. Dayow Ahmed Mohammed:** They are in Wajir and Garissa Districts and many other places in Kenya. Others are in business men within the country; Lamu, Nairobi and everywhere in this country.

**The Acting Chair** (Commissioner Namachanja): How about other countries like in Ethiopia and Somalia?

**Mr. Dayow Ahmed Mohammed:** They are both in Somalia and Ethiopia.

**The Acting Chair** (Commissioner Namachanja): When you compare those ones in Somalia and Ethiopia, where are the majority? Are they here in Kenya, Ethiopia or Somalia?

**Mr. Dayow Ahmed Mohammed:** According to the figures we have, the majority are in Somalia.

**The Acting Chair** (Commissioner Namachanja): What is the impact of the fact that your community members are not represented on the vetting committee for IDs?

**Mr. Dayow Ahmed Mohammed:** It is a negative impact to them because there are children who completed their secondary schools that they want identification cards. So, if one is not among the members of the communities that are vetting, they cannot be registered and get issued with identification cards. This is because we are not appearing in the vetting committees. So, when the members of the vetting committee belong to other communities and if a child goes before the vetting committee, those members cannot know which clan or community the child belongs to. The only person who can identify the child is the one from our community or clan, in Galjir.

**The Acting Chair** (Commissioner Namachanja): Thank you so much. I think those are the only questions I had. We shall analyze your memorandum further. Thank you so much for coming before this commission. We shall do our best.

Leader of evidence, please step down the witness and call in the next one.

**Mr. Tom Chavangi:** Commissioners, according to my list, our second last witness is No. 18.

*(Mr. Abdulkadir Abdi Tido took the Oath)*

**Mr. Tom Chavangi:** Commissioners, we are ready to proceed.  
Mr. Abdulkadir, Abdi Tido, please tell the commission your full names.

**Mr. Abdulkadir Abdi Tido:** My names is Abdulkadir Abdi Tido

**Mr. Tom Chavangi:** Mzee Abdulkadir Abdi Tido, where do you stay?

**Mr. Abdulkadir Abdi Tido:** I live in Madogo, near Madogo Secondary School.

**Mr. Tom Chavangi:** Abdulkadir Abdi Tido, you had given a statement to this Commission about the injustices you underwent by way of police brutality. Kindly, present that statement before this Commission.

**Mr. Abdulkadir Abdi Tido:** I was a young boy looking after goats, and that is when I met this brutality. While I was looking after goats, there were some army men who were doing their practice and that is, when I came across this calamity. I took it up and played around with it and took it to the well where the goats were drinking water.

When the goats finished drinking water, I hit this thing with some hard stone. I remember I took it near a stone and when I was playing about with it, I cannot remember exactly what happened to me. I collapsed and after that, I realized later on that the people whom I was with had already run away. When I tried to jump I realized that my hands were badly injured. I remember my hands were broken and my ears were deaf, I could hear nothing. I was with a certain boy and I realized that I was hurt by what I was carrying and I asked the boy to carry my shoes and we tried to go home. I did not see that I had any injuries that time, but the bones were so open. When I took about three steps that is when I started believing that I was not able to walk. So, we could sit a bit and then walk; finally we reached home.

When we reached home, there were only women who were at home, some men were traced and we were taken to the police station. I cannot remember what the police asked me because I was bleeding profusely and I collapsed. They just wrote on a piece of paper and told us to go to hospital. When we reached hospital the nurse asked me some questions about how I got injured. The police explained that I was injured where they carry out their practice and that is where I got hurt. The nurse asked whether that place was closed or open. The police officer explained that it was closed with barbed wire around it and it was closed, but there was no door.

The police officer lied because there was no barbed wire around there. I was admitted to hospital and the next day I underwent some operation where my arm was amputated. It took me long to get cured because the operation was done two to three times. They had to take some piece of skin from another part of my body to cover the arm and that is when I got cured.

**The Acting Chair** (Commissioner Namachanja): Excuse me! Could the interpreter interpret in the first person and not the second or third person, please?

**Mr. Abdulkadir Abdi Tido:** Thank you. I am corrected.

**The Acting Chair** (Commissioner Namachanja): Continue.

**Mr. Abdulkadir Abdi Tido:** When I got cured, the P3 was handed over to the police and then the police filed it. When I was released, we took it to the police. They took it from us and then they told us to go. We left the place and then my father was not conversant with such things. By then I was so young and we just left like that.

Many years after, when I grew up and became a man, I asked the police where the P3 was and they told me that it was at the police station. This was initially a police post then and it was taken to Bura Police Station. He told me that he was calling another police officer who was to look for it. After sometime he told me that it was lost.

When I asked what happened with it, he just told me that there were so many forms that got destroyed by water and he did not know whether mine was one of them. I just never wanted to look for it more than I did. I gave up and left it to God. After sometime I met this Commission and one of the officers assisted me write a statement. What I told the officer from this Commission is that, it is these people who kept that thing there that hurt me.

**Mr. Tom Chavangi:** I am sure that is not the way they were trained. They must have been trained how to keep those things safely.

**Mr. Abdulkadir Abdi Tido:** I want the commission to take up this matter and give me any type of assistance that they can be able to give me. This is the much I can say.

**Mr. Tom Chavangi:** Thank you very much Abdulkadir. This is a very sad story for a young man like you. I will ask you whether you ever came to know what that object which exploded was.

**Mr. Abdulkadir Abdi Tido:** I just saw it to be an object. I never thought it was anything harmful. I thought it was a bottle. When I was hurt is when I realized it was a dangerous weapon. I was not educated then, but had I been a grown up, I would have not played with it.

**Mr. Tom Chavangi:** You said that the first report was made at Madogo Police Station.

**Mr. Abdulkadir Abdi Tido:** Yes. It was at Madogo Police Station.

**Mr. Tom Chavangi:** When that object hurt you, you went to Madogo Police Station?

**Mr. Abdulkadir Abdi Tido:** I was taken to the chief and the chief took me to Madogo Police Station.

**Mr. Tom Chavangi:** Did they give you some reference number at Madogo Police Station?

**Mr. Abdulkadir Abdi Tido:** They never gave me a number.

**Mr. Tom Chavangi:** Can you remember the name of the chief?

**Mr. Abdulkadir Abdi Tido:** The chief was called Gutokole Angau and he is now deceased.

**Mr. Tom Chavangi:** You also said that the P3 Form was given to you by the police officers. The police officers were from which police station?

**Mr. Abdulkadir Abdi Tido:** They were from Madogo Police Station.

**Mr. Tom Chavangi:** They were police officers from Madogo Police Station. But I remember you mentioned that you went to Bura Police Station to look for information.

**Mr. Abdulkadir Abdi Tido:** I went to Madogo Police Station and they referred me to Bura Police Division because Madogo Police Post was under Bura.

**Mr. Tom Chavangi:** Thank you very much. I have no further questions for this witness, Commissioners.

**The Acting Chair** (Commissioner Namachanja): Pole Sana, Bwana Abdulkadir Abdi, for that unfortunate incident. A sad aspect of it is the policemen trying to conceal and deny responsibility for what happened.

**Commissioner Dinka:** Thank you very much, Abdikadir for your testimony. I have two questions. How old are you now?

**Mr. Abdulkadir Abdi Tido:** I cannot exactly remember my age. This is because we used the rain seasons.

**Commissioner Dinka:** How many years?

**Mr. Abdikadir A. Tido:** I am 30 years old presently.

**Commissioner Dinka:** Unfortunately, it happened to you when you were 12 years old. How has it affected your livelihood, your working, farming and doing things for yourself? Have you been able to farm well?

**Mr. Abdulkadir Abdi Tido:** I used to work with my own hands.

**Commissioner Dinka:** Have you been able to do what you want to do in life with your hands?

**Mr. Abdulkadir Abdi Tido:** I cannot even put on my clothes properly.

**Commissioner Dinka:** Was it amputated at the elbow, or where was it amputated?

**Mr. Abdulkadir Abdi Tido:** It was amputated at the elbow.

**Commissioner Dinka:** Have you received any assistance?

**Mr. Abdulkadir Abdi Tido:** No. I am not so concerned with such things. I never went to the Government to ask for any assistance.

**Commissioner Dinka:** So, in your estimation, what do you think the Government should do for you?

**Mr. Abdulkadir Abdi Tido:** I would like the Government to compensate me for the loss of hands.

**Commissioner Dinka:** What do you think would be the right type of compensation?

**Mr. Abdulkadir Abdi Tido:** I do not want to suggest. My children are going to school, so it is what the Commission and the Government sees. If the Government guarantees the education of my children, then it will be okay with me.

**Commissioner Dinka:** You were 12 years old, but do you remember who paid your hospital fees?

**Mr. Abdulkadir Abdi Tido:** It was my father.

**Commissioner Dinka:** I have no further questions. I am so sorry that this happened to you at that very tender age. Thank you.

**The Acting Chair** (Commissioner Namachanja): Thank you Abdi, I also do not have any questions for you. I thank you for coming to share your painful story. We shall take your recommendations very seriously.

**Ms. Chidodo:** Leader of evidence through the Chair, I would like to correct. It was the wrist and not the elbow. The hand was cut from the wrist. Thank you.

**Mr. Tom Chavangi:** Commissioners we have our last witness who was not in the cause list. He is called Lale.

*(Mr. Lale Tari took the oath)*

Mr. Lale, again, for the record state your name.

**Mr. Lale Tari:** My name is Lale Barisa Tari.

**Mr. Tom Chavangi:** Mr. Lale, there is a statement before this Commission which you have just presented. Go ahead and present it before this Commission.

**Mr. Lale Tari:** In 1966, the Government allocated 1.5 million hectares to foreigners. Today, the land belongs to the Government. It is the Galana ADC ranch. This is our prime grazing land. It is our only open grassland. We are today squeezed in bushy land that is fully overgrazed.

The present Minister for Lands gave the biggest blow to us by issuing a cattle dip to the Tana and Athi River Development Authority. This is the most important land. Its loss will disintegrate us completely. The action of the Minister is ill-intentioned, sadistic, and malicious. It is meant to force us on our knees. Another burning issue is Kipao Irrigation Scheme.

The Government in 1970s created village irrigation schemes. Our chiefs who were illiterate were cheated, bribed and manipulated to sign off thousands of acres for the scheme. We were told that the land belongs to Pokomo. It is unfair that our villages such as Kipao were farms of other people. Dr. Krapt being the first mission station in 1986. The first students came from Kipao. It is very sad that we are made squatters on our own land.

With regard to ethnic clashes, the Government oppresses us, whenever there are such happenings. In 2001, the Government took sides. Many of our cattle were slaughtered under the supervision of the then District Commissioner, Mr. Soita Wasike. Many of our people were killed and arrested.

Mr. Wasike never visited our villages. He was seen in all Pokomo villages. We were evicted from villages such as Tarassa, Golbanti and Nduru. It is our prayer that the Commission summons Mr. Wasike specifically to explain how 800 of our cattle were slaughtered at Ngao village. The cattle were eaten by security officers and Pokomos on orders from Mr. Wasike.

With regard to identity cards, the Government always denies us these documents. When a Mr. Gotho from our County headed the National Registration Bureau, all Oromas working for the department were sacked. We do not get identity cards. We only get

waiting cards when we apply. This is because none of our people work in that department. We can furnish the Commission with copies of the waiting cards.

We ask your Commission to summon Mr. Gotho to explain the criteria he used to sack Oromos who worked with his department.

On human rights, in 1989, two brothers; Rago and Osman Bitacha were arrested, handcuffed, and thrown into river Tana and sprayed with bullets in the presence of the whole of the Odoli village.

The parents of the young men are living in the same village, very frustrated. On the same day, Buranini Village was burnt. During the same time, Mangu Ganyo, Ashungi Balesa, were arrested, at Didabeba village in Lamu County by officers from Garsen police station. They never reached Garsen Police Station; they were shot at a known place, between Witu Town and Garsen. During the time, the District Commissioner was Mr. Peter Ndemo. He gave orders to go and hunt down armed bandits. He arrested our elders, gave them notice to keep peace. The bandits hunted elders at night and the police hunted the elders during the day. We ask the Commission to summon Mr. Ndemo to explain, why he ordered the killings.

**Mr. Tom Chavangi:** Thank you, Mr. Lale. You must be an Orma.

**Mr. Lale Tari:** Yes, I am.

**Mr. Tom Chavangi:** There is the Galana ADC farm, Kipao Irrigation scheme, and now there is TARDA. Have you ever benefited from these projects?

**Mr. Lale Tari:** No.

**Mr. Tom Chavangi:** What you are saying is that these projects have pushed you from your land?

**Mr. Lale Tari:** Yes, these projects have really disturbed us.

**Mr. Tom Chavangi:** Where do you live now?

**Mr. Lale Tari:** I live in Kipao.

**Mr. Tom Chavangi:** The whole community lives at Kipao. How big is the land that you are occupying now?

**Mr. Lale Tari:** We live at the other side of the river, and then some 10,000 hectares, where we graze our cattle is the land that is under question.

**Mr. Tom Chavangi:** You say it is not enough.

**Mr. Lale Tari:** It is not enough. If it will be allowed for irrigation, we will be displaced.

**Mr. Tom Chavangi:** Who wants to take this land now?

**Mr. Lale Tari:** The Government wants to create an irrigation scheme without consulting us at all.

**Mr. Tom Chavangi:** You mentioned a Mr. Godo, former head of the National Registration Bureau. Was heading in Nairobi or ...

**Mr. Lale Tari:** He was heading Nairobi.

**Mr. Tom Chavangi:** He was the head of the National Registration Bureau in Nairobi. You also mentioned there were two young who were thrown into a river as the village was attacked.

**Mr. Lale Tari:** The people watched when the officers were doing that work. The village was not attacked. It was another village that was burnt.

**Mr. Tom Chavangi:** Could you at any given time know the reasons as to why the two young men were killed?

**Mr. Lale Tari:** Well, I do know because it was said these men were bandits. Mr. Ndemo was telling us to hunt them down.

I think the work of looking for bandits is the work of the Government, and not our work.

**Mr. Tom Chavangi:** Was there banditry during that time.

**Mr. Lale Tari:** Yes.

**Mr. Tom Chavangi:** Thank you very much, Commissioner, I have no further questions.

**Commissioner Dinka:** Thank you, Mr. Lale for your testimony. Let me start with the land issue. You said this land was given in 1966. Was it being sold to foreigners at Kshs1.5 million per acre? What do you mean by foreigners?

**Mr. Lale Tari:** These were Europeans from USA and Britain.

**Commissioner Dinka:** Are they still farming it?

**Mr. Lale Tari:** No. They left the place. The Government ordered them to leave and they left.

**Commissioner Dinka:** Is this a Government farm?

**Mr. Lale Tari:** It is under a Government corporation called Agricultural Development Corporation (ADC).

**Commissioner Dinka:** I see. Have they compensated you in any way?

**Mr. Lale Tari:** Not at all.

**Commissioner Dinka:** You said the Minister for Lands has given title deeds to TARDA. I do not know, but our evidence leader might guide us on this. Will that not conflict with the new Constitution?

**Mr. Lale Tari:** The information I have so far, is that Mr. Orengo gave a title deed to ADC. This is what I have gathered.

**Commissioner Dinka:** Have you checked?

**Mr. Lale Tari:** I do not think I have the capacity to check, because I cannot talk to those offices from where I live. But it is our worry. That is why the community thought it suitable to come and explain to you here.

**Commissioner Dinka:** How does the community benefit from TARDA? Is there anything that the local population benefits from it?

**Mr. Lale Tari:** I do not think any local person benefits. I remember there are only two people who were employed by TARDA out of the entire place.

**Commissioner Dinka:** The same thing is true in Kipao irrigation.

**Mr. Lale Tari:** Kipao irrigation has now been abandoned. They want to recreate it. This is our land. We are not looking for jobs there. We want to be tenants. We want to own those rice farms. No consultation was done. We were just told "you people do not own this land".

**Commissioner Dinka:** Let me ask you a question since I am familiar with pastoralist issues in other countries. If the Government asks you to settle on this scheme as farmers, will you accept it?

**Mr. Lale Tari:** Our people could accept it. However, they have never been asked such questions.

**Commissioner Dinka:** So, the pastoralists are ready to be settled.

**Mr. Lale Tari:** We are ready to take part. I am not a nomadic pastoralist.

**Commissioner Dinka:** Not you. I am talking about your community.

**Mr. Lale Tari:** My community can accept it, if only they get consulted.

**Commissioner Dinka:** My other question is this DC, Mr. Soita Wasike you said he ordered these people be thrown into Tana River.

**Mr. Lale Tari:** That was Mr. Ndemo.

**Commissioner Dinka:** The slaughtering of the cattle at Ngao. That is the ethnic clashes. Were there ethnic clashes when they came, raided and took away your cattle?

**Mr. Lale Tari:** Yes, there were ethnic clashes by that time, and the cattle were just raided at Tarasa, four kilometres away from Ngao, in the presence of very many police officers.

**Commissioner Dinka:** The ethnic clash was between...

**Mr. Lale Tari:** Ormas and Pokomos.

**Commissioner Dinka:** The cattle that were taken away belonged to Ormas.

**Mr. Lale Tari:** Ormas cattle were taken by Pokomos.

**Commissioner Dinka:** They were slaughtered.

**Mr. Lale Tari:** They were slaughtered without us knowing because we were not allowed to go to that place. The whole village was surrounded by security men.

**Commissioner Dinka:** You talked about two young men who you saw in 1989 being shot dead. You also said there was banditry around. Do you have any idea whether these two young men were themselves bandits?

**Mr. Lale Tari:** I do not think so. They were handcuffed and then taken to the river. They were pushed into the river and sprayed with bullets in front of the whole village.

**Commissioner Dinka:** This was 1989. Have the population appealed to the Government to investigate?

**Mr. Lale Tari:** No. In fact, during that time, you could not complain.

**Commissioner Dinka:** Okay, we have taken note of your memorandum and your statement. That is well. I think we will make further investigation and recommend appropriately. Thank you very much for coming.

**The Acting Chair** (Commissioner Namachanja): Mr. Lale, in your statement, you said that by issuing the title deeds to another institution, it was a way meant to force you on your knees. Could you explain a little bit about this?

**Mr. Lale Tari:** What I mean is that, whenever there is drought, the entire Orma community relies on the Delta. Whenever there is drought, Ormas and even people from outside this county take our cattle to Delta for water and pastures. That is the last place for our cattle to survive.

I am saying this delta should remain on our side. If it is given to another county, our animals will die during the drought seasons. It is very important to us. It is the backbone of our economy. It is a very small piece of land, but very valuable. We can hold so many cattle there for a very long time.

**The Acting Chair** (Commissioner Namachanja): You have also stated that instead of you being given identity cards, you are given waiting cards. For how long will one stay with such a card before he is issued an identity card?

**Mr. Lale Tari:** It can even take years, or you can end up not getting it.

**The Acting Chair** (Commissioner Namachanja): What is the longest time, one has waited.

**Mr. Lale Tari:** At least a year.

**The Acting Chair** (Commissioner Namachanja): What impact would it have to the applicant?

**Mr. Lale Tari:** The applicant will not get an identity card if it is indeed established that he is not a Kenyan. He may not participate in an election or any decision making.

**The Acting Chair** (Commissioner Namachanja): Thank you so much. I think you have represented your community very well. We have your memorandum; you have just helped write a historical record. But we shall ensure that we look deeply into the issues you have raised.

That is the end of our public hearings today here. But for my sisters, tomorrow in the morning, we shall have our own session. Madam Sylvia will share with you, where the venue will be. I look forward to our meeting tomorrow.

I would like to thank everybody who was involved in organizing for this public hearing. I would like to thank everybody who was involved in facilitating us, Commissioners, to have dialogue with the witnesses. We would like to thank the public that turned up to affirm and empathize with the witnesses, from the victims, who have appeared before us. Thank you for your patience. You have sat for long. But this sitting cannot be called a public hearing without your participation.

On behalf of the Commission, I would like to thank the following witnesses who appeared before us today: Mr. Meza Galana, Dahir Abdullahi, Samuel Bonaya Buya,

Shadrack Jara Kofa, Jonathan Mutava, Ismail Jilo Komora, Dor Ahmed Mohamed, Abdikadir Abdi Dido and Lale Barisa Tari.

I will now handover the programme to our regional co-ordinator. God bless you all.

**Ms. Chidodo:** Thank you very much, Acting Chair. I would take this chance to thank you as the residents of Hola for your patience. You have sat here all those hours just to listen to the issues affecting the Hola people. For those who were not able to speak in front of the Commission today, or maybe, they did not, or were not able to write the statements, we are still taking your statements. Our statement takers are here with us, they can take your statement.

I would like to inform women that tomorrow, we will have our women hearing right here, in this Hola County hall. For men, who are here, when you go back, tell your wives, daughters, sisters, that they should come tomorrow.

We have come to the end of the hearing, I would ask Sheikh Ali Dadho to come in front and pray for us.

*(Closing Prayer)*

*The Commission adjourned at 3.10 p.m.*