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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION HELD ON MONDAY, 16TH
JANUARY, 2012 AT KILIFI TOWN HALL**

PRESENT

Margret Wambui Shava	-	The Presiding Chair, Kenya
Tecla Namachanja Wanjala	-	The Acting Chair, Kenya
Gertrude Chawatama	-	The Presiding Chair, Zambia
Berhanu Dinka	-	Commissioner, Ethiopia
Ahmed Sheikh Farah	-	Commissioner, Kenya
Tom Chavangi	-	Leader of Evidence

(The Commission commenced at 10.35 a.m.)

(National Anthem)

(Opening Prayers)

The Presiding Chair (Commissioner Shava): Once again, ladies and gentlemen, welcome to today's hearings, the first day of hearings here in Kilifi of the TJRC. Before we go any further, I will take this opportunity to introduce the panel before you.

(The Presiding Chair introduced herself and the other TJRC Commissioners)

The commission has been working in the Coast region from the beginning of this year. We have been very happy with the reception that we have received in Lamu and Hola where the hearings have been going on and there has been wonderful participation by the residents of those areas. We are now here in Kilifi after which we shall move to Mombasa, Kwale and Wundanyi. I would like to thank you for coming today and before we begin, I will make a few points, first; on the way in which we shall conduct our hearings. We ask that we respect the witness who testifies. You may hear things which you agree with and which reflect your own affairs. You may also hear things with which you disagree. In all instances, we ask that you respect the witness and be silent to the testimony of that witness. We have cameras in the room. While we encourage participation of the media and other interested parties, in order not to disturb the testimony of the witness, we ask that the cameras remain in one place. Our Coast regional co-ordinator, Ms. Chidodo, is here to give guidance as to how you can proceed. Thank you so much. When you are taking photographs, we also ask that you do not use flash photographs. The way in which our hearings proceed is that a witness is sworn in after which the witness will be led in testimony by the Leader of Evidence. At all times near the witness we have a professional counselor who is there to assist the witness in case of any difficulties. I think now we are ready to proceed. Over to you, Leader of Evidence.

Mr. Tom Chavangi: Thank you Presiding Chair and your fellow commissioners. Our first witness is Abubakar B. Kuchi, the leader of the Bajuni Community council of elders stationed in Kilifi with its headquarters in Malindi. He has actually presented a summary of the initial documents that is translated from Kiswahili to English for the purposes of the international commissioners. I have actually had a discussion with him, and I have told him that there are some issues that have been tackled while we were in Lamu but he says that he still has some other issues to add on. Thank you very much.

(Mr. Abubakar Kuchi took the oath)

Mr. Tom Chavangi: Thank you very much Mr. Kuchi. For the record of this Commission, tell us your names again.

Mr. Abubakar Kuchi: My names are Abubakar Mohammed Bahero Kuchi. I live in Kiunga. That is my original home but I am a resident here as well because I have more than one residence.

Mr. Tom Chavangi: At this moment?

Mr. Abubakar Kuchi: At the moment I live here but the most important issue is that of Kiunga.

Mr. Tom Chavangi: You gave a memorandum concerning the issues which affect the Bajuni community?

Mr. Abubakar Kuchi: Yes.

Mr. Tom Chavangi: Explain to this Commission which these issues are?

Mr. Abubakar Kuchi: Before I explain to you, I have an original map which is a map of Kiunga Division. Already a photocopy of the same is with the commission. This map shows the areas that have been taken. There is also a photocopy of this map already in the appendix of the memorandum. I am happy to get this opportunity, but I am worried because we have been writing so many memoranda but nothing has been done. Maybe this could be the same. We might explain and go away and that will be the end of it, but we pray to God that we should not be told that we never appeared before the commission. So, we come here with all the hope that this Commission did not just come to know what our problems are but to give solutions to our problems, because the Government already knows our problems.

I will go through this second version because it is my guide. The first thing is that I am very happy that I have this opportunity to appear before you and before this I had written a letter to the Kenya Anti-Corruption Commission to complain; they wrote back to me this letter saying that I should look for your team and bring my complaints before you; I am glad that I am here before you today. There is a photocopy of this letter sent to me by the KACC.

Mr. Tom Chavangi: Presiding Chair and commissioners, this is a letter from the KACC written by P.M. Mwangi on behalf of the Chief Executive Officer. The letter is dated 14th May, 2010 to Abubakar M. Kuchi instructing him to come before this commission for the purposes of airing their grievances. I pray that the same be admitted as an exhibit.

The Presiding Chair (Commissioner Shava): The document is admitted.

Mr. Tom Chavangi: I am most obliged.

Mr. Abubakar Kuchi: This letter inviting me to come before you is here. As we go through it, as it has been said, it was discussed in Lamu and I was there personally, but I know that there were quite a number of things which were not mentioned because the people who talked did not know the details of the issues. So, I am very glad to have this opportunity and I will not go through the details but it is already in our previous memorandum; I will go through this second memorandum. Before I go through it, let me inform you that the land of the Bajunis starts from Kipini and goes down to Witu and then to the Kenya Somali border; it stretches to the islands of Faza and Pate, Bajuni and Manda That is all about our areas according to Government documents and reports that have been written by experts for keeping the records straight. We have all these documents and if they are required, we will produce them.

Today, we are complaining about the problems that we have faced the Bajuni community. They started just immediately after Kenya got Independence in 1963. When Kenya got its Independence, people claimed that they had fought for it and that was when things went wrong. Before that, all the Bajuni land, the islands and the mainland, Kiunga, Faza and Kizingitini divisions, were well developed in farming, fishing and so on, but when the *shifita menace* started, it messed up everything. We were invaded by the *shiftas*. Our houses were torched. The entire Kiunga area was torched and it was the Government which was doing this. It was not the *shiftas*. We were there and the Government brought in D7s and demolished all houses. It was very painful indeed and I cannot control myself; I am not acting but it is what I feel deep within. All the houses were torched and then the army that was there brought in all the D7s which demolished all the houses and left only the mosques. That was the way it was and all the crops that were still in the farms were burnt down and people had to run away and abandon their homes. Some went to Somalia, Tanzania and Uganda. Some started going to Lamu, Malindi, Ngomeni, Watamu and Mombasa. Some had to create small villages like Shanga, Mtangawanda *et cetera*. Life became more unbearable. The place was uninhabitable. My late father and other elders went to Lamu to visit the DC to complain. There was a DC called Ngugi who was a Kikuyu. Together with the other elders, my father said that they had been attacked by the *shiftas* and they were farmers, yet we were in Mtangawanda and other places where there was no farming. They said that they knew of a place called Mkunguyani near Mkunumbi. Today it is called Mpeketoni; it was being given to Kikuyus. My late father and the other elders told the DC that they wanted to go there. The DC told them to go there.

My father asked how they could go there since they had nothing and they needed help from the Government. The DC said that there was no help and that we were just waiting for mangoes and coconuts to fall from the trees. Before long, people were brought in lorries and they were taken to that area. They had schools built for them from Class One to Class Seven. They were given iron sheets, seeds, nails and everything and we were given nothing. This happened in very many villages and it was not just in Kiunga. We tried to resist but it did not work because the Government did not protect us to stay in Kiunga. We were told that it was the *shiftas* who were attacking us, but later we realized it was not the *shiftas*. It was a Government plot to get us out, so that we would be displaced by other people. I am asking why the Government did not bring the army to protect us. Why it is that now the Government can go into Somalia to stop the Al-Shabaab? Is it not the same Government? Why is it in Somalia to try and finish Al-Shabaab, yet it did not protect us? That is sufficient evidence to show that the Government had planned to finish us. It is very painful to talk about it. I was told that I should be very brief but I require a whole day; you commissioners and the others should have gone to visit the area to see for yourself the houses that were demolished and the new houses that have been put up. There were very many good houses and all these were demolished by D7s. After that, when the people wanted to go back to build, they were told they could not get any land. Whatever was theirs had been given by the chiefs to someone else; that is the problem that we still have right now. Right now, even if you have a problem, you are told that this is not your home. I have one case of an individual. After the house on my mother's plot was demolished, the plot was given to somebody else who sold it; I still try to get it but the chief tells me that this is not my home and none of us owns a plot here. That is the way it is. We wrote a letter to the Provincial Commissioner and the District Commissioner but nobody responded to it.

In my memorandum there are copies of those letters. So, if this Commission is working, then there is a lot that should be done for us. All the villages belonging to the Bajunis along the beach were brought down. The villages of our neighbours, the Boni in the forest were also torched. The ones belonging to the Bajunis were more than 17, but according to my records they came down. Our colleagues, the Bonis, also recorded theirs which were 10; all are recorded here. The ones belonging to the Bajunis are in Ishakani, which is near the Kenya Somalia border. Another one is Kiunga and others are Mwambore, Pungu, Sendeni, Mwendeni, Hashuei, Matironi and all these names are in here. You will read all this for yourselves, just to save time and go through other painful things.

Those are our complaints. We have read very few words. There is a lot but we have written only 11 and I am saying the very first complaint that we have is that our land from Kipini up to Mpandanguo---

Mr. Tom Chavangi: Presiding Chair and commissioners, that is on page 6. I have just distributed it to you right now.

Mr. Abubakar Kuchi: All our land from Witu through Mpandanguo all the way to the Kenya Somalia border, both the islands and the mainland, should be given back to the

Bajunis and the Bonis. All that land should be under the possession of these two and not other people.

Secondly, all the schemes like Mpeketoni, Witu, Hindi, and Magogoni and so on should be registered and given back to the owners, who are the Bajunis. Thirdly, they should stop starting new schemes. They do not help the Bajunis or the Bonis. They are there to help the Kikuyus and other people and it is an injustice of trying to get the land away from us. We were told by our elders how the Kikuyus came to Mpeketoni. They were Mau Mau sell outs. They were about 70 people and when the whites were looking for the Mau Mau, they showed the whites where they were killing the Mau Mau, and the whites spared them. These Kikuyus felt that their lives were in danger and they went to Kenyatta. Kenyatta was the first President. They went to him for fear that they would be killed and Kenyatta tried to keep them for a while and then he took them to Tanzania. The late Julius Nyerere knew that they were traitors and brought them back to Kenya. Kenyatta tried to take them to Obote in Uganda but he also said that he did not want traitors. So Kenyatta had a problem with them. At that time we had a Member of Parliament called Abubakar Madhubuti; since he was looking for closeness to Kenyatta - he had a problem with the locals - he told Kenyatta that there was a place where they could take them. So, they were brought to a place called Lake Kenyatta. There were farms belonging to our people, the Bajunis. Our elders wanted to go there but Ngugi said he would bring us tractors and machines. Then they brought in the Kikuyus and gave them the land.

Since Mpeketoni was a settlement scheme, they were supposed to be brought in temporarily to look for peace and later go back to their place; later they changed and made it a settlement scheme, and many more came in and the scheme filled up and they started another scheme in Witu. That was our land and it filled up. They then went to Magogoni and they filled it up. Now, they are going to Bonini in the forest; that is what they want now. They want to create a settlement scheme. That is the trick that they used and we never benefitted in any way. The settlement scheme did not benefit us in any way, and that is why I am saying that you should try and end this trend. We do not want anybody to start another scheme. We do not want a new scheme.

Our colleagues in this place know very well that this scheme was just a way of bringing in people. We do not want to hear anything about the schemes. The Bajunis can also fight and kill, but because we respect the law we keep saying that we will wait but the Swahili say that the more you wait, the more you suffer. Sorry, it is taking me too long. I will have to change to English; I am a retired education officer. I have been told to speak Kiswahili but I cannot control myself.

All the houses that were demolished by the Government using D7s and caterpillars should be rebuilt to homes so that these people should go back to their homes. There is a list of all the houses that were in every village. It is on page 8. Page 8 shows all the villages and the number of houses. For instance, in Ishakani, which is the first one, there were 120 houses. Kiunga, which was a divisional headquarters, at that time, had 400 homes. Mwombore had 75 homes. Rubu had 40 homes. Siwambae had 260 homes.

Muvundeni had 200 homes. Hashuei had 45 homes. Matironi had 25 homes. Mkokoni had 75 homes. Kipuruni had 75 homes. Bauri, which is Boniland, had 50 homes, Seturi had 50 homes. Mwangae had 40 homes. Mararani had 60 homes. Mkondoni had 60 homes. Vumbe had 40 homes. Mdoe in Boni had 40 homes and Rumwe had 40 homes. Msini had 40 homes and Majengo had 30 homes. These are very many homes that were demolished. Now we want this commission to ensure that we have our houses rebuilt. These were mud houses and were thatched with coconut leaves. Some were of concrete material. So, they were a mixture.

What we would like from the Government, because of the losses that were incurred, is permanent houses rebuilt and not mud houses. We had our plans since we were building them and slowly changing them into permanent homes. Going back to page 6, it contains our demands. The Government should pay us the cost of living because we have been forced to live in towns. We could not even educate our children. We Bajunis do not have people with degrees or diplomas. We only go up to Standard Eight and if we are lucky, up to Form Four and that is the end because we have no way of educating our children. Our farms were burnt down. We do not have homes or employment. So, we are just there by the grace of God. God promised that whoever is alive will eat and drink, and that is how we live; we have nothing. So, the Government should ensure that we are compensated for all the years that we have been evicted out of our residences and forced to live in towns.

Six, schools should be built. There are lousy schools which are sometimes closed down because of *shiftas*. Teachers cannot come in. When I was an education officer, teachers would be brought in from Kikuyu land; they would be employed and brought there. After two to three days, they would be given transfers to Mpeketoni. They would be deployed to Kiunga but after two to three days, they would be taken to Mpeketoni, Ziwa and Umoja. They would claim that these areas have *shiftas*. That is a plot to finish us educationally. I never got very far. I do not have a degree but I started as a teacher and then I rose steadily but I got retrenched. I am from a community that does not have very many people; they should not be sacked but I was the first victim.

Seven, I wish to be given possession documents for all the land in each village, so that we do not have an area that will be given to other people because people are coming in and they ask where our land goes up to. People have come from Nairobi. One day very many senior people came in with huge and ready beacons to show us the extent of our land; whatever is left, they will look into it. We told them that they should go back with their beacons since there were no beacons here. This was to trick us. People come to the forest and got land for a white man. Our people asked them why they were here and they told us that they had been brought by President Moi; they were all sent away. They claimed they were surveyors. At that time if anybody heard the name of Moi, they would keep quiet.

That was the same way they started the marine reserve. We were told that Kenyatta also wanted a place to come and swim in with his friends. That is the place where Kenyatta would come with his wife to rest. We were told he was our president and we should give

him a piece of land. After that, all that area became Kiunga Marine Reserve. It has taken all the villages along the coast that belonged to the Bajunis. Look at pages 10 and 12 and the map. That is the map of Kiunga. It starts from Ishakani, Kiunga and comes down to Mkokoni and all that area belongs to the marine reserve. Remember these are our homes. After we ran away, we tried to come back but we realized that it had been made a marine reserve. The whites bring in money. The donors look at that. There is also the Dodori National Reserve. Kiunga Marine Reserve is where we used to fish. That is where we would harvest mangrove poles. That is the area where we were settled, but now the people of Kiunga and Kiwayu are all within the reserve; when we will be asked to leave we must leave, yet it used to be our farmland. Very large land for farming has been made Dodori National Reserve and now we have nowhere to dig and to harvest mangrove poles. Where in this world are we expected to live? How are we expected to live? God promised that whoever is on earth will eat and sleep but we have nothing. All these reserves like Kiunga and Dodori should be degazetted because there is nothing that we have.

Concerning the Dodori National Reserve, no shilling has come from there. There is no white man who has gone there. We know the area. We know it is a reserve but I know that at some point, some people will come and share it out. As in Manda, when we were displaced by the *shiftas*, we went to Manda which we thought was our land and from there all the DCs have been insisting that we have to leave claiming that they want to expand the airstrip but that is not the truth. Later on we heard that there is somebody from the Kenya Airports Authority (KAA) who has retired and wants to have a home there. Since Lamu is going to have a port, this will be divided among the DCs and other people for them to build hotels and displace us again. That is our situation. Wherever we go, we are displaced and our land is taken.

On number eight, the people of Kiunga should listen carefully. Plots which were given to people who were not original inhabitants must be given back to the original inhabitants. I have said that these places were burnt and that D7s came in and demolished houses. The people, who were there, including the deceased chief, started giving land to their people. My grandfather, who was a headman in that place, was told to look for land somewhere else.

On number nine, the plot belonging to my mother, Muhammadi Abubakar, should be given back to me, Abubakar Kuchi. The chief is telling somebody to get this land; he is lying to him that he should stay there. I have tried complaining but wherever I go I am told that I do not have any land.

On number ten, we should have a seat in Parliament reserved for this area because it is a very large area.

It is a large area, larger than all divisions within the district and the people are ready. This area should be called Lamu North. This request has been presented several times but we have been ignored and we have been told that we are very few. I have been told that we had two councilors in that area. But now we share with Kizingitini which is very far

because the mainland and the island are far apart. But we know that we have been denied our rights for a very long time. This should be thought through and we should be given a parliamentary seat. We should not look at the population only. We should also look at the special problems that the area has. The population growth trends can be seen and a port is going to be constructed there and there are settlement schemes. So, why should they not think about us? The two councilor's seats have been merged to one for a whole division. You can look at my map and see how big the division is. On page 9, there is the map of Lamu District showing Witu Division, Mpeketoni Division and Zamu Division. If you look at Kiunga Division, it starts from there all the way up to the Kenya-Somalia border and all that is one division. Now we have been told that it has got only one local authority seat and we will compete with people from Kizingitini. Kizingitini has so many people and that means that we will not get that seat. It will go to Kizingitini. This is a clever way of trying to deny us our rights. We have cursed this Government so many times and now we are still going on with that. Maybe, some of the problems we have resulted from this oppression that we have because we are told that God does not fail to pay for an injustice.

We have said in no.11 that for all the oppression to end is for the Coast to get true independence and the Coastal people should decide their destiny. We are tired and it is not only the Lamu people but also the entire Coast province. That is why the Mombasa Republican Council want their own country. I am part of the Mombasa Republican Council and I want independence. We were told to speak openly and if we are going to be arrested after this, then let me be arrested but I will talk. On the sixth page at the bottom contains three verses of a poem. If there is a problem, will there be no war. If the people have a problem, then the Government should be able to protect them or use their brains to be able to save themselves. There are people who were oppressed and their houses were demolished and some people should be prosecuted or compensated. These are our demands and we will now go to the letters that we have written. On page 12, we wrote a letter to the PC who was the foremost oppressor because he is the one that passes everything that is happening. The Government made sure that the PC, DC, DO and the education officer are Kikuyus. We are not seeing our people among you also; we are only seeing the Kikuyus. You mean that our girls have not gone to school? This is open oppression. We have been oppressed everywhere and I will repeat this and say that God is with us. The letter we wrote to the PC---

Mr. Tom Chavangi: The Deputy Regional Coordinator is from Coast Province. We have a Commissioner from Coast Province and some of our staff members are from the Coast Province. So, I think you are well represented.

The Presiding Chair (Commissioner Shava): It is a principle of the Commission to have staff from all over the country and that is what we have done, including the lady seated next to you. Thank you for that clarification.

Mr. Abubakar Kuchi: We wrote the letter but the PC did not respond and he was not even bothered. They probably put it in a file, dustbin or maybe even burnt it. We have sent delegations a number of times and we have even gone to Katana Ngala when he was the Minister for Land and we even discussed this with Kenyatta in a forum but nothing

has ever happened. All this was discussed as just a formality and at some point, the Bajunis were told not to harvest the mangrove poles. The Late Mathubuti who was the MP at that time told Moi at a meeting in Lamu that the Bajuni can also fight and if they were not going to be allowed to harvest mangrove poles, then they will be very angry and that their land should also be adjudicated and allocated. Moi asked Mbela who was the Minister for Lands at the time to stand up and he was told to demarcate the Bajuni land and he said he will do it. That was the end and Mbela is now dead. We have cried and we have sent memoranda and if you look at page 14, there is the Indemnity Act that was passed by Parliament saying that nobody has permission to bring up a case. Anybody who has been oppressed after independence has no permission to bring action. We were wondering because all the problems we have faced have been because of that Act. We are taking legal proceedings in respect of certain Acts and matters done in certain areas between the 25th of December 1963 and 1st December 1967 and to make provision for matters indicated thereto or connected therewith. We are some of the victims because Kiunga was in one of those areas and we could not say anything because the law had already prevented us from saying anything. Those who were in Parliament at that time, one of them being Honorable Chiaba and others – complained, but nothing was done. There is a letter here that we wrote to a special select committee that was brought to Lamu from Parliament. We presented our memorandum and we were praised but after that, nothing happened. On page 17, there is a brief history of the major historical settlement in Lamu region. We got these documents from Government documents and it explains that we have occupied Kenya for a long time. We did not come here yesterday. We are not like the Luos who came to Kisumu during the days of Moi to celebrate a hundred years. The Luos had lived in Kisumu for a hundred years. One day, our people went to Moi and Mr. Bett told him about the history of the Bajuni and Moi asked him where we were all these years. I asked Moi where these Luos had been all these years. A hundred years were just the other day and if you look at the documents that we have, they go back to the 10th to the 12th century and we were here. All the areas that I am talking about are smaller sites which are probably not so far as we can still tell. From the North, there is Kiung---

The Presiding Chair (Commissioner Shava): Mzee, can we ask you to start again please.

Mr. Abubakar Kuchi: I am saying that we came here a long time ago and from the 12th century, we were already in Kenya. The settlement sites are Manda Island, Pate Island and it comes down to Dodori which was probably not so far as we can tell. Settlement of town sites including from the North, Kiunga, Mtijuu, Sejafari, Sendeni, Simambaye, Vundeni, Ashuweyi, Ua, Atu, Kitau, Luziwa, Meya, Kimbo, Kiongo and Alfabaun. All these were towns which were demolished during the shiftas. There were effects and those towns had owners but now, because the owners are no longer there, the Government should make this crown land. We are crying and asking, where is our home? We are among the 42 tribes. Page 18 proves that the Bajunis are in all provinces. I have been doing this work and I took part in the census and I had an interest in knowing how many Bajunis were there in the entire Kenya. I went through books and since the 1969, 1979, 1989, 1999 and 2009 census; we have been keeping the records. They can be used to prove that the Bajunis are not people, who just happened, but we have been here all

along and the census has been able to capture our records. If we go to Mombasa, someone who was a victim of this problem will also complain. If you go to Uganda, they will complain and if you go to Somalia, they will also complain. You should not be surprised that I did not talk about Lamu because those who talked in Lamu did not really have the knowledge. They are people who are just made to talk because they are educationist. I have kept the records and presented them but anybody else would have only mentioned two villages and you would think that only the two villages were affected.

On Page 19, there is evidence that, after we had been attacked by the shiftas though we say that they were not shiftas but a plot by the government, two people were highlighted. One of them was a white person who converted to Islam and came to Kiunga. During the shifta war, they kidnapped that white man and went with him. There were many negotiations between Somalia and other countries abroad and he was eventually released though he is now dead. The second photograph is of the first DO who came to Kiunga and his name was Suleiman Shakombo and at some point, he was a Member of Parliament and he is still alive. Right below is Section 2 of Kiunga Town which was burnt down by the Kenya Army. They burnt it down and they brought graders and demolished it. On page 20, there is a caption from the newspaper and some of the issues presented to Parliament were more than enough. We have poems that we wrote to Mohammed Ashimi who was our Member of Parliament when he started asking about issues concerning us. He is a Bajuni though he had just gone to Parliament for the first time and we praised him. We told him that we praise him and we thank him for the work he did in Parliament. We told him that he had asked questions about our home and God will make him the lion of the Bajunis because the Government knew that we were moved from our homes. The second one says---

Mr. Tom Chavangi: This is something that the Commission can go through as we are investigating this matter further since we have the documents with us and the speaker has been given enough time to air out his views. I think he should now summarize his presentation. This is what he wants to go through but I think that this is something that the Commission can go through on its own.

The Presiding Chair (Commissioner Shava): We are so guided.

Mr. Abubakar Kuchi: Now we have the second evidence and these are poems that I have in my phone. I have a small piece that you should listen to. The snippet is in our local language so you may not be able to understand it. These are poems that when chanted, the elderly in our place cry in bitterness. I would just like you to listen to it because it is part of my evidence.

The Presiding Chair (Commissioner Shava): We hope to get a copy of the record.

Mr. Abubakar Kuchi: I have two CDs here for you.

Mr. Tom Chavangi: He says that it is the same as what he is going to present to us.

The Presiding Chair (Commissioner Shava): The CDs are so admitted as evidence and we will listen to just a short clip as we now have the CDs which we will listen to in detail later. We will listen to a short clip from Mzee Abubakar.

Mr. Tom Chavangi: Most obliged.

(Mr. Abubakar Kuchi played the CD)

Mr. Abubakar Kuchi: When these poems are sung, our grandparents feel a lot of pain and they cry a lot because they were composed by Mzee Abubakar Kuchi from Kiunga village who witnessed how this incident took place. They were sung by a taarab group led by Mohammed Sali from Seisabai village in our effort to try and fight for the rights of the people. It was also sung by Lamu Tawasal group and we have recorded it in writing. The MP who was in Parliament also read the additional memorandum. Our houses were set on fire...

Mr. Tom Chavangi: Presiding Chair and your fellow Commissioner, I think the introduction of the CD is clear now. It just goes further to emphasize what the speaker has said before this Commission and I urge him now to summarize so that we can move forward.

Mr. Abubakar Kuchi: So my poems did not really get to be listened to. It was just an introduction to---

Mr. Tom Chavangi: I think we can rely on the CD to make further interpretation of what the witness is talking about.

The Presiding Chair (Commissioner Shava): Thank you leader of evidence, I think if we can, maybe, get to the actual shairi and we listen to just a little bit of it even as we will listen to the rest of it later. Let him see if he can find a way to move forward past the introduction.

Mr. Abubakar Kuchi: I also have a copy of a poetry book and I would like you to keep one copy which talks about the entire Coast and talks about the county government which is the only way of bringing independence to the people of the Coast. My colleagues are saying that it is enough and I have taken a very long time but there is still so much.

Mr. Tom Chavangi: There is a book written by the witness containing all these poems. I kindly pray that it be admitted as an exhibit.

The Presiding Chair (Commissioner Shava): The booklet is so admitted.

Mr. Tom Chavangi: Commissioners, I have no questions for this witness.

The Presiding Chair (Commissioner Shava): Thank you, leader of evidence. Commissioners may now ask questions and we will start with General Ahmed Farah who I think today forgot his kofia.

Commissioner Farah: Abubakar Kuchi, thank you very much for your eloquent presentation. I have seen your memorandum with a list of all the complaints and also the recommendations. In your recommendations, which are very detailed, you have not only talked about the Bajuni injustices but you have talked about the general Coast's peoples marginalization and we thank you for that. You are a scholar and writer but I want to ask you: Do you support MRC? Is there a peaceful way of solving their grievances?

Mr. Abubakar Kuchi: Yes.

Commissioner Farah: Thank you very much. That is the only question I had.

Commissioner Chawatama: I join the General in thanking you for appearing before us and your testimony. In your memoranda, you have said to us that the Kenya Army set ablaze your towns and your farms destroying the harvests and also breaking houses and that you were forced to run. Could you tell us how long you had lived in the land that you had to flee before the fleeing took place.

Mr. Abubakar Kuchi: We were created there. As I have explained on page 17, history says that there was a major historical settlement in Lamu. We have been there from between the 10th and 12th century.

Commissioner Chawatama: Were there any lives that were lost during the time that you were fleeing?

Mr. Abubakar Kuchi: One administration policeman was killed and others ran away. My father who was a corporal in charge ran away together with us.

Commissioner Chawatama: What sort of impact did this fleeing have on the children and the women?

Mr. Abubakar Kuchi: Several canoes capsized. We were running away using canoes, others were on foot going into the bushes and whenever a canoe capsized, some people died. We lost our property and it was a very big problem because we had nothing and we were just running without knowing where we were going.

Commissioner Chawatama: One of the questions that we often ask at sittings like this touches on the issue of reconciliation. It is very clear that a number of people have been displaced. It is also very clear that people from different communities have settled in different parts of Kenya and that they are entitled to do because they are Kenyans. One of the things that we have to grapple with is the reconciliation of the people of Kenya. Do you have any thoughts taking into consideration what your community has gone through

and how this Commission can reconcile and maybe just not reconcile but also to bring unity and healing in the lives of people who are Kenyans?

Mr. Abubakar Kuchi: I have heard and we knew that Kenya was one and that is what we were told that we are all brothers. In the first memorandum, when we talked with Kenyatta, land for the Kikuyu will remain for the Kikuyu. But that changed when we were oppressed. I do not know what kind of reconciliation we are waiting for. We have said in our memorandum that we want what we have claimed for here whether they will live or not. Kenya belongs to everybody. So, that means that even where you are, you belong to us as well. How come we have nothing there but people from upcountry come here and take everything and how come we have nothing in the place where they came from?

Commissioner Chawatama: Unfortunately or fortunately, I do not come from upcountry. I come from a different country all together so, maybe, that makes it easier for me to ask certain questions because I look at things a little bit differently and, maybe, a little bit independently.

Mr. Abubakar Kuchi: Thank you.

Commissioner Chawatama: I have no more questions for you.

Commissioner Dinka: Like my preceding colleagues, I would like to thank Mr. Abubakar for your testimony. You have very eloquently and passionately presented the case affecting your people. This is not the first time we are hearing about the difficulties and the challenges faced by the Bajuni and the Boni people. I particularly remember councilor Hussein Abdulla Taib who did not get sufficient time but for the short period that he was given, he presented a very passionate presentation to us. We really know what happened but as my colleague said, I also come from a different country and so, I am not a Kenyan. Perhaps, we have a little latitude than our Kenyan colleagues to be a little more independent and ask you certain questions that may not be asked by others. As you said, it is a tragedy that happened to your people after independence. They have been thrown out of their homes; their homes and villages were burnt and they were dispersed throughout the country. They even went to some neighbouring countries. This has to find some resolution and there is no question about it but as my colleague has said, those who came from upcountry also settled here and it is now 47 years that they have been here. Probably a person who came here as a young child is now either a grandmother or a grandfather. They have multiplied and it may not be as easy as saying they must revert to the situation that existed before independence. Saying so is easy but doing it can be very difficult and very complicated. Do you really feel that Kenya being a united country of 43 or 44 different tribes, there is no way even after 47 or 48 years, for different ethnic communities to live together harmoniously and peacefully in a co-operative fashion? Do you think that is really impossible?

Mr. Abubakar Kuchi: We will continue being oppressed if Kenya is one. As I have said, when these people came in, they were very few. They were only 70 people who

were to come for some protection. Then it changed into a settlement scheme. When the settlement scheme was full, another one was opened and another one. So, there is no time we will ever get anything. Eventually, we will not even have leaders from among us. The chief, councilor, PC and everybody might be from them. So, we will have nothing except to cheer them on and vote for them. Now, we are waiting to vote and after we vote, we are put aside and this will go on. As you have said, Kenya cannot take them back. Why should Kenya not take them back to their homes? All these people have their homes and everybody should go back where they came from. They have annoyed us, they are irritating us and we do not want them because they are oppressing us. They have brought their traditions and customs which are not our customs and they have brought things that we did not have here. They do not know how to respect people and our children are now aping those characters. So, we will be completely finished. They dress in clothes that do not go with our culture. So, this is a problem. If we leave and say that we cannot take them, then, let them all come in until one day we will disappear among them. The only solution is for them to be stopped. Enough is enough. They have their homes. They should go back to their original homes and everybody should stay in their land.

Commissioner Dinka: Thank you. Another question that I have is this: In the 47/48 years, what have you done legally in terms of going to court to get some resolution of the problem or to do so administratively and what happened? You have mentioned that your Member of Parliament has made a statement and you even wrote a poem in his praise but what actually did he achieve? Why did he not achieve what you are asking? I am not saying that expelling other people is the solution but, at least, stopping new schemes and getting land adjudication for your people.

Mr. Abubakar Kuchi: We formed the Shungwaya Welfare Association for the Kiunga people and it is running the people's welfare. It has tried but without success. Shungwaya covers the whole of Lamu District and it presented a case in court to place an injunction so that no more Lamu land should be given to anybody else.

They had accepted that this would be closed but they have been back-dating it whenever they issue land. We have tried and even Members of Parliament have made a lot of noise but there is no outcome. They told us to continue making noise because our noise was compared to a frog's which cannot prevent an elephant from drinking from the pond. For us, we only hope that the pond will dry out. I am one of the frogs that is making noise. So, I am ready to go to the trunk of the elephant so that he can crush and die and the frogs will remain with the water.

Commissioner Dinka: I know that you are interested also in figures. I am going to ask you about figures and if you do not know then you can tell me so. What is the area in terms of hectares or acreage that you are talking about?

Mr. Abubakar Kuchi: I do not have the figures but I am sure the Commission has experts. The map is there and you can look at it. There is a scale in which you can use to calculate. There is a way of calculating; you can calculate and inform us as well.

Commissioner Dinka: Do you have an idea of the acreage that is occupied by people who came from upcountry?

Mr. Abubakar Kuchi: I have a letter of allotment which is a whole village which was taken and given to a foreigner to put up a beach hotel. The Ministry of Lands should be able to tell us how much of our land they have given out. I have a copy of an allotment letter given to a white man which is quite big.

Commissioner Dinka: Instead of going into pieces, what is the percentage of land that has been given to non Bajuni and non-natives?

Mr. Abubakar Kuchi: There is a newspaper that wrote on the matter. On page 20 it says that they occupy almost 98 per cent. The settlement scheme is like a whole country.

Commissioner Dinka: Is it 98 per cent of the whole territory?

Mr. Abubakar Kuchi: I am not an expert to be able to say the exact size. I believe that there is a concerned Ministry.

Commissioner Dinka: Could you tell me the size of the population which is not Bajuni or Boni in the territory?

Mr. Abubakar Kuchi: Why can you not ask the people who do statistics?

Commissioner Dinka: You gave us statistics and you even said that you believe in numbers. That is why I am asking you.

Mr. Abubakar Kuchi: Those are the statistics for Bajuni people and for the others you should ask the statistics office.

Commissioner Dinka: What is the number of Bajunis and Bonis living in this territory and not in other counties?

Mr. Abubakar Kuchi: We have to go and look for the statistics. I did not know that you might need that information. I thought that the information I have is sufficient enough but I can get the right statistics and share with you.

Commissioner Dinka: Do you not remember the census from last year?

Mr. Abubakar Kuchi: I have census from 1969. There is a total of 23,832 Bajunis in the whole of Kenya. In 1979 it came to 36,979 then in 1989 it came to Kshs55, 081. After that the trend changed. They were not documenting it according to tribes. So, many Bajunis were identifying themselves as Swahilis, Arabs or non-Kenyans.

Commissioner Dinka: I am asking this question because you are asking for your own county and constituency and yet there are rules for creating constituencies or counties.

That is why I am interested about the population figures. Otherwise, I do not have further questions.

The Acting Chair (Commissioner Namachanja): Elder Abubakar, thank you so much for sharing with us issues concerning land of your people from the bottom of your heart. When this Commission was set up, some people wondered whether we were not just going to open the old wounds related to historical injustices. The pain in which you have shared your story concerning your people was important for us so that we can find a way of solving these problems. We need to come up with practical solutions if our report has to be implemented.

Before joining the Commission, I have worked elsewhere as a relief and rehabilitation coordinator of victims of ethnic clashes and among them are the Kikuyus. Each time they are displaced you think that they would go back to their original homes but the experience we have had is that there is no original home for them especially those ones from Rift Valley. I want to assume that the situation is also the same here. I want to ask this Question and I would like you to reflect on it so that we come up with practical solutions to this problem. Is the displacing of these people from the current land that they were settled in which is not their mistake but that of our leaders, is removing them a solution? Is there any other land that has not been settled in the region where the Government could ear-mark and settle the Bajuni people who were evicted from their land?

Mr. Abubakar Kuchi: The land that belonged to Bajunis is still there. The problem is that people have invaded it. That is why the Bajunis were forced to move out to Somalia, Uganda and Tanzania. They can come back but most of their areas are already occupied. When we ask about how those people from upcountry should be taken, I believe that the Government has experts who can plan on how that could be resolved. The people who were displaced during post-election violence should be taken back because they might be rejected by the host communities. Now that Hon. Uhuru and Hon. Ruto have come together they should look for ways of resolving the issues of land but they should not be brought in Bajuni.

The Acting Chair (Commissioner Namachanja): The question I am asking is about the Bajuni who were evicted and who are now landless. Is there any land that is not settled on now that we could propose for the Government to settle them instead of us recommending that the Kikuyus who were settled here to be displaced again? Is there any land from the region that could be identified for a new settlement for the Bajuni landless people?

Mr. Abubakar Kuchi: Yes, the areas that belong to the Bajunis are the ones that we occupied previously. If their houses can be reconstructed then they can go back and live there. The Dodori Park should be degazetted so that they can cultivate. They should also degazette the Kiunga Marine Reserve.

The Acting Chair (Commissioner Namachanja): Thank you. I do not have further questions for you.

The Presiding Chair (Commissioner Shava): Mzee, thank you very much for coming here today. You have taken a lot of your time to prepare your documents and coming to explain and expound on them. I only have one commend which is in regard to the Indemnity Act. The Truth, Justice and Reconciliation Commission (TJRC) made its position known on that Act. We have communicated to Parliament about what our legal analysis is on that Act. In our view, that Act defends members of the armed forces from the acts that were carried out during the shifter war. In our view, that Act is overtaken by other forces of law such as the bill of rights. We have petitioned Parliament so that the Act can be repealed. Unfortunately, this Commission can only recommend. Although Parliament passed the amended Act, the President declined to sign it. Nevertheless that remains our position on that Act. We just want to assure you that we agree with your point of view and that there are ways in which one can go about it. You have spoken to us with a lot of pain and anger and it is very genuine. There are injustices that have been perpetuated against your people over a long period of time. We are now living in an age where the minority survives in the world of political economic blocks.

There are organizations like COMESA, the East African Community, the Great Lakes Community, and Arab League and so on. The message is that in today's world we need to see how to live together. This is the TJRC and we know that there cannot be reconciliation without justice. We have heard what you have said and we take it seriously. We shall be presenting our report to the President and then to all Kenyans in May this year. Make sure you get a copy of that report and look at the recommendation that we are going to make regarding what we have said so that you can help do your part to make sure that those recommendations are implemented.

Thank you very much. We have no further questions so Leader of Evidence, could you please stand down the witness?

Mr. Tom Chavangi: Thank you very much, Presiding Chair. We have three witnesses who will sit together. We have Thureya Mohamed, Juliet Mapenzi and Omar Ali Mohamed. These are the youths of Kilifi County. Omar is from Malindi which is also in Kilifi County. Their testimony is the same but we shall give all of them an opportunity to speak.

(Ms. Thuraya Mohamed, Ms. Juliet Mapenzi and Omar Mohamed took oath)

Mr. Tom Chavangi: I welcome all of you to this Commission's hearing. We have just combined you because the issues affecting the youth in Kilifi and Malindi are the same. We have read your statements and we can see that they are all the same. Ms. Thuraya will speak and then Juliet and Omar will give additional information.

Ms. Thuraya, you submitted a memorandum about the issues that affect the youth here in Kilifi County. There are some issues that you want to articulate before the Commission. Please, tell the Commission what you think is affecting the youth in this county.

Ms. Thuraya Mohamed: Thank you. My name is Thuraya Walidi Mohamed and I am a resident of Malindi Constituency, Kilifi County. I am a field officer in a Non-Governmental Organization (NGO) known as Kenya Community Support Centre. I am very happy to have heard my elders talk to the Truth, Justice and Reconciliation Commission (TJRC). I am here to represent my fellow youth. I urge that anybody can add anything to whatever I would have said.

There is a lot that affects the youth here. The biggest problem in Kilifi County is lack of employment. Many youth do not have jobs although they have education and the required skills but there has been discrimination in employment opportunities targeting certain communities.

I will briefly talk about our problems and what we believe that the Commission can do for us. There are very many challenges that we face and if I talk in detail, my colleagues will not have anything to add. Lack of employment opportunities is one of the biggest challenges that show the discrimination that we encounter. It is due to lack of employment that illegal organizations come up. When the youths are not employed they develop other thoughts. So, they think about what they can do even if it is illegal. When the youth have nothing to do then it is easy to find that they join such illegal activities. Why do we not have jobs and yet we are educated and are trained in various skills? There is tribalism in Kilifi County. Certain tribes are discriminated against. When a senior person is somewhere, he will try to fill the vacant positions with people from his tribe. So, the Commission should put in place measures that will solve such issues.

We would like to request that when scholarships come, the politicians should not control them. We are youth leaders and we know what the youths go through. If these things are given to politicians they use them to buy votes. They only give scholarships to certain families, tribes or communities. So, the people who have been given scholarships are obliged to vote for them. That means that there are no free and fair elections. We would like to request the Commission that any time the employment opportunities arise, the youth leaders should be involved.

The other issue is about Youth Empowerment Centres. Recently we were in Othaya and we saw Youth Empowerment Centres. Youth go there to learn certain skills. The unfortunate thing is that in Malindi Constituency and the entire Kilifi County, there are no Youth Empowerment Centres. That means that the youth who have completed schools have nothing to do. They can easily find themselves doing the wrong things. The Youth Empowerment Centres help to prevent the youth from engaging in illegal activities.

The other challenge that the youth face is HIV/Aids and drugs. This has become a big problem to the youth here. We think that a big percentage of the population which is affected are the youths. We have decided to tackle the issue but we have to get support

from the village elder up to the President. The Government should deal with those who do drug trafficking. They do it using aeroplanes, boats and other means. We are asking the Government to take action because the youth are destroying themselves with drugs. We would like the Commission to take our complaints to the Government. As youth, we have decided to stop the drug menace. There are some who have stopped and others are recovering. I am talking about the general drug abuse substances like cocaine, miraa or bhang. We know that those who are addicted to drugs go to rehabilitation centres where they are treated. We want those who have stopped using drugs to be role models so that they can assist others. Most organizations leave the duty of talking to the youth to elders. The language of elders and that of youth is different. If organizations decide that they want to sensitize the youth, then they should make use of us. We are willing to go through training to gain the necessary skills.

We are asking this Commission to talk to the Government and Non-Governmental Organization (NGO). I am a youth and I work for an NGO. I am engaged in many projects especially on peace. I am able to reach out to the youth because I know the language they understand. Sometimes, they bring us retired officers who cannot effectively communicate to the youths. Most youths prefer listening to fellow youths. One way of making sure that we are involved in employment is to be trained for the purpose of training fellow youths. One of the challenges is that it is the older people who come to talk to the youth. We are not refusing the contribution of the old people but I think the youths have a way of connecting especially through language. Language is one way of making sure that the youths communicate. By involving the youths we shall make sure that they are employed in sensitizing their peers.

The other issue is early marriages and other religious aspects. I am a Muslim and I understand my religion. There are many Muslim leaders here. We have had a problem even before this Commission came. There was a case in Malindi where a young person married another young person. These people were below the age of 18 years. They are now going to have a child before they reach 18 years. In Islam, we know that a girl who appears to be mature should be married but there are many issues that arise from the Quran. There are other things that we should think about even if religion allows it. I think it is illegal to marry people who are below the age of 18 years. We would like the Commission to find a way of educating people about early marriage especially to children under the age of 18 years. The Commission should take this as a challenge and discuss the matter with religious leaders. This is a big problem because even those who are in school are still convinced that marriage is good. We want everybody to come together and ensure that we have a good generation where people get married only when they are mature.

There are also cases of nepotism. In Kenya getting employed through merit is not easy. When I go somewhere with my diploma, degree or even a PhD the person in charge of the department will send me back. In some cases, they want to give you the job in exchange for your body, especially for us girls. Why should people in authority engage in such discriminatory acts? We would like to ask this Commission to listen to us because as young ladies if we go to ask for a job anywhere they should not take you round and

round or ask for your body in exchange for a job. We would like to end all undesirable things in our country because we are the presidents, ministers and leaders of tomorrow.

The other issue is about tourists. We like them because they bring us income and employment. As a resident of Malindi, this is a problem that affects us directly or indirectly. There is sex tourism. Tourists do not just come to tour the country but also take our girls, some of whom are below 18 years. They take them and make them their wives or prostitutes as they want. This is a very unfortunate thing because these girls are skilled in various ways. We would like this country to have a law to monitor tourism. Tourists should not be allowed to take girls who are about 25 years and below. The major reason why girls engage in prostitution is that there is no employment. In our organization, we try to inform them about the negative effects of such acts. We educate them about the HIV/Aids menace and the personal dignity of an individual. The Government should come up with a policy to manage tourists. The tourists should be warned on entry that if they engage in such acts, then they would be deported.

You will find a 67 or 72-year-old man going after an 18-year-old girl. Once this girl gets involved in sex at this stage, do you think that she will have a good life in future? So, there should be a policy for the citizens and even for international tourists that should be followed strictly.

We also lack the role models in Kilifi County. For example, Prof. Mazrui is not with us because he is out of the country. So, when I tell my four-year-old child that Prof. Mazrui's origin is Mombasa, Malindi or Coast in general, whenever we see him in the media--- Other people have good leadership and role models. People who have progressed in certain skills should not go to other countries. They should come back home so that the current generation can see them as role models. For very many years, we have been told that a Muslim child cannot speak but we should speak the truth. If you are well dressed like I am, you can speak. When such a girl goes to some institutions, she is told: "You are a Muslim and so, you should not speak like this." Should we just retrogress? If we do not have role models in the form of scholars, the future generation will think that even if they go to school, they will end up pushing handcarts.

We would like to ask the Commission as it goes round to also recommend that certain people like professors should come to work at the Coast so that they become role models for the coming generations.

Our youths in general who are down in the grassroots have a difficulty in accessing information. Even if you try to disseminate the information through any means, it is a problem. This is because most of the Community Based Organizations (CBOs) or Non-Governmental Organizations (NGOs) establish their offices in towns. When the offices are in town, the people in the grassroots cannot access even transport to those offices where they can get information. Therefore, the youths should get sensitization and know what is going on. This will ensure that we are also equal as those who are in the urban centres. If we centralize everything in towns, we will oppress the youths who are in the grassroots.

Most youths want quick money, but I believe that you cannot get anything without undergoing challenges. The youth always want quick money and this has made us end up in sodomy, filthy activities and wrong things. This is really amazing. So, this Commission should speak to the stakeholders so that they can sensitize and empower the youth. The youth should be told that there is no quick money that can be got and that they have a responsibility to struggle. For example, there is the Director of Early Childhood Education. I cannot mention the name, but he said that he was a failure in secondary school. He got a mean grade of D but did not give up. He went and got a certificate and Diploma in Early Childhood Education. He went on and now he is the Director of Early Childhood Education in Kenya. I was doing a Diploma in Early Childhood Education when he was explaining that. Those are the kind of professionals we are looking for. So, quick money cannot be obtained illegally.

There is also poor utilization of resources. The public utilities are being misused. It is really astonishing that when the youths go to seek for some equipment to undertake certain jobs, they cannot access them, and yet they are public utilities. I really thank the Water Department in Malindi. Sometime back, there used to be drought. We had a forum called “Malindi/Shela Youth Forum” which we established when there were drugs in Shela and Maweni. We brought the two villages together, sat down and discussed the problems that were really affecting the youths who were drug addicts. The youths should not keep on apportioning blame. Let us be on the positive side in order for the Government to recognize our problems. The Government is you and I. Whenever there is a problem when the youth go to any Government office, they always fail because they are always on the negative side. If we went there in a respectful way, I believe that these challenges cannot come our way every now and then.

On civic education, I am really amazed by the Government. Civic education starts at the beginning of the year up to elections time. I would like this Commission to take that issue seriously because civic education is about everything that a Kenyan citizen is not aware of. For example, during the implementation of the Constitution, there was civic education that was ongoing, but it just collapsed. So, we are appealing that the Government takes the responsibility of civic education. The youths are there and can spread the information. For example, I work with peace building. We have school mentorship and I really thank the schools that we partner with like Mamburui Secondary School and Libarani Secondary School. I really have courage when I go there. They have activities and we used to debate with their teachers.

So, as youths, we want to move from the negative side to the positive side. We have faith in this Commission and hope that we will get positive results.

Thank you very much.

Mr. Tom Chavangi: Thank very much, Thureya. We will now welcome Juliet to give additional information. Please, do not repeat what has already been said by Thureya. Whatever you say will reach the Government and the President.

Ms. Juliet Mapenzi: Thank you very much for giving me this opportunity. My name is Juliet Mapenzi Ruwa. I am a resident of Kilifi and I come from Bahari Constituency, Mnarani Ward. I come from an organization of the youth called “House of Talents” that includes children and the youth.

My fellow youth has spoken about the youth and so, I will just give additional information about children. It has become a great challenge for children to get information. They do not know anything about child labour. People from the Coast do not know anything about child labour. Parents just know that a child has a parent, but has no right. So, it is until you reach 18 years that you will know about your rights. They undergo physical and social problems because they are given responsibilities before they come of age. You may find children as young as nine or ten years walking for more than 20 kilometres to sell firewood or carrying sacks of charcoal because they are looking after their families, but that is not their responsibility. This is the responsibility of their parents. As a result, they are affected when it comes to education. They do not perform well in school because, perhaps, the child misses school for up to six weeks. So, you will find that some responsibilities which are done by children at an early age, obviously, affect their performance totally.

Also, on education, in the Coast Province, we thank God that we have some schools which were elevated to national schools last year. However, these schools do not have equipment and so, they do not qualify to be called national schools. The future of a child who is in a national school outside Coast Province is brighter than the one in Coast Province. The facilities should be provided in time so that the students can have a bright future.

The other issue is drug trafficking. It is not only the youth who are affected but also the children. You will find children below 18 years engaging in tourism sex. I do not have evidence, but it is really surprising when some of the tourists come and go to the extent of shooting pornographic movies with such children. The number of such children is high in Malindi. This is all because of the lure of quick money. If they are told that they will be given Kshs5, 000 in 30 minutes, they will accept to sell themselves. However, much they will be abused; they will get Kshs5, 000. If this continues, even the interest in learning disappears because they know that there is some quick money somewhere. Again when a child meets a white person, they get married. Obviously the other children will think that there is no need for education if one’s life can change without pursuing education. There are living examples but the Government is not taking any step to arrest these people who are moving around with children. There are volunteer organizations which are fighting this vice, but there are some battles that you cannot win even if you try to fight. We have worked together with such organizations for some time to help the children. We have managed to change the lives of a few children with the little money that we got. There are those who did not benefit from the project and the situation is still the same.

There are also no children cells in Kilifi. If a child is arrested, she is taken to women cells. Inside the cells, there are also violations and oppression. He or she can be

oppressed by those who are older there. She can even be raped. Sometime back there was a girl who was arrested and taken to the cell on a Friday. She was raped the whole night by different policemen, but astonishingly when people came to see her in the morning, she explained her situation but, unfortunately, there was no sufficient evidence because after being raped she was washed. The police officers obviously cannot accept that they did such a thing. She has undergone some sort of counseling. The police are supposed to take care of us but they instead turn against us. In the villages there are also women who are raped, but they cannot report at the police station. This is because even if they give their evidence, they are laughed at. If there are no reforms, such issues cannot change.

There is also a white woman here in Kilifi who hires young children who are in primary schools to other tourists or rich people. I think the authorities know about this, but there are some battles that even if you try to fight, you cannot go anywhere.

The third issue is about a school in Mnarani Ward called Kiriba. The head teacher of that school has stayed there for too long. The school has some sponsors who still want to continue funding the school, but they cannot do so until the head of that school moves out of that school. The sponsors take relief food and books to that school, but the head teacher sells them and hence the children do not even benefit. For the last two or three years, the performance of that school has gone down because the head teacher does not want to move from that school. We have tried to make a follow up on that issue at the education offices but it has not born any fruits. We do not know why he is still there, and yet her stay is affecting the pupils because they are not accessing the facilities that they need.

The funds meant for the orphans are there and people were registered from last year. However, you are called to the offices and sent back and there is nothing coming out of that. You fail to understand where the problem is because there is evidence that the children are orphans. In other areas, children are learning well and I do not know what is happening here.

The children in Kilifi County are just like any other children in other parts of the country. In urban areas, children mostly from rich families are the ones who benefit from anything that comes, but here in the grassroots, children do not benefit.

About the foreigners who are conducting sexual business, they should either be deported or the law takes its course.

Lastly, the head teacher of Kiriba should be transferred because she is hindering development. If she can be removed, I think it will be better.

Thank you very much.

Mr. Tom Chavangi: Thank you very much. Ms. Mapenzi. Omar, you can add on to what the others have said.

Mr. Omar A Mohamed: Thank very much, my fellow youth and commissioners. My names are Omar Alwi. I come from Malindi. I am the District Youth Leader. I am also in a group known as “Shela Youth”.

I have complaints with regard to the Ministry of State for Immigration and Registration of Persons. There are very many youths who have a problem getting documents from that office, especially identity cards. The vetting is done to prevent some people from getting identity cards, especially the Muslims or if you are a Bajuni. There are about 29 youths who are on a waiting list which I have here. One of them is called Abdurahab Mohammed Salim. He has three waiting cards. He applied in 2007. He was later told that there was a problem. He applied again in 2009 and up to now, he has not seen his identity card. The other thing that hurts very much is that one of the youth is my sister who is at Pwani University College who has not been able to get a loan because she does not have an identity card. She has applied for it many times but she has not been issued with one. Some of the 29 youths have been offered jobs but when they are asked to give their identity cards they do not have them. Some of them have even turned to drugs. I have waiting cards which I have photocopied.

Secondly, I come from Shela Ward in Malindi. We were affected by drugs and if you tell anybody that you come from Shela, they think that you are useless. Once the police know that you are from Shela, they think that you are only involved in drugs and moving about aimlessly. Now, we are embarrassed to say that we come from Shela. That has affected us economically, socially and politically because most youths have turned to drugs. This issue is affecting the whole of Malindi. Sometimes I am told that I am a drug user. There is not a single Government institution in Shela Ward. There is also no Government primary school and we are next to the sea and you will not hear of any drug trafficker who has been arrested. For instance, the drugs that were found in 2005 were worth Kshs5 billion, but none of the traffickers has been arrested. You cannot even open shops in Shela. If you are seen to be fighting drugs barons, you will face resistance. So, this Commission should try and help us.

With regard to leadership, any President we have elected has favoured and brought his own people to the Coast. During Kenyatta’s time, a Provincial Commissioner by the name of Mahihu was brought to the Coast. During Moi’s time he brought Francis Sirma. He came as a District Officer and then was promoted to a Provincial Commissioner. Most of the District Commissioners were brought by the President. Any President would bring his own people to Coast Province. I wonder if there are no District Commissioners from other tribes. During the Kibaki regime, the Provincial Commissioner is from Mt. Kenya region. The District Commissioner in Lamu is a Kikuyu. In Malindi, we had Arthur Mugira who has been replaced by Joseph Ikale. In Kilifi, it is Wachira. In Kwale, it is a Meru who is a cousin of the Kikuyu. He was replaced by Benjamin. In Taita, it is Njenga. We keep wondering if there is nobody else who can lead Coast Province. What Omar Hassan said is very true. For instance, in Lamu, there is a problem between the indigenous people of Lamu and the Kikuyu, but they still bring in a District Commissioner. What justice will the sheep get if there is a problem between it and the goat and it is the goat that is the judge? That is why Lamu has a problem always. In

Malindi, we have decided to just keep quiet and pray to God. Malindi is fair but there is no representation of indigenous people in the security committee. They are the ones who discuss issues and we do not know what goes on. Sometimes you will just find yourselves arrested and we do not know what is going on. That is what pains us a lot. Even if Raila was to take over the Government, he would just bring his own people. If this Commission does not look into this issue, then we will take care of it ourselves. I do not think that what is happening is right. Even at the port, they had to bring their own person. Why have we not had a person from the Coast being the director of the KTDA?

The other issue that we have is about the resources that we have, for instance, Malindi Marine Park and Watamu Marine Park. There is a portion of land known as 1204 which has been allocated to a private investor. There are more than 200 boats used by boat operators, who are our people, who do business there, but this has been given to somebody. Even the 60 metre riparian zone is going to be used by him. They are going to put up a billionaire's club and we will be evicted from there. The land has already been given out. There is a community shop that Netherlands constructed for us and the IQRA organization repaired it, but now it is being demolished. We have written letters and the issue has gone to Parliament. There is even the HANSARD to show that it was discussed in Parliament. There is also the title deed from the authority which shows that they were given that land. It was the British people who had given it to Coast project. It was then given to KWS who were to be the trustees but they are the ones who are selling it now.

But look at Maasai Mara. Why is it that there is a certain percentage that remains for the community? Is that a different Kenya? But in Watamu and Malindi, we do not even benefit from the corporate social responsibility. We have written proposals as boat operators but nothing comes out of them. Instead we are losing our land that is being sold. The Public Procurement and Disposal Act was not followed. The land was not advertised so that people could look at it. There was no consultation with the public so that we are also involved. I have presented this document before.

There are some current injustices that we are facing. I am now 24 years old but when I get to 30 years old, Kenya will be uninhabitable. We think that we are not in Kenya because of the way we are being oppressed. We have written to the Public Procurement Oversight Authority (PPOA) and the Kenya Anti-Corruption Commission (KACC). The person at the KACC who wanted to follow up the issue also got sacked. If you read this HANSARD, you will get everything.

The other issue is with regard to the Public Procurement and Disposal Act. We, as indigenous people of the Coast, especially Malindi, do not get these tenders. We applied as Shela Youth for a tender with regard to drainage in the Central Business District, but we did not get it. There was a bit of violence until eventually we were sub-contracted. It was given to the highest bidder who had quoted Kshs1.2 million, and yet we had quoted Kshs750, 000. There was even a lower bidder who did not get it. So, these are the oppressions that we are going through.

If you look at the local infrastructure in Malindi, you will find that there is not even a local indigenous person who has built it. It is just them who built. That means that we do not deserve to progress.

The other issue is drugs. *Miraa or Khat* is killing us. Even if NACADA comes here and tell us that it is a drug, the Government has found it difficult to declare it illegal. It kills our economy and the dealers do even pay tax.

When you die, there is a tax on your dead body but those who sell miraa do not even pay tax because it belongs to them. I was asked to present this by the people from Taita Taveta. They said that even if this will be discussed in Taita Taveta, we better discuss it here as well. In Taita Taveta County, three quarter of the land belongs to KWS and the remaining quarter belongs to corporate bodies and individuals from upcountry. Ranches have been established in the area and the indigenous people are left with a small portion of land. Is there any reconciliation that can take place in an area like that where somebody has 5,000 acres? If I get one acre, I might be thrown out tomorrow or get trampled on by wild animals?

My first recommendation with regard to the Ministry of State for Immigration and Registration of Persons, the local indigenous people should be registered first because they do not even know how to spell the people's names. My name is Omar Ali and I have been called Alawiya which is a female name. They do not even know how to spell my name. They cannot even spell Omar and that is why the IDs are frequently sent back. Why do they not employ indigenous people? That office should have indigenous people like the Mijikenda, Swahili and the Arabs so that we have people who can spell our names.

Secondly, is with regard to the issue of Shela community. We would like you to build for us schools and universities as compensation for those who have been affected by drugs because we know that it is due to laxity of the government. We also want rehabilitation centers for the youth and a modern youth polytechnic like those which are in Muranga. When the presidents come in, they should not employ their tribe's men. We do not want to see DCs and PCs coming to the Coast from one community. There are many other communities and not just one community. We should have Somalis and Kamba and in each district, the security committee should also be mixed up. We should have representation in all committees like the Tender Committee which should have representation from the youth and the community. We do not know what is happening in there. There should also be a youth and women representative in the vetting because the youth suffer and the corrupt older people are the ones who have been put there. If you ask them, they will tell you that they do not know your name so the vetting process should be removed because the constitution does not allow for it. I have gone through vetting and I have not seen any other people except the Mijikenda and the Swahili and it is only people who live along the border who should undergo vetting. I have not seen any other tribe affected by the vetting yet according to history, the Luos are from Southern Sudan, the Kikuyus are from Cameroon and now they are the ones who brag as being the real Kenyans. The Maasai are from Tanzania and they also brag as being real Kenyans though

they are also slightly oppressed. We originated from Kenya in the Lamu side and the Mijikenda are the original occupants of Kilifi but they are treated as non Kenyans.

The other thing is in regard to the KWS. They should practice some corporate social responsibility to the community in the resources that they have like in the Malindi Marine Park and at least 30 per cent should be channeled back to the community. When the county government comes in, we shall have nothing. There is a community shop that they want to demolish but it should not be demolished. We should be allowed to use it to land the boats in low tide because there is no other place. We also have youth leaders who volunteer through the Ministry of Youth and I even have the certificates here. We volunteered for two years and those youth leaders should at least be employed by the government. Jobs come up but we are not given instead they are given to other people. We should be given work and we should probably be the first inciters because the youth listen to us and every time you tell them about role models, they tell you that you are jobless yourself. If you tell somebody that there are jobs in the Government, they ask you why you yourself do not have a job. Is that justice? There should be some affirmative action for those of us who have volunteered so that we can get jobs. That is all and I thank you very much. You should implement that or give us a way forward so that we can know that all the information we have shared with you will be of assistance. I can see that the elections of 2012 will be very peaceful but failure to that, we do not know what will happen.

Mr. Tom Chavangi: Thank you very much Omar, Mapenzi and Thureya. Mr. Omar, there are some documents that you have given out. I have them, but I have already submitted, but we want you to give them to us as evidence before this Commission. Can we photocopy the booklet and the memorandum? There are 29 who made applications for identity cards showing the dates when they applied for their IDs starting from 2007 to 2011. I would wish to produce this as exhibits and also a memo from the Malindi community to the Director General Public Procurement Oversight Authority on issues of tendering and also a letter to the Kenya Anti Corruption director and two letters to the town clerk of Malindi from the Shela Youth Group. I would wish to produce this as exhibits before this Commission.

The Presiding Chair (Commissioner Shava): The documents are so admitted. I would like to ask whether any of the other witnesses have any other documents that they would like to produce so that we have everything.

Mr. Tom Chavangi: As Omar is looking through his files of documents I just wish to ask him what solution he has towards issues of integration in this part of Coast Province. In Coast Province, we have the Luo, Luhya, Kikuyu, Mijikenda, Bajuni and the Boni. Some might be your friends and perhaps you have even intermarried with others. What challenge do you have with these communities that have come to live here in the Coast?

Mr. Omar Mohammed: The communities that have come to live in the Coast should respect the indigenous people. You will find that most of heads of departments come from up country and even the indigenous people are not given anything. We do not even

have role models because they say that even if you are educated, you will not get employed in such offices. At least 60% of the people employed in Government offices should be from indigenous communities and they should be given the first priority. For example, at the DCs place, if there are ten clerks working there, then six should be from the local communities. In that way, we will feel some ownership because sometimes, others benefit more than the indigenous people.

Mr. Tom Chavangi: Ms. Thureya, there are some issues that you have addressed. You talked about the loans from different organizations and banks and though you did not speak in details, you also talked about religion. What would you like to say about such kinds of issues?

Ms. Thureya Mohammed: The Government gave out revolving funds for the youth, but the main challenge is that the funds come in late. Our group applied in August, and January is now coming to an end and we have not yet received the cheque. Secondly, you will find that most of the youth do not go for those funds because they are charged interest and as Muslims, if they want to give us cash for us to develop income generating projects, then it should be interest free. Muslims are not allowed to take interests because it is a sin to us, so we are appealing to the Government to make the loans interest free because if it has interest, we cannot manage to take the money. We told them about the issue when they came to Kilifi but they did not implement. To some extent, the funds are given out but as Muslims, we cannot benefit because they have interest.

Mr. Tom Chavangi: Thank you very much, Ms. Thureya.

The Presiding Chair (Commissioner Shava): Thank you very much to the three of our witnesses. Before we continue, I would like to apologize to my brother Commissioner who is here with us and whom I had not previously recognized. I would like to formally recognize the presence of our brother Commissioner Dr. Ahmed Yasin of the National Cohesion and Integration Commission. I can see that he is listening keenly particularly since we have to make recommendations before the life of this Commission then comes to an end. Commissioner Yasin and his colleagues will be left with a lot of the work of implementation. We are very happy that he is here with us today. Karibu, Commissioner. We will now give the commissioners the opportunity to ask question.

Commissioner Dinka: I would like to, first of all, thank Omar Mohammed, Juliet Mapenzi and Thureya Mohammed for your presentations. You are very angry and passionate and that is the way it should be, but I would appeal to you never to be bitter. Keep your sense of humour that we have seen and try to get to your objective because most probably in ten years time, you and your generation will take over the implementation of the things that you are now demanding so prepare yourselves.

I have one or two questions. On the issue of drugs, I am sure the Government authorities, the security agents and the intelligence agents and the police must have been following what has been happening in the Coast for a long time. They must have some idea in terms of who are the players and so on, but what do you think the Government should do in

terms of protecting the border in order to prevent the drugs from coming in? It would appear from what we hear that a lot of drugs are coming in. Is that beyond the control of the Government or is there something that could be done to seal the Coast a little better by controlling little boats and big boats and things like that and other inaccessible areas. Is there any suggestion that the youth would want to make because this is basically targeted within your group and generation?

Ms. Thureya Mohammed: My personal view is that during investigations, we are not involved as women and youth. They forget us yet they should bear in mind that we have seen drugs being concealed in baby nappies and in private parts and it is not easy for the Government to discover such places.

Secondly, the Government should protect the witness because he or she will be risking his life. We have not seen any measures that the Government has put in place to protect a person who is ready to give out information and evidence about drug addiction. How is the Government going to protect the witness when he gives out such information? Every person fears for his life and so they do not give out information to the Government. Those reasons, for me, are enough.

Mr. Juliet Mapenzi: Thank you very much. Personally, I see that the Government has a problem because sometimes back, there was some investigation that touched on drug addiction in deep and there was sufficient evidence, but up to date, no step has been taken. The people at the top offices are the ones who bring drugs to these sides. How would one report himself and he is the one bringing the drugs? I cannot blame the users because once you start using drugs, it becomes an addiction and you cannot live without them. You will find that the people who buy them are the ones being arrested and prosecuted and people fear to come out because we have no security. No step is taken against the people in high offices who bring the drugs to these sides and it is the ordinary citizens who are being affected and it is our families getting problems while they put some money in their pockets. You should assist in that issue because there was sufficient evidence. Thank you.

Mr. Omar Mohammed: There is an Act concerning drug trafficking where a drug dealer will be arrested and fined Kshs3, 000 or Kshs4, 000. There was a Chief Magistrate who was in Malindi and he gave a life sentence to a dealer. That is when people started to fear. Drug abuse declined but the magistrate was later transferred. I even have a letter here that I wrote to congratulate him and we spoke about him on drugs day. The Anti-Narcotics Act should be reviewed to be like China where if somebody is arrested, a life sentence is served. If that can happen, then drug abuse will stop because there is availability of drugs and if there is a strong law, then everybody will fear. The Anti-Narcotics Unit should involve people from the community. If a forest officer is from the community, then he will work better than someone from outside. You will find that when a person is arrested, he will plead guilty and he pays a fine because they have money. The Act should be changed to give a life sentence to drug dealers.

Commissioner Dinka: My last question is for the three of you. In your organizations of youth and women and other community based organization, can you tell the Commission in about two minutes, what your organizations have been doing in terms of sensitizing the population on the issue of drug and sex tourism particularly the parents, school children and also elders?

Ms. Juliet Mapenzi: I come from a youth based organization called the House of Talent and we use theatre as a mode of communication to our community. We also use our talents in singing, acting and dancing to pass information to the community on different issues like the issue of drugs. We usually have plays, poems and songs and we also organize football tournaments. When we do that, we pass information and we find what issues affect them. If it is drug abuse, we go there with different items to perform and we have a one on one discussion with the community members and we try to come up with some solutions that can assist us all.

Ms. Thureya Mohammed: My organization works on different projects in bridging the gap between the community, the youth and the law enforcement officers. We have a project called Masala Peace Building and the first step is to build good relationship between ordinary Kenyans and law enforcement officers because the youth and the law enforcement officers were enemies who could not manage to cope and information could not reach the appropriate place. We saw that we must build a good relationship between the youth and the law enforcement officers. Last year, we had more than three activities. One was a peace dialogue between the law enforcement officers and Kenyan citizens. We saw that we had religious leaders, youth, women leaders and the law enforcement officers and the provincial administration. We discussed issues concerning peace and within those issues, the most important things that came up were HIV/AIDS and drug abuse. We discussed how to reduce or completely eradicate these two things. The second activity was peace building in high schools. When we go there to mentor the students; we interact and hear from them. We join hands and in the process, we learn many things that we did not know. One of the primary schools in Malindi had some of its students being given drugs and the drugs were put in books. One of the teachers told us that happens a lot in primary schools. Student mentorship is one of the things we do. We debate with them and on 25th, we will be in Mambrui Secondary School where we will have preventive talks between the facilitators and the youth in the school. Thank you very much.

Mr. Omar Mohammed: As Shela youth, our activities are unique because of drugs. You will find that most organization that deal with drug addicts only treat the pain which will come back after some time. What we do is now is civic education especially among the women because you will find that when a young person is arrested, the mother is the first person to go to the police station. We started to bridge the gap between the mothers and their drug- taking children. Some have been arrested and jailed. There is also enforcement in court and the judge was firm and the women were not going to court. Most of the drug users are just sleeping at home being fed by their parents. Drug users are being protected and the mother should leave the child so that if he is arrested, he is all alone.

Secondly, we have meetings with members of the judiciary and the community police. In the whole of Kenya, the people of Malindi are at the forefront of fighting drugs but the drugs are easily available.

Commissioner Dinka: Thank you very much. I am grateful and in conclusion, I would like to encourage you to continue with this good work. I would like to join you in appealing to the elders to join hands with you and save the young men and women of this county from drugs and from going astray in their lives. They should talk to the youth effectively but unless you also help them, they will not succeed. Your help is absolutely critical, so do not expect too much from Government. The Government has other things to do and it is, basically a social problem and that society has to help itself and with these kinds of young people committed to work, I think you have a very easy task to do. Just support them. Thank you very much.

The Acting Chair (Commissioner Namachanja): Thank you, Ms. Thureya, Juliet and Omar. I have a few questions for clarifications starting with Omar. You have used two words that I do not understand. What does *gangari* mean? What do you mean by *kukaa gangari*?

Mr. Omar Mohammed: To be *gangari* means that you should be firm and strong.

The Acting Chair (Commissioner Namachanja): Now I understand. Concerning the case of your sister who missed the loan because she could not get the ID card on time, I would like to know how old she is now, for how long has she been waiting for the ID after application and what reasons were given to her.

Mr. Omar Mohammed: I live a bit far from her but it is from 2010. She went to Lamu and she was told that she is an Arab and that brought some problems. They wanted a birth certificate of her great grandfather so that she could attach to the documents. She is about 20 years old now.

The Acting Chair (Commissioner Namachanja): This policy applies to communities that are on the border region. I come from the border area and I have a daughter who is now 21 years old and she has also not been able to get an ID card because she has to go through the vetting process. Unfortunately, when this process takes place, I am away in the field. So it is not just discriminative to your community but it is a Government policy that applies to all communities that are on the border areas. I think the most unfortunate thing here is the long time of waiting.

Thureya, is your organization a Government sponsored or is it an NGO because you said that you are a social worker?

Ms. Thureya Mohammed: The organization that I am working for is a Non-Governmental organization. I also volunteer in the community and we join hands with the youth as a community youth leader.

The Acting Chair (Commissioner Namachanja): Thank you very much. I think I see real role models there on that bench and I will just encourage you to continue working for your community and pushing for the issues. Omar, do not get so emotional. As a role model, the youth look at you and any word from you could easily incite them. So, please, do not get so emotional. That is my appeal. Thank you very much. I have no further questions.

Commissioner Farah: Mine is also to join the commissioners to thank the three of you for your good presentation. I do not know who said it but I have one question. After listing down all the matters affecting the youth of Kilifi and Malindi, I know that we have cultures, and cultures must be enforced and added to values. Somebody mentioned harmful cultural practices and I wanted to get an idea.

Ms. Thureya Mohammed: It is me who spoke about harmful cultural practices. I spoke about harmful traditions, for example, in North Eastern, there is the FGM. I said that our religion says that if a girl attains the age of 9 years, she is free to get married.

Although she is young, she is considered to be grown-up. In those days, they were not educated like they are now. If you cannot have advanced education like now, you will just be like a corpse. But if we say we follow that one, you can imagine a child of nine years in this modern life is in Standard Three. If you marry off such a girl, by the end of nine months, she will be 10 years and she will give birth. She is a very young girl and she is bearing children. So, we would like this Commission to assist us. This is the message from us.

As a Muslim, I accept it. I have not denied it. It is a religious practice. It is also a harmful tradition and culture. We should sit down with religious leaders from different religions, so that we can find a lasting solution to this problem of marrying off very young girls. The Constitution states that a child is someone who is below 18 years. This will come to affect us because we accepted what we were told by the religious leaders. We were there as the Muslims and other religions. We accepted as people with different traditions and cultures. We said a child is anybody who is below 18 years. If it will affect us, there is nobody to blame, but ourselves. I think I have answered your question.

Commissioner Farah: Apart from harmful cultural practices, the youth have accepted that getting rid of them needs generational changes. For example, for some people in Mombasa, it is the men who work. They go out to the sea, fish and bring food home. But in the upcountry, you will find that the men just sit under a tree and it is the women who work. Those things need to be carefully handled and changed slowly. If you do it forcefully and say that you want to change it overnight as a youth, you might face problems. Are you getting what I am trying to say? There are some cultural practices you need to handle carefully and slowly. Thank you very much all the same. I have noted down all your complaints. That was the only one which I was not sure about and now I am getting it.

Ms. Thureya Walid Mohammed: Thank you very much.

Commissioner Chawatama: I have really enjoyed listening to the three of you as Commissioner Dinka said it is the passion. You definitely believe in what you are saying and what you are doing. I have no doubt that the work that you are doing is bearing fruit. If you continue this way and you represent the future, then Kenya will be blessed for having leaders such as yourself. Hopefully, you will not change.

I do not have a question, but I just wanted to say something, especially since the room is full of adults. One of the things that keep on cropping up wherever we have been is that solutions lie with the Government. I agree that some solutions lie with the Government. However, my worry is that the Government, too many, seems to be the saviour to the extent that family is not being talked about. What is happening in the families? One of the things we have heard constantly is men abandoning their families and not providing for them and not being there to give them words of encouragement and leadership. We have also heard from women who are single parents and who are just not getting the support that they need.

When I listen to the three of you, I wondered to what extent the lack of family life or the breakdown of that institution of family has impacted on the lives of the youth and whether or not with stronger families, some of the issues that we are hearing from you could be lessened. I do not know whether or not one of you has any comments on what I have raised. If you have maybe I would just like to hear from one of you.

Ms. Thureya Walid Mohammed: We are the indigenous people of Malindi. My maternal and paternal relatives both come from Malindi. I listed down the challenges facing us, as a family. I prioritized and saw that the education standards are very low in our families. I sat down with the people from my family who love education and we had a family gathering. Right now, as I speak, in Mombasa, we have two tribes known as Baluti and the Nubis. They came together as a family and noted their weaknesses. For the last two years, they have sat down and we have really looked into their problems. I brought the same example to our family members and told them: I have a thought as a person. I thank God, my late father educated me. At least I have some experience. I can manage to sustain my life. I saw that I am a good role model to my family and they can understand me. When I approached them last week, they really supported me. One of them had courage. I told them openly that there will be a time that we will register, so that the Government can identify us. If there are funds for development of education, we should also get that fund. But as a start, let us contribute, so that we have our personal account. We can deposit money in that account. If we see there is one family member who has a weakness and cannot pursue education, we withdraw the money and help him or her. They supported the issue. There is one family member who said he was ready to give that money for registration. He said that if members are willing to contribute towards education of our people, he would pay thrice that amount. So, that is a good example. Perhaps others will share with me.

Mr. Omar Alwy Mohammed: Regarding the issue of youth employment, we sat down as the youth and formed a group called HK. We are not biased in education. When we go

to the National Museum of Kenya, if there is a cultural festival, we are the people who are much involved in that. We go there to sell ice creams and do other small-scale businesses. At least, there are Government departments which normally assist us but the problem that we have is finance. Right now, we have the Matunda Sales groups whereby we sell pineapples, but we have a problem of finances.

There is also the issue of drugs in Malindi which is really affecting us, but HK is very strong. All the youth know that you cannot choose the type of work we should do. Even the youth employment as the members who were there, we went there and did the slashing.

Ms. Juliet Mapenzi: I feel that everything starts from the family. As a parent, I would like to congratulate those who have started. However, you will find that most of the parents if you have given birth, when you finish breastfeeding the child, the child is no longer yours. You sort out yourself. As you bring up the child, you should consider her future. If the future is bright, definitely, even the family will have a change. As a parent, take responsibility even if you do not have money to educate the child. There are some sponsors. There is a lot of money that can educate the children. It is for you to know how to access such kind of money.

As a parent, you should take responsibility and ensure that you groom your children well. Also, the second thing is that they youth like money that can come there and then we know that nothing can come on a silver platter. You have to sweat for it.

I would like to encourage my fellow youth by telling them that there is the issue of volunteers. You can volunteer as long as you have set your targets and know what lies ahead. You have the ideology that we cannot work without being paid. If you are idle, you cannot think a lot. So, the change will begin with us. We have to change our attitude first, so that at least, we can have a bright future. Thank you.

Commissioner Chawatama: I would like to encourage you to ensure that when you become parents, the foundation of your family is strong. I congratulate you on the initiatives that you have taken as a family. This is something that you should share with others, so that you can look within the family on what the family can do. Thank you very much.

The Presiding Chair (Commissioner Shava): I would like to thank our witnesses. As Commissioner Chawatama has said, I also feel the same. I have really enjoyed the presentation. I love the enthusiasm and confidence that you exude. There are different approaches in life. Sometimes people want to bring change gradually, but one characteristic of the youth all over the world is that they want change. We need different kind of approaches because it just enriches the entire process. It has been a pleasure to listen to you all because clearly, you are very passionate about the issues and you have a very good grasp of the issues. I like the way in which you have addressed yourselves with regard to those issues. There may be a solution. As you have said, there needs to be structural support. Even if you want change, you cannot control the structures. So you need to be inside the structures and the structures need support.

I have taken note of the issue of sex tourism. As one of you pointed out, I read a study where actually in this area there was a large proportion of Kenyans who were guilty in participating in that and not foreigners. So, I think it is important for us to also own those statistics. I have read different reports. We have different pieces of legislation, the Children's Act and the Sexual Offences Act. There is the Attorney-General's Task Force on the implementation of the Sexual Offences Act. UNICEF has been doing some important work with hotels and villas in this area. So, I just want to know from Mapenzi whether this has had the desired effect. Do you feel in this area the impact of the Sexual Offences Act and the Children Act, UNICEF, the agreement with Kenya Association of Tour Operators and Hotel operators of now allowing children into hotels for these purposes? Do you think they have made an impact or do you have any suggestions as to what else they should be doing?

Ms. Juliet Mapenzi: Concerning that issue, not many hotels are implementing that Act. However, there are some hotels where if you go, if you find there are some rules and regulations to be adhered to. If you go against the rules, legal action will be taken against you. This is not the case in all hotels, but a few of them. My recommendation is that action should be taken against those who contravene the law.

The Presiding Chair (Commissioner Shava): On empowerment of the youth, the fact that the youth have not been involved in different processes including in the vetting, I think it was Omar who talked about modern youth polytechnics which are needed in this area and they are not here. Somebody else talked about the national schools, but there are no facilities. Also, Thureya spoke about the role models. I do not know how we will compel Prof. Mazrui to live here, but we will try and get him the message that---

Now that the county governments are coming and you three, sitting there, are leaders of youth, how do you think that the new county system of government will help you implement your agenda? Where do you situate yourselves in those county governments? What agenda do you think we should be following most urgently?

Ms. Thureya Walid Mohammed: Actually when we learnt that the county government is coming into place and we will have the county government, we sat down as youth from different organizations which are KECOSKE, Kenya Muslim Youth Alliance, Malindi Education Development Association and we said every day we are being told about education but now we are being forced to get education because there will be employment opportunities. A person who will be having a certificate should go on with education to diploma. A person with a diploma should go to Phd. We sat down and the main agenda was to advance in education because even when the county governments come into place, we are still the Form Four dropouts. We are primary school dropouts. We will not get those vacancies. So, our slogan was: "Tuongeze Elimu" so that those job opportunities come into place not only for people from upcountry. The people from upcountry are getting ready. We are asking ourselves as the youth, how prepared are we for the county government system? The other issue is the Port of Lamu. Once the port is established there will be employment opportunities. We were telling the youth that we

should advance in education. If the parents or relatives of a person have land in Lamu he should not try to sell the land because once the port and the county government are in place that land will be a resource. We told the youth that they should advance their education and that they should stop selling land completely.

The title deed acts as security when going to secure a loan. We told them that they should not sell land that will help them in future. You sell the land and you are left with nothing. That is the agenda that we addressed when we were talking with the youth. Thank you.

Ms. Juliet Mapenzi: For me, it was a great opportunity that we are adopting the county system of governance. The people of Kwale have been marginalized for a long time. They should get opportunities to come out so that their lives can change. Some of us are reaping the results because their parents did not want to take the responsibility of educating them. So, there are people paying back because the issue of employment---because they do not qualify. A person should not give up because you can start from below but at the end of the day, you will be somewhere.

In implementation, there are certain issues that really surprise me. There are some industries that are being established but you find that the locals are not being involved. An example is Tuskys Supermarket. When you go to Tuskys to look for a cleaner's job, you are told that you must have a degree. Do you need a degree to sweep? Jobs like arranging commodities on the shelf, do you really need to have a Phd? If there is a company that is being established somewhere, the locals should be given a certain percentage so that they can develop.

I blame our leaders because they do not have the voice to defend us. When such companies are being established, this should be an opportunity for us to get employment. If one of us can get employment there, he or she can educate their children. Even when it comes to jobs like arranging biscuits on the shelves, they bring people from upcountry to do that? Does this mean that there is nothing that we know? Those are the opportunities that we can use to change our lives but still we do not get them. That is when you find that if there are groups like Mombasa Republican Movement or Al Shaabab, people are ready to join them. A person is really willing to join such organizations because he will get money. Our people who have degrees, when they come home those degree certificates do not assist them. So, we really have great hopes for the county government that it will assist us. We hope that we, the locals, will be considered first in everything that will happen in our county.

There is something that I had not addressed. There is an issue that I want you to go and investigate about the National Youth Council Elections. The elections of the youth were to take place and all over sudden, the exercise was stopped. Every now and then, the case is being postponed. There is something that is happening behind the curtains that we do not understand. Please, investigate on that issue.

Mr. Omar Alwy Mohammed: If I can speak about the county governments, most of the time when we sit down as the youth, we ask ourselves whether this county government will be a powerful government. That is the first thing that I want to know because if you

look at hotels and industries, most of the people who are employed there, they are not people from our place. Does this county government have a mandate to ensure that the indigenous people will be given the first priority in those employment opportunities?

Another issue is about the position of the youth leader in the county government whereby he will be speaking on behalf of the youth. Why is it given to political parties? The political parties are the ones who have been given the responsibility to elect a youth leader. So, he will go there to serve the interest of that political party. He will not go there to protect the interest of the youth.

As women representatives, a youth representative of the county should be elected within the county so that it could have been better. He could go there on behalf of the youth. So, although we will vie for those posts, but these youth representative---

Another issue is that it should be mandatory that 30 percent of the budget of the county should go to the youth because we want to start a talent club and modern polytechnics and deal with very many issues that affect the youth like rehabilitation. The county executive should be proposed so that we can have youth that will be in the Executive so that when the issues of the youth are being addressed, they should know who to approach. That is when we can get an explanation. But if it will just be like that, it will be that as the youth, we do not know the way forward because the politicians will come in and nothing will come out.

First of all, the county government should be very powerful. It should have a mandate to ensure that the resources and also the job opportunities that will be within the first priority should be given to the youth who are indigenous people. Harmful habits like usage of miraa should be eradicated.

The youth should have a mandate so that they can fight drug addiction. There should be a department that will undertake the issue of drugs. Thank you.

The Presiding Chair (Commissioner Shava): Thank you very much for your testimony. We have managed to have a youth forum and made concerted efforts to make sure that we listen to the young people from that area and the surrounding areas where we are. Thank you very much for representing the young people. We see you have a youthful approach to things. We can see gender balance, cultural balance and all the rest of it. That is how we want Kenya to look like in the future. I think you have represented the youth very ably. I have no further questions for you. Thank you very much.

Leader of Evidence, please, stand down the witnesses and approach.

Leader of Evidence after conferring with my colleagues, it has been decided that we will take a short break.

Mr. Tom Chavangi: We can resume at around 3.30 p.m.

The Presiding Chair (Commissioner Shava): We will take a short recess and we will reconvene at 3.30 p.m. At that time, how many cases will we hear?

Mr. Tom Chavangi: About nine witnesses. We will start with Carson Nzaro Ngua for persons living with disability.

The Presiding Chair (Commissioner Shava): I think that our co-ordinator is trying to make an announcement. We request that those upstairs who are moving to be seated. We thank you your patience so far. We ask you please to remain seated until we conclude and not to disturb the rest of the proceedings. Thank you for your patience.

Mr. Tom Chavangi: Presiding Chair and commissioners, I suggest that we start with the memorandum on the persons living with disabilities and then we move to Mohammed Mwalimu who is clustered in the land thematic area. Then we move to the other group of forced evictions, the last four witnesses and then we go back to individual hearings of our cases.

The Presiding Chair (Commissioner Shava): We are so guided.

Mr. Tom Chavangi: Most obliged.

Ms. Sylvia Chidodo: Residents of Kilifi, thank you very much for your patience. As the Presiding Chair has just spoken, we will have a short break and then at 3.30 p.m., we will come back and continue as has been directed. For those who are fearful because some issues you did not expect them to go the way they were, I think they were spoken about even by the commissioners. We have a list of people from Kilifi. They will be able to speak today and tomorrow. We have a special hearing for women where women from Kilifi will be given a chance to speak. So, I am begging you to be patient. They will sit here as the Commission so that they can listen to you, the residents of Kilifi, because these hearings are for the people of the County of Kilifi. So, with your permission and that of the commissioners, I will ask you to stand up in respect of these hearings so that the commissioners can leave.

(The Commission adjourned for lunch at 2.30 p.m.)

(The Commission resumed at 3.30 p.m.)

The Presiding Chair (Commissioner Shava): Please, take your seats. Ladies and gentlemen, welcome to our afternoon session. It is a continuation of what we were discussing in this morning.

Leader of evidence, please, carry on.

Mr. Tom Chavangi: Thank you, Presiding Chair. Our witness is Kilifi No.9, Mrs. Kazo Nzaro Ngua.

(Mrs. Kazo Nzaro Ngua took the Oath)

Thank you very much, Mrs. Kazo Nzaro Ngua, for coming before this Commission. You had presented a memo about people living with disabilities or the vulnerable group in this particular area of Kilifi. Is that the position?

Mrs. Kazo Nzaro Ngua: Yes.

Mr. Tom Chavangi: Now, you can go on addressing the issues you articulated in the memorandum.

Mrs. Kazo Nzaro Ngua: I was addressing the Commission on behalf of the disabled and people living with disabilities who have been marginalized for a long time. I was born with disability and I have never had anything to be happy about because being disabled is not a disease. A person with disability is like any other person and we have children who need assistance. The person who is disabled is marginalized and cannot get the rights because the first help starts with the chief who is the first person to recognize that you are living with disability. But if the chief does not recognize this, then I thought I would come and talk on my behalf and on behalf of the other people living with disability.

Mr. Tom Chavangi: Continue. What is the problem or the challenges that people living with disabilities are facing?

Mrs. Kazo Nzaro Ngua: The challenges that are faced by people living with disabilities are the physical strength. They cannot do any strenuous work, even if they are being assisted. For example, through the CDF funds, we can be enrolled in small and medium-term projects or enterprises so that we can develop ourselves. You find that you vote, and once you have voted, they go there and they do not want to come back. We do not even know some of those Members of Parliament.

The issue that is most important at the moment is that a person with disability wakes up very early to go to the roadside to mend shoes at Kshs5.00 and the Member of Parliament is waiting for it the other side. As a country, we wait for Members of Parliament to work for only three days. They go to work on Tuesday, Wednesday and Thursdays. When they come back home – constituency - they count the Kshs5.000 that the person with disability has made.

Those of us who are living with disability thought of publishing in the newspaper something that could spread throughout the country so that everybody can read it so that those in the Ministries concerned with people living with disability could be embarrassed. This is because it is not good for somebody who is able to keep money meant for the disabled people. We go to school and most of these people who are well educated are thieves and corrupt because when they make calculations, they know how they pass the figures, but those of us with disability know those secrets.

Mr. Tom Chavangi: Thank you very much. The problem facing women and especially those living with disability is big. Let us just go back and try to focus on the women who

are living with disabilities on issues like education. If they have opportunities to be educated or get employment; perhaps, you get forcefully engaged into sexual abuses. These are the issues that we want to hear from you so that we can know the challenges that people living with disabilities face, especially on education. What do people living with disabilities encounter?

Mrs. Kazo Nzaro Ngua: With regard to education, not many people living with disabilities go to school. Some have gone to school but not all of them. I cannot talk about everybody at their homes because everybody is born in a decent home. But my pain is, as I feel it, with education, everybody should have access to good education.

Mr. Tom Chavangi: What about employment? As the representative of the disabled people in this county, what about the issue of employment opportunities on the side of people living with disabilities?

Mrs. Kazo Nzaro Ngua: That is the worst! Who will give you a job? Even if you go to the office, you are degraded. Who can give you a job? Even if it is just watering the plants, you cannot get it. So, the offices have the owners and everything has its owner.

Mr. Tom Chavangi: So, you are saying that on the issue of employment, the disabled people also have a problem?

Mrs. Kazo Nzaro Ngua: Yes, they have a big problem.

Mr. Tom Chavangi: What about the issue of being exposed to sex, rape and defilement of children, especially the disabled ones?

Mrs. Kazo Nzaro Ngua: Children or women being raped are wrong. People living with disability do not have the ability to stop you from going to them with unnecessary things. That is wrong. I would say that I do not support it.

Mr. Tom Chavangi: Mrs. Kazo, do you have a family?

Mrs. Kazo Nzaro Ngua: I have children and grandchildren.

Mr. Tom Chavangi: What are your children doing at the moment? Are they employed or how do they sustain themselves in life?

Mrs. Kazo Nzaro Ngua: My children are unemployed. They just go to play and that is how they get their income. The offices are theirs.

Mr. Tom Chavangi: Even if they are doing masonry, at least they are sustaining themselves. They can look after their wives and children.

Mrs. Kazo Nzaro Ngua: Yes. They try to see that we look okay. We eat the little that we get. We do not get big things but, we get everything although it is not enough but, at least, we live.

Mr. Tom Chavangi: That is so good, mama Kazo. There is also an issue; for example, of stigmatization and marginalization of the disabled people who are totally separated from the rich people. Are such issues in this county?

Mrs. Kazo Nzaro Ngua: Marginalization is the biggest issue here because even when the food is brought here, the Governments of the three regimes were different. During the KANU regime, money was not found but life was easier. When the NARC Government took over, it was better at first, but now with PNU and ODM coalition, you get somewhere where the food comes in and they will look at you as if you have dropped today from heaven. They will not give you. If they do it, a group of 25 or 50 people is given 50 kilogrammes of food. How can you share 50 kilogrammes of food among fifty people? Sometimes you are told that the chief has already taken the maize and there is no maize. How do you go to ask the chief?

Mr. Tom Chavangi: How about the food? Is it the food meant for the disabled or it is food for the community?

Mrs. Kazo Nzaro Ngua: It is supposed to be for the disabled, widows and orphans. When you hear that it is food for the disabled, you will go and look for it and when you get there, even if you ask the person concerned, he takes a pen and says: “Madam, we are very sorry, the food was taken the other day”, and that is in your area.” When I inquired about whom I should ask, I was told: “Go and ask your chief.” So, how do I go to ask my chief? Of course, I cannot ask and, therefore, I stay like that.

Mr. Tom Chavangi: Let us say that the Government of the three regimes, the KANU---

Mrs. Kazo Nzaro Ngua: The KANU Government had three roosters and it was a little bit better economically. There was no food, but if you went to the shop, you would be able to buy something at Kshs10.

Mr. Tom Chavangi: Thank very much, Madam Kazo. Is there any issue, perhaps, that you would want to tell the Commission or the commissioners to listen and to take the message forward on issues concerning, especially the disabled? Is there anything that you would want to say?

Mrs. Kazo Nzaro Ngua: I would like to tell the Commission that---

The Presiding Chair (Commissioner Shava): As you have said, perhaps, some of us were not here in the morning. I requested that when a witness is testifying, please; respect the testimony of that witness by being silent. For those of us who have mobile phones, I requested that you switch them off! I now give you a few minutes to do that, if you may have forgotten.

When the witness is speaking, we request that you remain silent. The things that the witness is talking about are things that are important to her and to the people that she is

speaking for. You may agree or not agree with what she is saying, but in all instances, we expect that you give her respect.

Mama Kazo, please, continue.

Mrs. Kazo Nzaro Ngua: All that I wanted to tell the Commission is that, as they go there, a disabled person whatever belongs to them, she would remain with them. If it is in the President's Office because that is where everything is planned--- If it is planned to be for people with disability, it should pass through the hands of people with disability.

Also, in the same vein, even here in our place where food is given, my recommendation is that there should be a person with disability there because if another person with disability goes there, I will be sympathetic here in Kilifi.

Mr. Tom Chavangi: Is that all you wanted to speak about?

Mrs. Kazo Nzaro Ngua: That is all. I do not have much to say.

Mr. Tom Chavangi: I have exhausted part of my leading. I now pass you over to the commissioners.

The Presiding Chair (Commissioner Shava): Thank you, leader of evidence. Commissioner Dinka, do you have any questions for the witness?

Commissioner Dinka: I have no question except to thank Mama Kazo for coming to share her experience with us and for having represented people living with disabilities very ably.

Thank you very much.

The Presiding Chair (Commissioner Shava): Commissioner Namachanja!

The Acting Chair (Commissioner Namachanja): I have no questions for the witness.

The Presiding Chair (Commissioner Shava): Commissioner Farah!

Commissioner Farah: Mama Kazo Nzaro Ngua, thank you very much for your presentation. In every county where we have been to, we have heard presentations from people who are living with disabilities. Do you have any communication to the National Organization that deals with people living with disabilities?

Mrs. Kazo Nzaro Ngua: I am told it exists but I do not know anything about it.

Commissioner Farah: There is no communication about it. Is there any other person with disability who can answer that question?

There is a national organization which has money to be given to the counties for people with disability. Anyway, I think with the counties, the Government is going to give money to people living with disabilities. You should ensure that your organization is properly registered. Therefore, you should know your members. After you register your organization, you communicate to the head office of the National Organization for people living with disabilities so that you get funds to help yourselves.

Thank you very much. I have no further questions.

The Presiding Chair (Commissioner Shava): Commissioner Chawatama!

Commissioner Chawatama: Thank you very much for your testimony. I have one question with regard to whether you access health facilities for persons living with disabilities. What are the challenges for people living with disabilities in accessing health facilities?

Mrs. Kazo Nzaro Ngua: There are many challenges. When I fall ill, I do not have money to take me to hospital. I will stay with the disease until I recover. If I am taken to the hospital, I will stay there for a long period. Sometimes I stay there for a whole day and only get a prescription with no medication. That is another problem.

Commissioner Chawatama: What would you like to see done in order for people living with disabilities to have proper health care or access to health care?

Mrs. Kazo Nzaro Ngua: I would like a system to be put in place where a person living with disability is given chance to help other people living with disability.

Commissioner Chawatama: Thank you very much. I have no more questions to ask you.

The Presiding Chair (Commissioner Shava): Mama Kazo, I have two questions. I would like to know from the community from which you come from, what are the traditional attitudes towards people living with disabilities?

Mrs. Kazo Nzaro Ngua: To be honest, I do not have any problem with the traditions or culture in my home. It is me and my children. I do not have any problem at all. Those who have problems are the ones who do not get any help at all.

The Presiding Chair (Commissioner Shava): We have been to other parts of Kenya, and we have been speaking with persons living with disabilities. Some people have told us that, contrary to the traditions, persons living with disabilities are less or highly valued than those who are not. Did you experience anything like this when you were growing up?

Mrs. Kazo Nzaro Ngua: I did not because I was well taken care of until now and I am okay. I was not isolated or marginalized at home. I am okay.

The Presiding Chair (Commissioner Shava): That is a good statement! I am very happy to hear that. We have heard what you have said. You have spoken on the issue of livelihood, though your testimony seems to be different from those we have heard. You seem to be speaking from a position that also encompasses even people that are not living with disabilities. So, as you speak for your people, they are also speaking for other people and we appreciate that.

We have no further questions for you. We wish you well and thank you for coming to give your testimony.

Leader of evidence, please, stand down the witness and usher in the next.

Mr. Tom Chavangi: Thank you, Presiding Chair. I think we are going to have a litany of about six witnesses who are going to speak on issues about land.

These are Mohammed Mwalimu, Witness No.6; Nicholas Mrima Wanyeke and Washington Mwambura Mbaga. We have agreed that one of them will speak. Then we will have Samson Jave and Fatuma Mwakidudu and one Mr. Habil Randu. We have agreed also that one of them will speak.

The Presiding Chair (Commissioner Shava): Leader of evidence, which number of witnesses are those?

Mr. Tom Chavangi: I am talking about number 6, 16, and there are two numbers 17. Which means then that Samson Jave will be first number 17 and then Mwakidudu is supposed to be number 18 not 17.

*(Messrs. Mohammed Mwalimu, Nicholas Mrima Wanyeke,
Washington Mwambura Mbaga, Samson Jave Munga;
Habil Randu and Fatuma Mwakidudu took the Oath)*

Mr. Tom Chavangi: Thank you, Presiding Chair. We had a lengthy discussion over lunch hour. These witnesses are all going to speak about land and we are in agreement that, they will all speak, but they will not repeat what the other witness have spoken about.

Hon. Commissioners, that is the agreement we have made.

Bwana Mwalimu, for purposes of the record, tell us your full names.

Mr Mohammed Mwalimu: My names are Mohammed Mwalimu; I am the Chairman of Sokoni Sub-location, CDF Kilifi, Bahari Division, Kilifi Township Location.

Mr. Tom Chavangi: Mwalimu, you presented a memorandum concerning issues of land grabbing or land in general in this area of Kilifi, and also the issue of corruption in Kilifi Town. Please, tell us in brief what is contained in your memorandum concerning the issues mentioned in your memorandum.

Mr. Mohammed Mwalimu: Thank you very much. Honestly, before I start, I am a Muslim and this is the Truth, Justice and Reconciliation Commission (TJRC). I would like to ask the commissioners to allow me use to use the Koran, if it is possible or you can write it in your own way.

This book deserves respect when it is being held. Even with female Muslims, there are times when they are not allowed to touch it. So, we would like to have it covered so that when somebody is being sworn in, it can be okay. If possible, it should be done on a paper. This is what I would like to ask.

I would like to talk about the issues of land here in Kilifi. Here in Kilifi, we have problems of land which has been caused by the administrators, leaders and civil servants who have been brought here. We, the citizens, say that the resources of this country belong to all of us but then according to the system of governance, from the assistant chief, the chief, the District Officer (DO), District Commissioner (DC), the Provincial Commissioner (PC), Ministry of Lands Permanent Secretary (PS) and the Commissioner of Lands have been involved in a very big way to take land away from the coastal people. When we say that they have been involved in taking away our land, we are not saying it through guess work, but because we have evidence.

The elders of the people of Kilifi did not know the meaning of GL and because those who are representing us; Members of Parliament, councillors, leaders, surveyors and the physical planners, took advantage of our situation and formed a syndicate. They sat and thought of ways of making PDP maps so that they could take away public utility land. The law with regard to land is open! The property law says that if somebody wants to deal with some land, it has to be put in the Kenya Gazette through the council and a local daily newspaper. But here in Kilifi, I am talking about the area where we are sitting in this building. Right from here, all the beach plots have been taken by our leaders. I would not say Kikuyus or Luos, but most of the people who are taking these plots are told that Kenya belongs to all tribes, but the tribes that are driving us are five; Kikuyus, Nandi or the Kalenjins, the Luhyas, Luos and Kisiis. The rest of us have been put far behind, because the people in authority were not able to take the land. For example, the DC sits with the Mayor and the Town Clerk, and they call the PS and the PC and form a syndicate which makes the documents. You would find that a government house has been subdivided and a PDP is formed and that house is put aside and the land is given to someone else.

We have given him authority as Chairman of the council or the councillor and that should be a prize which we have given him like a cake to keep for us. But we did not tell him that this cake should not be divided. We, as citizens, sit down and divide the land--- We believe that they have used their authority in annexing the land.

For example, there is evidence of the map showing that this police station was taken by the former Member of Parliament and, below it, the land has been taken by a councillor. The land behind has been taken by somebody who was a PS and another one a PC. They

formed a syndicate claiming that they had done subdivisions and that this is no longer a police station. They were looking for another space to build a police station and they insisted that citizens should move to somewhere else and get a piece of land to give them. We have been here all these days because the leaders have decided that the proposed police station should be moved here so that this can cease to be a private residence.

In the PDP map that we have and the evidence, even the CD that I have given showing those who had grabbed land and which I would like to present here as evidence--- This CD contains information on all the people of Kilifi who have land and those who have come here to get the land. We have been told that the land belongs to them, but according to the evidence and the PDP of 1979, you would see that a government house has been moved or a public utility land has been taken and converted into a private residence or a site. There are council recreation areas where the council has moved to. There is evidence which I have given to you. It indicates that all the utilities have been grabbed.

All those are in the evidence that I have presented to you and they have also been presented to the commissions of inquiry.

They are council's recreation areas. The council has allowed these areas to be grabbed by private developers. All this is in the evidence that I have presented to you. They have taken the matter to a Commission of inquiry. You find that those who were involved in doing the subdivisions in this area have grabbed land. How do they grab it? They get it through the Commissioner of Lands. Successive Commissioners of Lands from 1989 up to late 1990s have facilitated this grabbing intentionally. They were getting part of these plots and enriching themselves together with their cronies. During Kenyatta's Government, they gave many plots to the whites. The British gave a lot of money for citizens to buy land. If this was done in a transparent manner, we would not be witnessing conflict and clashes among communities. It is a pity that the founding father of this nation, Mzee Jomo Kenyatta settled his own people in Coast Province. That is the change we witnessed when Kenya attained independence.

When the former President Moi took over he pledged to follow Kenyatta's footsteps. He gave people beach plots as gifts. This was done from Kilifi and all the way to Lamu, Malindi, and Mombasa. We wondered whether we did not deserve to own some of these plots along the coastal line. The good thing about this process was that most of the title deeds were issued from Nairobi. They were not issued by local councils.

The law states very clearly that local councils should be involved in demarcation and sale of plots within their jurisdiction. In the letter from the council, it is clearly indicated that any illegal allocation should revert back to the council.

There are some Members of Parliament who grabbed the airstrip. The airstrip has been changed into private property. The administrators here in Kilifi are telling the citizens to get money to pay them so that they can be allocated plots. These people have grabbed public land.

The other thing that I would like the Commission to know is that this lady died. She was oppressed by the District Commissioner and the Lands Control Board. This DC made sure that this woman was oppressed, and that caused the death. I would say it in brief, this lady worked at the hospital. She reached her retirement age. She had two options, to send her child to the university or to build a house. The child told the mother, "it is important if you build a house, because we will get money. The other things can come later." So, she got a plot and built a house here in Kilifi. The DC and his people decided that this woman has built on a road reserve. They did that either because she was a Muslim or of Somali origin. We can only look at that as the reason. After her house was demolished, the woman did not recover. She suffered the agony of losing all the money she had put in the rental project. The interesting fact is that, that plot was given to somebody else. That is the most unfortunate thing. The same Government that you have served decides to frustrate you in your retirement. The same DC who made this woman lose her house has taken many public utility plots. Members of Parliament, councillors, surveyors, and physical planners do not write their own names, they write names of companies.

It is true Kikuyus have taken land, but those who have brought these people are our own people. When it is time for election, they beseech us to vote for them yet they have taken our property. If you go through lands records, you will find names of former Members of Parliament and their families. They own the whole of Kilifi. They have more than 20 plots. All these were formerly public utility plots. We are saying that there were about eight plots for putting up a police station at the old ferry, but people have subdivided them. They want to move out the citizens who do not understand what "GL" means. People have been told that title deeds will be issued in all areas except coast. This has irritated people because those who are given title deeds have either been given land by the President or they have money to afford it. We are saying this because the law says that whoever is given a gift by the President must produce a letter signed by him. But if you are given a gift by the President through a phone call to the DC or the PC, you have stolen land. So, I am requesting this Commission to ensure that those people who have taken land for public utility return it so that it can be given back to the citizens or the Government.

Two, if it is possible they should be taken to court. We gave them the authority to protect our land but not to form a syndicate for alienating our land. All the mess was done by the physical planners. Every physical planner that comes to Kilifi, Malindi, or coast must get a plot. They use the same chiefs. When a certain piece of land has dispute, the DC plans to grab it and gives it to other people. All the DCs who have served in Kilifi since 1979 should be investigated. All DCs, MPs, former or current, councilors, surveyors or physical planners should be investigated. This is what we are praying for as citizens of Kilifi so that these pieces of land can revert back to our hands.

Mr. Tom Chavangi: Thank you, Mr. Mwalimu, would you wish to give the CD evidence before the Commission. Is there any document that you want to give out as documents to the Commission?

Bw. Wenyepa, what would you like to add on that?

Mr. Nicholas Mrima: My name is Nicholas Mrima Wanyepe. I am also a community mobilizer in Kilifi County. I will start by reading a letter. The letter was written on 5th September, 1964, by Ronald Gedion Ngala. It says this:-

“Hon. Prime Minister Jomo Kenyatta,

Dear Jomo,

I would like to meet and discuss the land problems at the coast. As you know in the trust land, particularly, in the inter-land of Kwale and Kilifi District, the problem is lack of water for human consumption and for agricultural development. My detailed memorandum to you in March this year even indicated the amount of money we would require for that. But so far nothing had happened. In the most coastal strip area, the problem is that of squatters, some of whom had occupied the so-called Arab land before 1901, 1902, 1903, 1904, when the title were issued to the Arabs by the imperialists. Our people are now being unfairly exploited. Their trees are being pulled down and they are asked to quit without any compensation. Long established African farmers with permanent trees are daily losing their livelihood. This is why a Motion was moved in the House to the effect that money should be made available to purchase such private land in the coast. Your Minister, hon. Jackson Angaine, accepted the Motion on behalf of the Government. But, again, we have not received anything so far. The notorious places in this matter are Malindi, Kilifi, Sheriani, Mtwapa, Likoni, area, Diani and Gombato Estate in Kwale. Africans in the coast are looking forward to the African Government solving this long standing issue this first year of our independence. The attached is a list of people who are now in danger of losing a total of 8000 trees at Kijipwa and Bureni, Vipingo Estate. Most of them have established the land ever since 1929 that is before the estate acquired the land. The danger is that the people will lose their trees without any compensation. Something must be done urgently concerning the whole problem of land in the coast region.

Yours Faithfully,

Ronald Gedion Ngala,
President of Coast Region.

Copy to J.H. Angaine, Minister for Lands and Settlement, Nairobi”.

I have given this as evidence. I am very grateful for this session. That is where we begin, where the land problem started at the coast. The first President of the Coast region, Gedion Ngala explained to everyone the problems that were here before independence. But nothing was done. That was in 1964 and until now, nothing has been done. These areas were issued with title deeds from 1908 to 1923 when the Mijikenda and other communities were living in the area.

The areas where title deeds were given earlier, even before independence are Mtwapa, if I start from plot No.515, plot No.914 and 13 section 3. These plots were given earlier on. But people are already living there. This happened, at some point. The area extended to Gorofani, which is section 283 belonging to Mr. Nahat, coming up to Vipingo Estate, which comes up to Takaungu. This is under Mazrui Trustee land Act which has since been repealed. The coming up of Vipingo Estate in 1945 meant that so many people were forcefully evicted. People were forcefully evicted from 1963. In fact, Vipingo Estate has been given a police station known as Kijipwa Police Station to prevent the natives from demanding their rights. Property, even the coconuts belong to the original owners, who were poor and they continue getting poorer. People were forcefully evicted from the Kijipwa area and that area has now been taken by Bamburi Portland Cement. Coconut palms are still being used by the people of Bamburi without any compensation.

After doing that the Government started to buy land and settle a few people. The people of Kijipwa were given Kijipwa Settlement Scheme after making noise. This is where scheming started. The Director of Kijipwa Settlement Scheme, James Issack Mbadi got himself 120 acres that is plot No.96 Kijipwa Settlement Scheme. The plot No.277 was given to the person who was singing very well for President Moi. His name was Bonface Mghanga who is now deceased. Plot No.53 was given to Stephen Timothy Wakisha, who was the PC of Nairobi. Plot No.43 was given to somebody called Toshimbai Kashimbai Patel, who was legal officer at Ardhi House. Plot No.41 was given to John Mwaura, who was the Provincial Physical Planner at the Coast. Plot No.35 was given to Anderson Kariuki Chomba, who was the Deputy Physical Planner. Plot No.48 went to somebody known as Madango Parcel, and that was the end of it. He was the legal officer at Ardhi House.

The original owners of Kikambala were taken to Kijipwa, and they were given two and a half acres. Former people of Mferejini were taken to Kikambala. People from Kijipwa had to demolish their houses to go to Kikambala and those in Kikambala had to demolish their houses to go to Kijipwa. This was meant to create confusion. I have the letters here. We have complained and nothing has been done until today.

When we look at the areas such as Mtwapa, we have fought for Plot No.29, Section 3 Mainland North, which is called Gathecha Settlement Scheme. Gathecha Settlement Scheme was bought by the Government recently. But what happened, it is other people who benefited. The original owners did not get land. They are very many, and we have a full list and it is here. In the Gathecha Settlement Scheme the natives went to the court, but the Government still has the letters of allotment. The original inhabitants wanted the land subdivided among them, step by step. But the Government went there, because they wanted to bring in other people and subdivided this into quarter acre plots as if it is a trading centre.

In Vipingo Estate, some of the people who were evicted went to Shimba Hills, others to Tezzo/Roka Settlement Scheme, Bale Shononeka, Marereni and Kipini.

In Vipingo Estate, after fighting for their rights, the people from Mkomani, Jodari, Gongoni, Gathecha and Kijipwa gave out their land to these people. When this land was given out, the Government subdivided Vipingo Trading Centre into plots and gave it to people from outside leaving out the original inhabitants. If you look at Bungoni now, they want to subdivide this settlement scheme and yet that is supposed to be a farming area. If you look at Kazinuni, it has not been subdivided. The Government wanted to subdivide an area that had been given out by Vipingo Estate, called Boyani Settlement. Boyani Settlement Scheme was given to the owners, but now Mombasa Cement has fenced the whole area.

The Mazrui Trustee land Act was repealed in 1989, and whoever took the Motion to the House was the then MP for Bahari, hon. Mtana Lewa. The Motion was passed by Parliament, but after that subdivision started. The land was subdivided into 817 plots, but after some time our brother, Mazrui went to court. The case was thrown out. After that, Mazrui went back to sell the plots. The original inhabitants were forced to buy each plot at Kshs40, 000 by Mombasa Cement Limited. The people who refused to sell land, chiefs indicated against their names that they had died. They are 32 people, and one of them may stand here.

(Mr. Tofa stood up)

It was reported that these people were dead. There are letters to that effect. We will give them as evidence. All the people who were given plots in this area were given so that they could sell them, and they were all working for the Government.

In all these other areas people have been waiting for title deeds. If we look at the area near the beach, the same Angaine was the first person to grab 20 acres. Jackson Againe has plot No.1075 Section 3, Mainland North, which he sold to the NSSF at Kshs100 million.

If you go back, plot No.1088 was owned by James Mureithi. He sold it to NSSF at Kshs250 million. If you look around, we were left very poor. We were like the Australian Aborigines playing drums and entertaining whites in hotels. This is what we have been reduced to. What is left is we have to go into the sea, but there is nothing that is left for us. At Kibarani Settlement Scheme, the same thing has been done. Original owners have not been allowed, but it is being given to wealthy people. If you look at Kijipwa, the same thing is happening. If you look at the area that has been divided such as Gathecha, it is the same thing.

One area, Plot No.528, Section 3, Mainland North in Sheriani was sold because it had been returned to the Government. It was sold to Kenya Ports Authority. The other day, citizens were forced to demonstrate and make a lot of noise because their land was going. The land belongs to KPA and they want to sell it to a foreign investor.

If you look at Gathecha, Vipingo Estate has now decided to sell the land to Vipingo Golf for Kshs786 million. Vipingo Golf in turn has closed all the roads. People in neighbouring area have to go round 15 miles to reach the main road. Wealthy people are

getting richer, whereas we, the Mijikenda, are getting poorer. Merus and other tribes sell our brooms for us. We have been oppressed long enough.

If you see people talk about Mombasa Republican, it has come up because of oppression in land matters. That is the truth and at the moment, God should give us the grace. If it is fighting, the Mijikenda would have been the first to fight. How do you educate your child, if you do not have a place to stay? What do you tell your child, if you are told that tomorrow your house will be demolished? They are bound to fail exams! People are doing business here, but we are just fighting for land.

The Presiding Chair (Commissioner Shava): *Pole*. I can see how distressing this is for you. What you were talking about are very weighty matters. This Commission is here to listen to you. So, we will give you a moment to recover. Perhaps, leader of evidence at this time, in order for us to manage our time and be able to bring up these issues very clearly in the way that the last two witnesses have done, perhaps you can give us an indication of the amount of time each witness will be taking.

Mr. Tom Chavangi: We have two main witnesses. That is Joho, Samson Java and Randu. Wenyapaa was being supported by Washington. But then I do not think at the moment I can add anything more. Mr. Randu is being supported by Fatma. I will allow Samson to proceed as Mr. Mwenyepaa is getting back to his senses of cooling down his emotions.

Mr. Samson Java: I am very grateful to this Commission. I am very painful. I have a lot of pain in my life because----

Mr. Tom Chavangi: We are at the angle so that they can be captured by the camera.

The Presiding Chair (Commissioner Shava): Perhaps they can take the opportunity to also correctly position----

Mr. Tom Chavangi: Most obliged.

Mr. Samson Java: If I can continue speaking, my happiness is that this TJRC is listening to our complaints and cries. Our land was sub-divided and we are now squatters. Our people are poor and cannot farm. I do not know why this was done to us. Most people from up country have taken our land in Kilifi and also in Chonyi.

If you see the leader there, he is a kikuyu. He is the officer who is registering the land. He is the one who knows the borders of the two tribes. He does not involve us in the subdivision. This situation has made us to lag behind in development. Other tribes say Mijikendas are lazy; they wait for mangoes and coconuts to fall down so that they can pick. The land adjudication does not start from Kipliningania section, it also starts here. When Wenyapaa was speaking he talked about the subdivision of Somanga. Even my father was chased away from there in 1926. He was a sisal farmer and he was chased away. The land was leased to Golf Club. He is a farmer at Kipingo.

We do not have a source of revenue now and yet we do not do farming. The Golf Club was sold after the European sisal farmer leased it for some time. After his lease was over in 2001, as the indigenous people, we should have subdivided our land. However, they have leased it for the second time and we do not know when the lease will end so that we can take up our land. The white golfer took my land and put a wall stone fence. The water pipes were broken. Since he fenced it round, we cannot fetch water anymore. He takes the water and irrigates the grass that is planted on the compounds of the houses he has constructed. Where do we go now?

We have tried to write letters to the Minister. We also wrote letters to the PC and the Minister for Lands, hon. James Orengo but we have not received any response. We have also taken our complaints to some lawyers in Mombasa. Perhaps, if they could advocate for us we would be better off. However, this has been put aside. Up to now you will hear people saying that Kilifi people die of hunger because they are lazy and yet some people have taken all our land and the small portion we are being given after the subdivision is not enough. So, what do we do? For sure, enough has been said and it continues to be said. However, I would like to appeal to this Commission that in the few years that God heard the cries of the Israelites when they were in Egypt, he sent Moses to Mount Sinai and told him to go and move his people from Egypt. Moses refused and he tried to fight with Pharaoh. He then moved then and took them to the Promised Land, Canaan. Once they got there, they realized that there was still spiritual slavery, the kind of slavery that was brought to human beings by the first person. God then sent his Son Jesus Christ to come to the world and save His people because they were suffering and perishing. Jesus was born by Mary so that he could save the people of this world from their sins.

I am now sending you, Commissioners, to do all that you can to bring back our land. As people of Coast Province, we are tired. Our land is being taken away by prominent people and we are lagging behind due to poverty. If our problem is because we lack education, we ask that we be given back our land which we were given by God. These people have luxurious places and they are educated. We are tired. We are sending you to take back our sisal land and any other ancestral land in Chodari and Kapesho so that we can do farming and rebuild our lives. However, the issue of being poor until we die can make God come back to us fast because some of us are very sinful. These are my last words but it should be told to the Government of Kenya so that it can return our land. We need our land. We are tired and the whole of Coast Province wants back its land.

Mr. Tom Chavangi: Thank you very much, Mr. Samson. We will now give a chance to Mr. Randu so that he can come and contribute.

Mr. Habil Randu: I am glad to be before this Commission at this time to talk about the oppression we have suffered and especially in Kilifi County. In brief, I presented a memorandum to this Commission.

My name is Habil Randu. I work at the Kilifi District Co-operative Union. I am a resident of Kilifi County. I am here to represent Fatuma Mwakidudu who is the Chairperson of

the Kilifi District Co-operative Union. I am here to talk on behalf of Kilifi farmers. I will present a memorandum, a copy of which I have here which I think has already reached the Commission. In brief, this will be a summary of the memorandum we have already presented. This memorandum covers five areas. One of them is the cashew nut factory, the sale of Simba Hotel in Malindi, the auctioning of plot 596 in Malindi and the plot of Co-operative in Kilifi which was subdivided to somebody to build a petrol station, a factory and put wood products or furniture. That was allocated to a certain company here in Kilifi.

I would like to say that the first issue is the cashew nut factory. We, as the Kilifi Co-operative Union sat down and gave our views with regard to the injustices we have suffered since 1999. We appeared before the Parliamentary Select Committee in 2007 and discussed in length the issue of the cashew nut factory. Very good recommendations came out of it but nothing has been implemented. As we talk about this factory, I would like to say that it was built in 1972. In 1974, the Kilifi Co-operative Union got shares in this factory together with other parastatals such as the National Cereals and Produce Board (NCPB). There was also the Industrial and Commercial Development Corporation (ICDC) and the Industrial Development Bank (IDB). When the factory was operational, it was supported by the Government and the people of Kilifi Co-operative Union because each area was well represented at that time. Any information with regard to the business, all of us, as shareholders, got a copy of everything. Those were the board minutes, trade statements and final accounts that were audited. Business went on well until we were told that the factory was old. It was sold to people from this country and foreigners. In 1990, it started having problems and it had to be closed temporarily.

It was later re-opened after six months. Towards the end of 1991 and the beginning of 1992, the Government had shares amounting to 65 per cent through the NCPB, ICDC and the IDB. The Government decided to offload its shares so that it could stop dealing with the cashew nut factory. According to the laid down procedures in the Articles of Association of the cashew nut factory at that time, Article No.80 (a) stated that the preemptive rights say, with regard to a shareholder who wanted to offload his shares, the first priority would be given to the existing shareholders who want to continue to remain in business. There were four shareholders because there was the co-operative union and the Government on the other side. So, when the Government decided that it would offload its shares and quit the business, farmers through the Kilifi Co-operative Union decided that they were not going to offload their shares. So, they aimed at raising funds from the Government. The preemptive rights work in a way that shares are bought by remaining shareholders and not subject to competitive bidding. Therefore, they are not advertised. You simply discuss. So, a committee of seven people was formed, three from Kilifi, two from Kwale and two from Lamu. We talked about Lamu and Kwale because these areas were also cultivating a lot of cashew nuts. The reason for bringing members from these areas was that 65 per cent of shares were to be bought by people from Kilifi, Kwale and Lamu. The seven man committee was sent to try and raise funds. The first place was Co-operative Bank in Nairobi. The Committee was summoned to State House, Nairobi and they met the then President. Before they went to Nairobi, they had gone to the PC's office and they were told that some businessmen were willing to be involved in

the management of the factory. When they went to State House, they were also told the same thing. I want to say that the shares that were supposed to be sold had a value of Kshs20 per share. There were 850,000 shares in total which were worth Kshs17 million. For them to be sold another time fresh valuation was done and one share was valued at Kshs141.10. The shares at that time were worth Kshs120 million. I said that the Government, through the three corporations had 65 per cent shareholding. That meant that the Kilifi Co-operative Union had 35 per cent shareholding.

The shares of the Kilifi Co-operative Union were worth Kshs42 million while those of the Government were worth Kshs78 million. There came a time when we did not understand what was happening. However, the seven people, while in their going to Nairobi and back spoke to possible investors, who were supposed to be experts in cashew nut business and we were supposed to advice. One of the conditions was that whoever buys the factory; even if we are the ones who bought it must be a registered organization that has been involved in that business for at least ten years. Although at that time we were in that business, we did not have a registered body that was involved in cashew nut business. So, those who were introduced to them were told that they had been involved in cashew nut business for more than 20 years and so if we took them in, they would be very useful in the management of the cashew nut business. When the shares were sold, we were not given any information whether money had been found to buy off the 65 per cent valued at Kshs78 million. We were told that an agreement had been reached and they had said that the Kilifi District Co-operative Union had bought the Government shares at Kshs78 million. Where the money came from, we were not informed. As we were talking, the agreement to sell the shares was put as an appendix of the memorandum.

The first one is KBCU which says that the 65 per cent shares were bought by the Kilifi Co-operative Union which meant that at the time of the agreement on 29th October, 1993, the Kilifi Co-operative Union was 100 per cent shareholder of the cashew nut factory. If you read the agreement with the KBCU on page 3 and 4 of the agreement, you will find that the Kilifi Co-operative Union agreement was made to take over the loans that the factory had up to Kshs118 million. The Kilifi Co-operative Union was going to pay this debt for the cashew nut factory. Within this, there was Government money. When the factory collapsed, the Government had advanced them Kshs30 million.

The NCPB was owed Kshs46 million; ICDC, Kshs10 million; the Italian Government, the ones I hear put up the factory were owed about Kshs22 million. This was the problem that they had as a co-operative with regard to the factory. The question that surrounded this is that the agreement said that the Kilifi Co-operative Union had bought the Government shares. In a straight manner, the Government shares should have been sent back to the Government Registrar's Office to show that the 65 per cent which were owned by the NCPB, ICDC and IDB were now the property of Kilifi Co-operative Union. This was done and the 65 per cent shares were registered under the names of Kenya Plantations and Products which had 51 per cent while the Cashew Investment Development had 40 per cent.

Commissioners, this is something we do not understand and it has caused a lot of argument. Even if there is another argument, the first agreement that was drawn should have been that the Kilifi Co-operative Union owned an extra 65 per cent. But, in the addendum, Kenya Plantations and Products own 51 per cent shares while Cashew Investments and Development owns 14 per cent. This went up from the transfer that was done from the NCPD which was written to the Kilifi Co-operative Union. However, it went up to two people who are in the agreement.

When it came to handing over, the Government was officially to leave. Those who were said to be experts in cashew nuts business came in and took over together with many people in our area. They formed a new board to be in charge of the project. The difference between that and what was in place was that we used to get reports of everything. Now, we stopped getting reports of everything and when those people came in, we could not get any minutes of the three months operations and even the audited accounts. That became an issue and we asked questions. We wondered why that was happening and we would be told not to worry because we were being represented in the board. We said that previously, we had our people but the office still gave us documents and wondered why they did not give us documents. When that happened, fellow Commissioners, the board in charge of the factory in November, 1993 took a loan of Kshs45 million from Barclays Bank of Kenya. We do not know what that money was supposed to do. After that we saw big cars and lorries and other small cars moving around. After a while, in 1996, they took another loan of Kshs15 million. The security was the factory itself. The title deed of this was given as security for the two loans.

What I would like to highlight before this Commission is the fact that if you go for a loan from a bank it will first raise what is called the “debenture schedule” and if you are using a title deed as your security, the title is marked the amount of money that you have taken. What is in the debenture should be seen in the schedule or the title of the plot. This is the document that you have given.

If you look at KBCU No. (v), you will realise that the debenture from the bank and the schedule appendix KBCU (vi) the land charges at the Mombasa Office for the Kshs45 million loans appears in both places. This is in the debenture on the charged schedule in the land registry in Mombasa. What we do not understand until today is this loan of Kshs50 million which was taken in 1996. There is a schedule in the bank showing that Kenya Cashew Nut Factory took a loan but the list of charges in the land registry in the Mombasa Office, the Kshs50 million does not appear. The question is, what do we do with the second loan whose charge is not indicated in the title in the land registry office in Mombasa? What happened between the bank and the land registry office in Mombasa?

Mr. Tom Chavangi: With regard to the memo that the witness is referring to, we have it in our record. Our research people have gone through the memo. He should not keep on belaboring the issues and repeating himself on issues which are within the realm of this Commission. I think the best thing he can do is to give recommendations. What are his recommendations because all these things are known to us? The corruption that has taken place within Kilifi District Co-operative Union, how money has been embezzled, how

managers have taken off with money using forged signatures is known to us. I urge him to go straight to his recommendations so that we can see how we will accommodate other witnesses. I have 15 more witnesses seated here.

Mr. Habil Randu: With respect to the terms of reference of this Commission, I will be brief by saying that there was a PIC sitting in 1999 and I gave recommendations that the Cashew Nut Factory should revert to the farmers. I have said that in our memorandum. However, we want this Commission to use its authority. We have come here in the hope that this Commission has the power and we believe that the current Government has the objective to ensure justice to its citizens. What we said before the PIC and the Parliamentary Select Committee was said more than ten years ago. They told us that the Attorney-General would do something but he never lifted a foot to do anything. What we are saying here is that the recommendations by the PIC and the Parliamentary Select Committee which I have attached here as Schedule No.4 in the appendix - you will see it - we would like the factory, as a farmers' property with 350 acres to revert back to farmers. The loans that the managers have that would make it be auctioned, loans which were seen in one place and not in another place, maybe this Commission can take a position and make sure that all properties revert back to the farmers. I will stop there with regard to that factory.

There is something else I wanted to talk about with regard to the Simba Hotel in Malindi. The Co-operative Union had the Simba Hotel in Malindi which has about 20 acres auctioned because of small loans advanced by The Co-operative Bank. We did not want it to be sold and to avoid this we decided to sell part of the hotel. The hotel had about eight acres of the beach and we decided that this would be sold. This was advertised locally and abroad. People came in and handed over their proposals. When the committee sat down to deliberate, it awarded a company called "Professional Ceptries" which was supposed to purchase eight acres at Kshs19 million. Some of the monies which had been collected were paid. At that time, there was no water or power connection. So, they said that they would go to Nairobi with Kshs250, 000 to pay the bills. After coming back, they would give a grand payment of 10 per cent and the rest would be given after they had done the transfers after 90 days. At that time, the Government had said that the hotel should not be sold because farmers would lose if that was done. People wondered why it should not be sold and a purchaser was brought in through the Government who said that he would purchase the hotel at Kshs22 million instead of paying Kshs19 million. So, they said that the 13.5 acres must also be sold and yet it was not intended for sale. The hotel was in four plots namely 605, 606, 777 and 778. They said that, that had been put to the group to be sold. So, the investor said that he was giving Kshs22 million. So, the question was, somebody had already given one-quarter of a million and he was going to pay 10 per cent as down payment. The Government wrote a letter to the Co-operative Bank saying that he should be given half a million overdraft so that whoever gave the quarter million may be refunded as we wait for the person who was to pay to bring the money.

Time is not on my side. I would like to hasten this matter because part of the issues of the hotel is in the report. The sale of this hotel was not legal and it must be reversed because why should a purchaser be brought after bids have been opened and somebody had

already given down payment? Why were farmers forced to take a loan and not given enough time to pay back? The sale is illegal and must be reversed.

The second thing I would like to talk about is in connection to Plot No.596 in Malindi. This plot belonged to farmers and it had debts with the Municipal Council of Malindi amounting to Kshs33 million. Their lawyer wrote a demand letter over this money. The municipal council lawyer who was also our lawyer talked to us and we told him that since we were also his clients, we would pay the debt. The same lawyer went ahead with that knowledge and presented a case in court, attached the property and sold it. We came to learn about this later. We went to the High Court in Mombasa, we were taken up and down but the plot had already been sold. The plot that was worth Kshs3 million at that time was sold at Kshs1.1 million. That must have been an arrangement between the lawyer, the municipal Council and the buyer. So, we went to the advocate to complain about this and it came to the commission. The lawyer seemed to favour one side but he died before the case was resolved. The Complaints Commission said that since he had died, the case would be withdrawn. In this particular plot, we want to say that there was corruption involved and the sale was illegal.

Finally, with your permission, I would like to talk about the plot belonging to the Kilifi Co-operative Union, here in Kilifi which was purchased in 1971. In 1972, we put up a building. The plot started from Ushirika Bar where there is a business and extended up to the Kobil Petrol Station. That plot belongs to Kilifi Co-operative Union. However, in 1988 and 1989, this plot was hived off and given to an individual who sold it to Kobil Petrol Station. We complained that this plot was farmer's property and it should not benefit individuals. It was public utility plot which had to benefit the public. As farmers, we would like to ask the TJRC to look into these injustices and correct them. I would like to thank you for giving me this opportunity and for listening to me.

Mr. Tom Chavangi: Thank you very much, Mr. Randu, Mr. Wanyepaa, Mr. Samson and Mwalimu. Our four main witnesses have all spoken on land issues. Some are very specific and some are general issues. Having understood them very well, I have no question for these witnesses but to pass them over to you so that we can get further clarifications on certain issues that did not come out clearly.

The Presiding Chair (Commissioner Shava): Thank you, Leader of Evidence. I will start with Commissioner Farah.

Commissioner Farah: Thank you very much all four of you for your vivid presentation. We have understood, some of you emotional but understandable but I have some questions even in the middle of emotions. We have gone all around the country and this is the last province we are hearing. We found out that the land issue in the whole of the country is a very burning issue. We will make appropriate recommendations. Do not forget that all the documents that you have handed over to us will be reviewed thoroughly and at the same time, the presentation that you made is being recorded here. We usually send the recordings and it is translated into transcripts by HANSARD specialists who will listen to your voice and whatever you said will come out in transcripts even when

you have broken down, it will say so. We have not missed anything and we will analyze it properly and we are aware that this is a province that is even more sensitive when it comes to issues of land.

There is something I want to ask and I want a very honest answer. We are aware that there are genuine landless people all over Kenya even though it is more glaring here in the Coast Province. The consolation is, we have a new Constitution apart from our recommendation where a Land Commission will be set up and we hope that every province will be adequately represented in that Commission. It will be a permanent commission and it will be a commission that will always together with the new Judiciary be handling the sensitive issue of land. My question now is, although we are aware of genuine landless squatters in the settlement schemes that the Government has been setting up, we know there is corruption. We are aware that when a settlement scheme is set up there are corrupt officials who collude with a corrupt advanced syndicate and together with that, as we found out in Maasailand, when local people are allocated land, they immediately get the title deed and they sell it. They sell it to people without caring where those people came from. Money changes hands and title deeds are altered and then the same people who sold the land move on to the next settlement scheme and they are allocated again and they sell it. Therefore, within the bigger picture of corruption, there is also a bit of local collusion. We want to sieve all these things and we want to indicate the real unfortunate victims. There is a recommendation that in future, when somebody is allocated a piece of land and he is given a title deed, there should be a caveat on that title deed so that, that land cannot be sold within a span of period. Is that true or not? Anyone of you can answer.

Mr. Nicholas Mrima: Thank you very much Commissioner. I will answer that question. Honestly speaking, there are officers who registered people using the names of this particular place and then they told them to sell. It is there in Kipingo Trading Center where people were registered with our names but it was a tactic of the corrupt officials so that they could look like squatters. It is also at Kateshia Settlement Scheme, Kibarani Settlement Scheme and Kijipwa Settlement Scheme where people used the same names as ours and later brought people with identical names to swear affidavits so as to sell the land faster. It is there but it is not true that an indigenous person can sell land at our home. That is not true. The cartels have started from the settlement schemes and it has continued rising.

Mr. Mohammed Mwalimu: I would also like to answer. The true picture here is that most of the people think that people from Coast sell their own land. Those who sell the land are the grabbers and our own leaders. One leader may have more than 30 plots and he is in power and he does not have a single cent but after two years, he sells 20 plots and he gets money and these are our plots. The people who buy think that the people from the Coast are the ones who sell the land. Thank you very much.

Commissioner Farah: Anybody else who wants to add?

Mr. Washington Mbagu: I would like to add on what has already been said. My name is Washington Mwambura Mbagu. I am a resident of Madukani at Kikambala. I have been in many committees of land and I am also a member of Land Control Board here at Bahari. People who sell their land do so because they are poor and this poverty has made us not to own land. Somebody will sell land because he wants to pay school fees and he uses any means to pay the school fees. Once he cuts a small piece of land to sell and the money gets finished, he will come back to the board and ask for permission to sell another portion of land and he will eventually remain with just the compound. In our board, we tell them not to sell because once he sells, where will he go? We tell them to tell us where they will resettle because we do not want them to go and live in road reserves. We give them permission since it is a willing buyer willing seller deal and the land is his. They sell because of poverty yet we have many resources like coconuts, cashew nuts and minerals but most of the people from coast are poor and they are beggars and the land does not have any benefit to him. The land in coast belongs to the rich people because the person who gets the land sells it to the rich person and so he remains without land. Thank you.

Commissioner Farah: I think what has come out is that both issues take place here. My advice to you would be it is better to be poor and have your piece of land rather than surrendering it for things like school fees and what have you. We have been all over the country and we have been to places like Turkana and North Eastern where land is just barren and sandy and it is valueless unless oil is found in the future. When drought comes, all the animals die and they remain poor but they do not resort to selling land. They send their children to schools through bursaries which are distributed by the politicians. Land is a very sensitive issue and it will become more sensitive in the future even when the Land Commission is set up. In the next elections, please drop out all old politicians who go to Nairobi, join different parties, get their money, they do not care about you and when the elections are approaching, they give the government ultimatums. I read in the papers the other day somebody saying that he has given the government 14 days to settle landless people in the coast of face the music. When a politician is saying that, he had all the five years to look at how to settle these people so there is a problem of leadership and you had better elect your leaders very carefully.

Thank you very much for presentation and as I had said earlier, we have been crying with you. Do not forget that these Commissioners sitting here have been all around the country and every time somebody breaks it affects us. At the end of our term, we may even go to hospital and require to be treated because we have passed through a lot of emotions of different kinds. We are very emotive, we are with you, we will take up your matter and recommend appropriately but please tell the people not to sell the land because land is going to be less and less available in the future and it is going to be a very serious affair. Thank you very much.

The Acting Chair (Commissioner Namachanja): All the cases have been well presented. I have no question but just to let you know that we hear you and we affirm what you shared with us. We shall do our best when it comes to writing the report so that the situation does not go out of control. Thank you so much and God bless you all.

The Presiding Chair (Commissioner Shava): I have a few questions and a few comments. My first question is to Mr. Mrima. Several people have referred to trees, even in the letter of Honorable Ngala that you read it also talked about trees. Because I am not from this region, perhaps you would help me and the Commission to understand what is meant by trees. What trees are these and what is the value of these trees?

Mr. Nicholas Mrima: When Ngala talked of trees, he meant the coconut, mango and cashew nut trees. These are the trees that were cut down by Vipingo Estate so that they could plant sisal. People were evicted from their own land because of those laws that are coming up. Right now as we speak, Vipingo Estate is being sold and it is selling very fast. By the time that Land Commission is set up, they will find that Kilifi plantation has finished selling land. Everybody is trying to sell fast to other people and if you come to Kilifi, people are strategizing because of the coming of counties. From Mavueni coming to this side, the land has already been sold and anybody trying to intervene is chased away. Evictions are going on on daily basis and people are not happy any more. That is why you find that even NSSF is trying to sell very fast to other investors who want to build in that place.

The Presiding Chair (Commissioner Shava): That is a good explanation. There is something else that you said about people wanting *jembe kwa jembe*. That is another term I do not understand. Perhaps you can help us to understand the meaning of *jembe kwa jembe*.

Mr. Nicholas Mrima: When they say *jembe kwa jembe*, it means that they do not want the settlement schemes but they want the adjudication schemes. People do not want people who are removed from their places and brought to those schemes. When you look at the settlement schemes this is what has brought about a lot of problems. In all the settlement schemes that have come up, people from up country are the ones living there.

The Presiding Chair (Commissioner Shava): When we were in Mount Elgon, we heard that the land adjudication there was also a problem and they were saying they wanted *nyumba kwa nyumba*. When you say *jembe kwa jembe*, I understand you to be talking about a particular method of adjudication.

Mr. Nicholas Mrima: *Jembe kwa jembe* means how a person's land should be allocated. If it is a quarter acre, then the person should be given a quarter an acre, if it is ten acres, then the person should be given ten acres. Nobody should come and invade your land because in a settlement scheme. Places that are being subdivided now already have people living in them. It is not as if the land is bare. People have built roads, schools and churches and they want to be given land for farming. If I have a farm, I know all my neighbours and we know each other according to the way we live and that is how we want the subdivision to be done. A person should not come from outside and say that he has been farming that land.

The Presiding Chair (Commissioner Shava): What you are saying is that as people are living now land adjudication has not been done so people do not have titles. Government sometimes behaves as if there are no people there and comes to make a settlement scheme instead of taking cognizance of the people who were there and giving them land title.

Mr. Nicholas Mrima: That is the way it is and even recently in Kateja Settlement Scheme, people were already living there and farming but there are conflicts now. I would like to recommend that sub divisions should not be done until the Land Commission, the community land board and the county land board is formed.

If things are not stopped, then people will fight. My recommendation is that the subdivision of the land should not be done now and evictions should not be carried out until the National Land Commission is formed.

The Presiding Chair (Commissioner Shava): I hope that your recommendations are in your memorandum. They are very clear recommendations with a timeline because you are saying that by the time the board comes in, it is when these kinds of subdivisions should be done. Thank you for that. My next question is to Bwana Habil on the issue of the cashew nut factory. This may be evident in your memorandum that we have but I would need to refer back to it. I just want to know from you, at that time of the takeover, where these other two entities bought into the structure of the company? Did they pay off any of the debts?

Mr. Habil Randu: The issue of taking over was done after the agreement in 29th October 1993. The takeover was done in November in the factory and the people who were in management did not pay any debt. Sometime in 1998/99 the cereal board sold it as a cooperative unit and we went to court to defend the cashew nut factory. Nobody came to listen to the case and we went to Nairobi to defend and the case was withdrawn. Nobody paid us for the debts. They took the money from the bank and they did what they knew and left the security of the company at stake and they went their way.

The Presiding Chair (Commissioner Shava): My second question is at the takeover; was the farmers union not able to obtain any information on how the organization was being run? You said that you had no more access to minutes or the accounts of the operational reports. Did you make any effort to obtain those records or that information?

Mr. Habil Randu: We tried our best to seek for the minutes and the records of the business of the factory but we were told that the people representing us knew everything. Everything that was coming from the office was coming directly to our offices and the representatives who were there at that time would come and read the minutes in our office. After the takeover, we did not receive the minutes and we did not know where they were going and that is what we did not understand. At the time, Kilifi District Cooperative Union did not know that people took loans for Kshs45 million and Kshs50 million. We just heard that there were loans and Barclays Bank started to bring some managers and they wanted to sue so that the factory could be sold so that they could get

their money back. We have gone to court to block Barclays Bank from selling the factory but the most amazing thing is that the case is still pending in court but Barclays Bank managed to sell the factory in 2002.

The Presiding Chair (Commissioner Shava): That is truly shocking. Thank you very much for that answer. I just have a few observations. As I said a bit earlier, when we were in places such as Mount Elgon, Busia and all over the Rift Valley, we have had occasion to listen to people in Eastern Province where the issue of Syokimau and the demolitions were very current. We have heard from you how one lady worked all her life and with her pension she chose to build her house which was then demolished. We have seen as you have all pointed out, the role of public officers in these kinds of practices and also the roles of professionals. When somebody is putting up a house, obviously professionals are involved. There must be lawyers and surveyors so all these people need to give some answers to Kenyans about how these kind of things can happen. We have also heard about issues around structurally induced poverty. When we were in the upper Eastern region, we heard about Government operations that come and knock down people's houses and drive away their animals and that is basically their bank and people are left poor and their children never go to school. Those children then grow up and never get access to particular jobs and the circle of poverty just goes on like that.

We want to assure you that we are very much aware of those issues which we are going to consider very seriously. It is the mandate of this Commission to deal with issues of land. There have been many truth commissions all over the world, over 40 and some as nearby as Uganda but no commission has had justice in it before this commission, which is a Truth Justice and Reconciliation Commission and no other commission has been charged with looking into the issues of land and economic rights. What you have all taken time to tell us today and the detail that you have given us and the picture that you have painted is very important not only for this Commission but also for this country. The recommendations that we are going to make are going to inform these processes in other countries because it is not only in Kenya where these kinds of injustices are happening and they are very serious injustices. I think I have really been struck by that letter from Honourable Ngala because when we do not deal with issues as they arise, they do not go away. When we are told *sahau yaliyopita*, hutasahau because it is still affecting your life today. It is the reason why your life is the way it is today. So, perhaps, if honourable Ngala's advice had been heeded to and we had dealt seriously with those land issues at that time, maybe we would not be in the position where we are in today where you see Kenyans blaming each other for the problems. If we look deeper, the problems are further atop and we know as we saw in 2007/08, when we are suffering, the people at the top are drinking tea together as we are busy fighting this side and that side and it is Kenyans who are suffering. We want to let you know that you have spoken to us today and you may not hear tomorrow what it is we have decided about what you said but you will hear. We have a very strong team which incorporates investigations and research and that is going to give strength to the recommendations that we are going to make and which of course are informed by what you have told us, what it is you think should happen in order to resolve these issues.

You have also told us that many people have listened to you including Parliamentary Committees, Public Investments Committee and others and then nothing happens. In terms of the Truth, Justice and Reconciliation Act which is the statute that governs our operations, it is mandatory for the government to implement our recommendations. The Minister who is in charge of Justice will have to be making reports to Parliament on the implementation of our recommendations. Our report is also not going to be secret. It is going to be published and disseminated throughout the country so that Kenyans themselves can know what was recommended. You can task your Member of Parliament and your county government as to why those recommendations have not been implemented. You will be able to have that power.

The last thing I want to say is that when we finish our hearings at the coast, we will be having hearings for the region of Nairobi. After that, we will be having what are called thematic and institutional hearings where we will be listening to issues such as how the security forces have contributed to some of these injustices and also to give them a hearing on what is their side of the story. We will be listening to issues surrounding women, young people and children. We will also have what is called hearings on persons who have been mentioned so that any memoranda and documents, if there are particular individuals you would like answers from, you are in a position to invite them to come and perhaps answer some of the questions you are not in a position to put to them but we can put to them. We would encourage you that if by the time we leave here after tomorrow's hearings, if there is anything that you feel you would like to be included in those hearings, you are free to pass that information on to our leader of evidence who is seated next to you and we will definitely take it up.

I think with that, we will thank you once again for coming. We know that it is late and we thank you for your patience and remaining here and your patience in compiling all this testimony and handing it over to us. We assure you that we are going to consider it very thoroughly. Leader of evidence, please stand down the witnesses.

Mr. Mohammed Mwalimu: There is something I would like to add. You are asking for a solution so that we can live in peace and this is the most important work and that is why you are here. I have a solution that I can recommend. Fifteen thousand square meters of land is in the protectorate of the family of the first president of Kenya Mzee Kenyatta. It is not surprising that he has all that land but as citizens we are appealing to the Commission to talk to them so that we can get some parcels of land so that we can live in peace. Thank you very much.

Mr. Tom Chavangi: Thank you Presiding Chair. There are some documents I would wish to produce as exhibits from Mr. Wanyepaa.

The Presiding Chair (Commissioner Shava): Leader of evidence you said earlier that you had several more witnesses for us to hear. What is the time?

Mr. Tom Chavangi: Presiding Chair and fellow Commissioners, it is 5.30 pm. I seek your guidance.

The Presiding Chair (Commissioner Shava): Thank you leader of evidence. I think the consensus is that we will continue tomorrow. How many witnesses do you expect us to hear tomorrow?

Mr. Tom Chavangi: I have eight witnesses for tomorrow. I have four individual witnesses and the other four are clustered. The last four are clustered into forced evictions, then there is a group of youth from Kilifi who are protesting out here and we promised them that they will be heard tomorrow at about 10 am. There is a group from one of the Mijikenda tribes from the Kauma Community that feels marginalized. We also promised them that we will give them ten minutes tomorrow for them to speak.

The Presiding Chair (Commissioner Shava): I think that sounds manageable. We will proceed tomorrow and we will continue to hear the witnesses that we were unable to hear today. I would now like to formally thank and acknowledge all the witnesses who have appeared before us today. We would like to thank Mr. Abubakar Guchi, Wali Mohammed, Juliet Mapenzi, Omar Ali Mohammed, Kadzo Garo Ngua, Mohammed Mwalimu, Mrima Wanyepaa, Washington Mbagaa, Samson Java and Fatima Mwakidudu as well as Habil Randu. We acknowledge and thank our witnesses who will appear as part of our record. I would now like to ask our master of ceremony to let us know what next.

Ms. Sylvia Chidodo: Ladies and gentlemen we are very grateful for your patience up to this time. We have finished today's session and we will continue tomorrow. Tomorrow, we will also have a special forum for women at a place called Moving the Goal Post so all the women who are here should inform the others who are back at home so that they can come. Our public hearing will continue tomorrow and those who are in the cause list but have not been heard today will be heard tomorrow. Anybody who has not recorded a statement should record with our statement takers who are outside because that is one way that shows that the Commissioners heard you. It is not a must that you get an opportunity to speak to feel that you have been heard by the Commission. Recording a statement or a memorandum is one way of the Commission to hear you. I want to call Bishop Josephat Bahati to conduct closing prayers.

(Closing Prayer)

(The Commission adjourned at 5.30 p.m.)