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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION HELD ON TUESDAY, 17<sup>TH</sup>  
JANUARY, 2012, AT KILIFI TOWN HALL, KILIFI**

**PRESENT**

<b>Berhanu Dinka</b>	-	<b>The Presiding Chair, Ethiopia</b>
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Ahmed Farah	-	Commissioner, Kenya
Ms. Emily Kimani	-	Leader of Evidence

*(The Commission convened at 10.15 a.m.)*

*(National Anthem was sung)*

**The Presiding Chair** (Commissioner Dinka): I would like to welcome everyone here to the second day of the TJRC's sessions here in Kilifi. You have been very patient and courteous to the witnesses. Today, I would like to appeal to you to behave in the same manner.

*(The Presiding Chair read out the rules to the members of the  
Public and introduced members of the Commission)*

I will now call upon the Leader of Evidence to bring us the first witness.

**Ms. Emily Kimani:** Thank you, Presiding Chair. Our first witness is Witness Code 13.

*(Mr. Sheikh Salim Omar Dima took the oath)*

**Ms. Emily Kimani:** Kindly tell us your full names for the purpose of the record.

**Mr. Sheikh Dima:** My full names are Sheikh Salim Omar Dima.

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

**Mr. Sheikh Dima:** I am a religious leader in the Muslim religion in Malindi. I have my own house which I built while working for the Ministry Foreign Affairs 20 years ago. I have also built my two houses in Malindi.

**Ms. Emily Kimani:** You recorded a statement with us regarding extra-judicial killings that occurred on 12<sup>th</sup> November, 2007. Is that correct?

**Mr. Sheikh Dima:** Yes, that is true.

**Ms. Emily Kimani:** Please, go ahead and give us your presentation.

**Mr. Sheikh Dima:** Presiding Chair, before I proceed to describe what I wrote in the memorandum, I would like to recognize people whom I came with here. There is Peter Kamau. He is a human rights principal from Nairobi. He is one of the people who lost eyes, but never lost his talent in leading Kenyans. He has really assisted us.

*(Mr. Peter Kamau stood in his place)*

The second person I would like to recognize is Hamimi Ramah whose child was arrested by the police. Next is Mr. Daudi Charo. One of his sons was killed. He was in charge of the Mji wa Watu area.

I was born in Tana River District. My parents are poor. They are faced with the problem of getting the daily bread. After schooling I was blessed. I managed to work with the Ministry of Foreign Affairs. I worked in Saudi Arabia, especially on religious issues. I came back home in Malindi where I was elected the Chairman of the Muslim Council in Malindi. I was also appointed the Chairman of the Peace Committee in Malindi District. I am still the Assistant Chairman of Coast Interfaith and Clergy/Imams Group in Kilifi County.

I have points that should be taken seriously. Everyone belongs to God, even the devil himself. I will be very brief. I am not pleased with the police behaviour. The police should change their attitude towards us. Disturbing things have happened in Malindi; they really disturb us.

Somebody talked about drugs in yesterday's session. We know drugs have killed many people. Drugs have maimed people too. However, the Government has not done anything to curb this menace. As a result of this the youth decided to do something. We used to see drugs find their way into the country. The youth confronted the person who was bringing in drugs and asked him to stop bringing drugs.

**Ms. Emily Kimani:** Presiding Chair, the matter on drugs has been covered extensively. I kindly ask the witness to relate to us what happened on 12<sup>th</sup> November, 2007. It is the main reason why he is before us this morning.

**Mr. Sheikh Dima:** The youth, when they were answered rudely, punished the person through mob justice. They wrote a statement with the police after that.

On 12<sup>th</sup> November, 2007, I was still an Imam in Malindi in the Kisumu Ndogo Mosque. Five youths were killed in a *tuk tuk*. Those killed were Hussein Mohammed; Akinyi Nagila; Kariuki; Rahma Amin, and Ibrahim Daudi Charo. I was in the company of Hussein Mohammed and Ibrahim Daudi Charo in our morning prayers in the mosque. Three weeks before, being a religious teacher, I had sensitized the youth and taught them the importance of loving God and adhering to the five Muslim prayers that we were given through Prophet Mohammed. We were praying together for more than three weeks. I was perturbed to hear about a shoot-out which took place next to a slaughterhouse in Malindi.

I saw blood and the bodies of the youth which had been taken to the mortuary. I was involved in identifying the bodies. The parents also came to identify the bodies. They had been destroyed by bullets.

My informers told me that the youth were going home from work for lunch. They were in a *tuk tuk*. They met a girl by the name Akinyi. She was a friend to the *tuk tuk* guy. She was given a lift home. They were to go home for lunch and return to work. They did not know that the police were following them. According to the information I got, they were stopped. They were told to get out and they were searched. They were told to lie on the ground and that was when they were shot.

Mr. King'ori Mwangi was the OCPD in Malindi District. He later became the PPO, Mombasa. He released a statement saying that those who were killed were gangsters the police had been looking for. I was surprised. This is a man who worked in Malindi and even got a promotion. Nobody gets promotion without the blessing of a community, yet he gave a very bad statement. To him the killing of the youth was nothing.

Presiding Chair, you have the memorandum with you. What kind of a gangster would take a *tuk tuk* which is open? No gangster would do that. Why did the police decide to shoot them, yet they had been searched and nothing found on them? Do we really have a police force that can protect us Kenyans? I have taken oath and I can say there is none. Today they want to make King'ori Mwangi a Commissioner in charge of police. Where is the truth here?

God gave us a lawyer who was being paid by the human rights organization. The work you are doing is good, but at the end of the day you are taking the report to the same people. King'ori Mwangi will be promoted, yet he justified the killing of the innocent youth. No action has been taken against those who killed the youth. We are busy saying that people in other countries be protected, yet here in Kenya the Government is not protecting Kenyans.

Mzee Charo has a family of 37 people who were being taken care of by the late Ibrahim Charo. He was a productive youth. He was liked by the people of Malindi. Today he is in the grave, dead. This old man has trouble feeding the large family he has. How should we believe that the TJRC will take our recommendations seriously and not for the purpose of promoting those who killed the innocent youth?

The Kilifi Court has failed to proceed on with the case and yet it is a small case. The families of the deceased youths need to be compensated. They were killed innocently. Yesterday, I was forced to take someone to school because it is a burden this old man cannot bear.

My proposal to the TJRC is that these people should be compensated. This Commission should bring out the truth. There is not truth when you eat and your wife is hungry. There is no truth when one lives comfortably and another suffers.

The youths who are making noise, the MRC, believe me, the whole of Coast Province is with this group. I will not hide that fact. The Government should do what is fair and do away with persecution and suffering that people are undergoing. If that is not done, the future Kenya will be worse than where we have come from. The Kilifi Court should continue with the case. Before you complete your business in Coast Province, you should go to that court and talk to the judge about the case which has remained unresolved for a year now.

I would like to stop there.

**Ms. Emily Kimani:** Thank you, Sheikh Dima for that very emotional testimony. I empathize with the families that lost loved ones. Nothing can ever bring back a life lost.

You told us that the court ruled that the respective families should be compensated. Do you have details of the case or a copy of the judgment?

**Mr. Sheikh Dima:** I have a copy of the court's judgment.

**Ms. Emily Kimani:** You mentioned King'ori Mwangi. I know there was an inquest that was carried out to establish the cause of the deaths; that is Inquest No.7 of 2008. Was King'ori Mwangi ever served with the inquest recommendations?

**Mr. Sheikh Dima:** I am not sure. I cannot commit if he was given the inquest recommendations.

**Ms. Emily Kimani:** The officers who shot the youth, are they still in Malindi?

**Mr. Sheikh Dima:** I cannot confirm that. They were employed by the Government, which has powers to transfer them. This case was supposed to be done in Malindi where the youth were killed. The Government brought the case to Kilifi to avoid demonstrations. The police officers could have been transferred.

**Ms. Emily Kimani:** What recommendations would you give about the yet to be formed Police Service Commission so as to bring about reforms in the police?

**Mr. Sheikh Dima:** There is a youth who said that they should be involved in community policing. The FBI comes here to arrest people for terrorism. The FBI co-operates with the police and they arrest people. The community should be involved in these matters. Anybody who has been involved in the killing of Kenyans, no matter what position he holds, should not be given any responsibility. Why is it that those posts are held by the same people? Each policeman or woman should be investigated before they are given any responsibility.

Those who are innocent, who are not accused of anything, are enslaved because they come from a minority tribe; they are Muslims. Those are my proposals.

**Ms. Emily Kimani:** Thank you very much Sheikh Dima. Now, you have furnished us with several documents, among them a certificate of death, postmortem results for some of the deceased persons, a ruling in inquest No. 7 of 2008, among other correspondences. Do you wish that the same form part of the commission's records?

**Mr. Sheikh Dima:** Yes, I would like that if you will treat these documents well. We have the copies and it is okay if you take them as evidence.

**Ms. Emily Kimani:** Presiding Chair, I pray that the said documents be admitted to be part of the Commission's record.

**The Presiding Chair** (Commissioner Dinka): The documents are admitted; leave your originals with us so that we can make copies.

**Ms. Emily Kimani:** I want to thank you once again Sheikh Dima for being the spokesman for the families that were affected by this very unfortunate incident. I pray that God may give all those families the grace and also give you wisdom as a leader to keep representing your people. Thank you very much for taking time to be before us. I have no further questions.

**The Presiding Chair** (Commissioner Dinka): Thank you very much Leader of Evidence. I thank you very much Sheikh Salim Omar Dima for coming to talk to the Commission and presenting very ably the events of the November 2007 that happened in Kisumu Ndogo. The Commission has taken very good notes of your statement and we will do everything possible to carry out the court proof; it will make its appropriate findings and recommendations in the final analysis. I would like to ask my colleagues if they have any further questions for you. Let me start with Commissioner Tecla Namachanja.

**The Acting Chair** (Commissioner Namachanja): Sheikh Dima, let me also join the Leader of Evidence in thanking you for being the voice of the voiceless, and for our elders who lost their children, we empathise. We are sorry for what happened; you may have read so much about extra-judicial killings. It is one thing reading about the situation but it is another thing experiencing it. What we have just heard in the testimonies today are live examples of Kenyans who have lost their lives through extra-judicial killings; we have been hearing this all over. It is not only in the coastal region. The Police Department is one of the institutions that have been adversely mentioned during the hearings of this Commission. After we are through with the Coast and Nairobi, we are going to conduct institutional hearings for the institutions that are adversely mentioned, so that they also come and talk to Kenyans about what happened, what went wrong and what they have put in place as a measure to ensure that such cases do not continue. So, when we advertise in our newspapers, we encourage you to come to Nairobi so that you hear from these institutions. This is my appeal to the public.

I just have a few questions for clarification. Sheikh Dima, before this incident took place, was there any robbery that had taken place either in Malindi, Lamu or Kilifi in that week or two weeks earlier?

**Mr. Sheikh Dima:** The incidents of theft happen. When they happen, Kenyans identify those who were involved. When robberies happened in Malindi, police used to go out and kill suspects but the death of these people made the people of the whole Malindi meet on streets and mosques. I am the peace committee chairman; I really tried to reduce the tension among the youth and Kenyans who wanted to go and burn police stations. Christians and Muslims came together to liberate the Muslim youth. There is no other day we had a similar procession in Malindi. I requested all the Muslims to go to the churches and be together with the Christians who had lost their fellows, because Islam does not allow Muslims to go to churches. According to the situation, I decided to go and join the families, mourn with them and try to find out what would happen later. All the Christians and Muslims stood together to see that these youth who were...Some were saying Daudi was innocent and he had been their classmate and fellow student. The Muslims for Human Rights came from Mombasa and we organized another sitting. Journalists wrote about it and showed that the youth were not guilty; afterwards the boss came and showed that the judgment had proved otherwise.

**The Acting Chair** (Commissioner Namachanja): 2007 was an election year. Do you see any politics when you reflect on this incident?

**Mr. Sheikh Dima:** Politics is not here. It is just something that was planned, the youth should be killed. They just decided to kill them. It was not politically instigated. At that time I was the chairman and the Malindi DC was in the peace committee. There were some things that came up as politics in Gongoni and Marereni. We can go together and find out whether it was politically instigated. However, when the police in Malindi went to Magongoni and broke down the posters, then that was political but the killings should not be associated with politics. The youth were just killed.

**The Acting Chair** (Commissioner Namachanja): Thank you Sheikh. I have no further questions for you.

**Commissioner Farah:** Thank you very much Sheikh Dima for your presentation. Extra-judicial killings have not been special for Malindi. All over the country, there have been extrajudicial killings; they have occurred in Central, Rift Valley, Nyanza and North Eastern provinces; in the Coast we are now hearing it from you. Thank you very much for bringing this matter out.

**The Presiding Chair** (Commissioner Dinka): Sheikh Dima, you have said everything and we have asked you all the questions, but I have two questions. One is technical and the other is a factual question. You said that there is no reason why the police killed the youth. There was no robbery or criminal activity ongoing in the area. Do you really think they just got up from their office and said they would go and kill five young people? What really motivated those policemen? Be honest with me. Why kill these five youths?

**Mr. Sheikh Dima:** I think there must be more than three reasons. I would say perhaps it was a misunderstanding between the police and the youths; at times it might be that

informers had informed the police and when the police went on such a mission, they could have killed innocent people. It might be the informers had misinformed the police. Secondly, there is a possibility that the police, because they are from different regions, might not have been able to differentiate people; lastly, I am so angry at the police behaviour that supported the killing of the youth. For example, when people fight and surrender, I think there is no need of killing them. If I am fighting and my enemy surrenders, then I do not believe that the law tells me to kill such a person. The people were told to come out of the vehicle and they obeyed. Why kill them? The police have a very bad attitude. When you tell somebody to lie down and you kill him that is very bad.

**The Presiding Chair** (Commissioner Dinka): Sheikh, I read in the papers that this also happened in the middle of Nairobi traffic, where people were told to get out of their vehicle and were shot dead on the road. As you said, police are supposed to arrest, detain, investigate and then take people to court for prosecution to prove that they are guilty. No extra-judicial killings are legally proved in any country, including Kenya. This is an issue that we have been hearing all over Kenya. As I said, this is a speculative question; the factual question which I am going to ask you, and which will be my last one, is that now we are in a new constitutional dispensation in Kenya, when you look at the police, the Provincial Administration, the military and the GSU around your area, do you think there has been noticeable change in their behaviour?

**Mr. Sheikh Dima:** Security issues are something that should be looked into with a keen eye. This is not something that should be solved in one year. We, the Swahili, say that there are no changes but as a senior person in Malindi, I see that people are changing. I believe the police will continue changing. However, in one year I cannot notice anything. They should continue a little longer; they do not take care of goats but human beings. They should recognize that the Constitution has changed. Let us take some time.

**The Presiding Chair** (Commissioner Dinka): Thank you very much Sheikh. I have no further questions; I encourage you to continue with your peace work, especially among the youth.

Leader of Evidence, stand down the witness and then bring in the other one.

**Ms. Emily Kimani:** Commissioners, our next witness is Witness Code 5.

*(Mr. Harrison Kingi took the oath)*

**Ms. Emily Kimani:** For translation purposes, the witness will be using the English Language. Mr. Kingi, how are you this morning?

**Mr. Harrison Kingi:** Fine, thank you.

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



**Mr. Harrison Kingi:** My names are Harrison Kingi Kalama.

**Ms. Emily Kimani:** Mr. Kingi, what do you do for a living?

**Mr. Harrison Kingi:** I am a teacher.

**Ms. Emily Kimani:** Thank you very much. Now, the reason why you are seated before us this morning is that you recorded a statement about the negative effects of salt mining by various firms in Magarini. Is that correct?

**Mr. Harrison Kingi:** That is very correct.

**Ms. Emily Kimani:** Now, you have written a very detailed statement and I can also see that you have taken it upon yourself to prepare a very detailed memorandum on the issues that you wish to present before us this morning. I plead with you to give us a summary of those issues and then proceed to give us the recommendations thereto. Welcome.

**Mr. Harrison Kingi:** Thank you. Mr. Presiding Chair, I wish to recognize you. Before I start, with me are two officials from Malindi Rights Forum, the chairman and organizing secretary. Through you, I wish to recognize their presence. At least they can put up their hands so that we can see them before I continue.

**The Presiding Chair** (Commissioner Dinka): Please stand up.

*(The two officials stood up)*

**The Presiding Chair** (Commissioner Dinka): Thank you very much.

**Mr. Harrison Kingi:** Thank you and on behalf of the Marereni Community, Malindi Rights Forum is here to present the case of the salt mining companies in the affected communities. The salt mining companies are located along the coastal belt of Magarini District previously in Malindi. I just want to give a brief history. It covers an estimated stretch of about 35 kilometers along the sea shore. Malindi Rights Forum is a human rights organization based in Magarini and Malindi districts, and it has a working relationship with the Coast Rights Forum which is a registered trusteeship at the coast. Also, there is Elisha and Action Aid to just mention a few. Malindi Rights Forum is constituted by more than 15 member community-based organizations. During the establishment of the salt companies in Magarini, I wish to say here that the community welcomed the establishment of the salt investors in Magarini. They welcomed them as a benefit to the community but later very serious human rights violations were witnessed in Magarini Division. We are witnessing these violations on a scale never seen in the recent history of human rights violations in Magarini and Malindi districts.

I would like to outline exactly what I am going to take you through. I have an outline here of the human rights violations, the first one being irregular and illegal land allocations. The second one is the forceful evictions. Pollution is number three, health

and labour issues are number four, intimidation and harassment are number five, and lastly leadership. These human rights violations are clearly documented in the Malindi inquiry report of 2006 following the public inquiry into allegations of human rights violations conducted by the Kenya National Commission on Human Rights (KNCHR). I wish to submit this report.

Mr. Presiding Chair, the salt mining companies that were allocated land, were allocated land under lease agreements; the leasing of land was irregular and illegal. We are saying this because this land was trust land and the community was never consulted to consent to these allocations. The companies allocated lands are about eight or nine. First of all, we have Mombasa Salt Company Limited, now called Krystaline Company, and is located at Gongoni area. This company has an acreage of 1019 hectares. The second one is Ken Salt Limited, located at Hakazuoni, and with an acreage of 2,264.9. The third is Malindi Salt Limited located at Kambi Hawaya, and with an acreage of 665 hectares. The fourth is Krystaline Salt Mining Company located at Marereni, and with an acreage of 2,034.8 hectares. Also there are Solar Salt located at Marini, Munyi Industries located at Marini and we have Gurawa Industries Limit located at Kanagoni, with an acreage of 595.2 hectares. Ken Salt Packers Production located at Kanagoni has an acreage of 3,835 hectares. This is a very big parcel of land. How can the Government of Kenya allocate land irregularly to very few individuals, leaving out the community members now living as squatters?

Apart from the irregular and illegal land allocation, these salt companies have also violated terms of the lease agreement, thereby compromising the necessity for the allocation. For instance, Gurawa Industries Limited has been leasing its factory to other companies. It started with Ken Salt and now it is leasing the land to Krystaline Company. Solar Salt Limited and Munyi Industries have never processed any salt since the allocation. People were evicted and there is nothing happening. It is just idle land. We have some salt companies which collude with the Provincial Administration and have had illegal extensions and expansions encroaching the unallocated land. Land was irregularly allocated to them, yet today they are still extending their occupation. This is very serious. Krystaline at Marereni is an example of such a factory and at present the community has sued this company.

I want to take you through demands on irregular and illegal land allocation. The lease agreements which are illegal should be revoked and the land reverted to the community. The Government officers who issued illegal land documents should be prosecuted and where possible Chapter 6 of the Constitution be applied fully. Land sizes for these salt firms that are in excess of the core business should revert to the community for economic management.

I would wish to go to the second issue which is forceful evictions. To pave way for the companies to operate, residents were evicted, save for just a few who refused to vacate their land irrespective of the pressure exerted on them. These evictions were forcefully conducted and the companies used the machinery of the State; there was collusion with the Provincial Administration and the police to intimidate and harass the members of the

community. Surely, the issues of brutality have been documented and the cases during forced evictions are clearly documented in the report I have presented here. In the process, community members lost property. Houses were burnt down, bulldozed and some crops in farms and food stores were destroyed. The Clerk to the Council then, Mr. Anthony K. Namugana and the then chairman of Malindi County Council, Mr. George Baruku issued an ambiguous eviction notice to farmers living in the farms. I have a copy of the notice.

**Mr. Harrison Kingi:** The chairman of Malindi County Council at that time gave false information to the effect that the farmers in Kemu would be relocated across the road to a plot of about 19,000 acres, only for that plot to turn out that it had already been allocated to the Livestock Marketing Department. The community members were evicted hoping that they were going to be relocated only to find out that the land had already been allocated to the Livestock Marketing Department. Where will those people go? I just want to give a few live examples of the forceful eviction. Mr. Katana Fondo had his houses burnt down in 1986, his coconut trees bulldozed and his animals taken away and the family moved at the time to Marereni village in his absence. Just imagine that you are away and you get to learn that your family has been moved at night without your knowledge. He was harassed, intimidated and all that evil was done under the supervision of the District Commissioner in the company of armed police. Mzee Katana was later arrested. At that time, he was running a tourist resort at his Giriama Beach Village with average sales of about 45,000 shillings per day. Everything was destroyed. Another one is the late Mzee Mgere Kenga. He had his coconut *shamba* brought down and bulldozed for two consecutive days under the supervision of the DO. Those evil deeds were taking place at a time---

**The Presiding Chair** (Commissioner Dinka): Excuse me. We have a summary of your memo with us and you are hopefully going to leave the major memo with us. In that case, can you just leave the details to us to go through properly and give us your recommendations and what you expect us to do.

**Mr. Harrison Kingi:** I will just do that because I wanted to give a few details of what I am going to leave with you. There are several people who suffered and I just want to name them and then I move to...

**The Presiding Chair** (Commissioner Dinka): Just mention their names.

**Mr. Harrison Kingi:** Apart from Katana Fondo, we have Mzee Kenga, Mzee Katana Katimbo but this is a different case because his homestead was surrounded by water and then he was dragged on the second day by the DO. We also have the case of Mzee Kazungu Masha Nyanja alias Mbugua who was also dragged by the police for about half a kilometer. We also have the case of Mr. Daniel Katana Karema 209 whose wife was forced out of her house despite the fact that she had just delivered.

**The Presiding Chair** (Commissioner Dinka): You have given us enough details. Can you just go to the recommendations and you will give us the memo.

**Mr. Harrison Kingi:** We demand adequate compensation for the loss of property, inclusive of crops. Land damage and psychological torture should be adequately compensated. We also demand adequate compensation for wrongful acts and arrests committed. We also demand the prosecution of the officers involved in those barbaric acts and those still in service be summarily dismissed with immediate effect because people are suffering. We also demand that the salt farm be compelled to facilitate a special bursary fund for the salt victims as a result of the massive poverty following those evictions. They cannot even send their children to school. On pollution, Krystalline deliberately dumped bags of salt into Kanyama fresh water wells as a method of intimidation. I wish also to take you through our demands.

We demand that the State should start a special fund to provide piped water for the community in the salt mining belt. We also demand that the salt mounds be under a shelter. We demand that the brine be treated before being released. I wish to take you through environmental impact very shortly. On the outset, salt farms resulted in massive clearing of the bush both local and the mangrove forest resulting into large tracts of bare land. This affected the climate change. I also wish to take you through the demands under this.

We demand that the district environmental committee be disbanded and a new one constituted. The dykes should be removed. They should also open up access roads and reinstate diverted rivers. We also demand that officers in the regulatory institutions like NEMA, who have been sleeping on their jobs, be sacked. We demand research into the effects of salt to life and the environment. We also demand that an extension of salt works must comply with the EIA. We demand that the brine waste be treated before being released into the sea.

On health issues, I just wish to take you through all the problems faced by the community members. Among the women, there are frequent incidents of miscarriages, abnormal menstrual cycle, abnormal child birth and persistent wounds around their thighs due to corroded skin. This is as a result of working in salt ponds without adequate protection. I wish to point out one problem faced by the men. The men also suffer painful swollen scrotum. I now wish to take you through the demands. We demand adequate health care facilities by the salt farms. We also demand research into the effects of the salt with respect to life.

On labour, the working conditions are characterized by lack of industrial and safety gear, low remuneration and poor terms of service. Most workers are temporary workers and have no freedom of association at all. There are no unions and those who advocate are victimized. We have live examples of those who were victimized. We have Mr. Kassim Mwasu, Sila Kadzo, Sidi Rai, William and Charo Katana Kalume, All those were victimized. We would like to demand that all labour pending cases be promptly concluded. Appropriate disciplinary measures should be taken against regulatory institutions who are relaxed. We also demand the establishment of workers unions. We demand adequate wholesome terms of service for workers.

**The Presiding Chair** (Commissioner Dinka): You are now beginning to repeat yourself. Can you please come to conclusion because we are going to have your memo? You have said about health facilities, employment and better working conditions and you are now repeating yourself. We have eight more witnesses to hear.

**Mr. Harrison Kingi:** We are now on intimidation and harassment....

**The Presiding Chair** (Commissioner Dinka): Your memo is going to be part of the records. We are going to get it.

**Mr. Harrison Kingi:** I just want to take you thorough the demands on this one and they are only three.

**Commissioner Farah:** The demands are already in your memo, are they not? Is all that not written? We receive what is written and what is not written goes into the HANSARD. So, there is no need of putting into the HANSARD what you are already going to give us.

**Mr. Harrison Kingi:** I feel that I have to touch on the most important parts.

**The Presiding Chair** (Commissioner Dinka): I am sorry I have to stop you. You have to take our rules. We have a rule of work and you have to adhere to it to be here. We have given you more than half an hour and we have your memo. So, please, do conclude. No more discussions.

**Mr. Harrison Kingi:** In my conclusion, I wish to say that this is a clear testimony of the ineffective manner in which the Government is servicing the community. I would wish if possible---

**Commissioner Farah:** Just hold on. Members of the public, this is not a political rally. You have been advised by the Presiding Chair that there would be no murmurs and no discussions amongst yourselves. I do not know what you are debating up there. There is a gentleman here who is presenting. So, you have to keep quiet.

**The Presiding Chair** (Commissioner Dinka): Thank you very much Commissioner. I forgot to tell you when I was laying down the ground rules that those who do not accept our ground rules will be politely asked to leave the hall. That is also our rule.

**Mr. Harrison Kingi:** Thank you for listening.

**Ms. Emily Kimani:** Thank you very much Mr. Kingi for your testimony before us this morning. You have furnished us with various documents. You have furnished us with a memorandum, a letter dated 5<sup>th</sup> June 2001 and a copy of the Malindi Inquiry Report 2006 and various other correspondences. Do you wish that the same form part of the Commission's record?

**Mr. Harrison Kingi:** Yes please.

**Ms. Emily Kimani:** Presiding Chair, I pray that the documents be admitted on the record of the Commission.

**The Presiding Chair** (Commissioner Dinka): The documents are so admitted.

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

**The Presiding Chair** (Commissioner Dinka): Thank you very much leader of evidence and Mr. Kingi for your testimony. You have done a very good detailed job in a very articulate fashion as well. Now let me ask my colleagues if they have any questions.

**The Acting Chair** (Commissioner Namachanja): During the evictions as you have called it, were the people who lived on that land compensated in any way, either in terms of money to buy land elsewhere or alternative land?

**Mr. Harrison Kingi:** As I stated, the compensation was not adequate. Most of the community members were forced to accept compensation that they were not ready to take. Most of them were not compensated. There was no land that was bought. However, a few were compensated but not all.

**The Acting Chair** (Commissioner Namachanja): What was the form of compensation and why do you think it was not adequate?

**Mr. Harrison Kingi:** It is because they were not consulted regarding the compensation that they were going to be given.

**The Acting Chair** (Commissioner Namachanja): What was the form of compensation?

**Mr. Harrison Kingi:** They were given money.

**The Acting Chair** (Commissioner Namachanja): How much?

**Mr. Harrison Kingi:** They were not given the same amount and they were not given time to decide how much they would be compensated.

**The Acting Chair** (Commissioner Namachanja): Would you know for example how much one family was given.

**Mr. Harrison Kingi:** For instance, one family was given 65 shillings per house.

**The Acting Chair** (Commissioner Namachanja): 65 shillings or 65,000?

**Mr. Harrison Kingi:** That time they were given only 65 shillings.

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

**Mr. Harrison Kingi:** They were not compensated.

**The Acting Chair** (Commissioner Namachanja): What was the 65 shillings meant for?

**Mr. Harrison Kingi:** They were just compensated and told to vacate.

**The Acting Chair** (Commissioner Namachanja): Was there land elsewhere because you said 65 shillings was for land. Was there an alternative land elsewhere where they were to go and settle?

**Mr. Harrison Kingi:** They had no land and there was no land that they could be relocated to. The Government did not provide any alternative land.

**The Acting Chair** (Commissioner Namachanja): When you talk about the locals not earning from salt farms, during the setting up of those farms, would you know of any local who also applied and he was denied.

**Mr. Harrison Kingi:** Yes. I know one called Mzee Katana Fondo who applied but he was denied.

**The Acting Chair** (Commissioner Namachanja): Thank you. Those are the only questions I had.

**Commissioner Farah:** Thank you very much for your presentation. We have already been given by the TJRC staff, a summary of the problems that salt companies have brought to local people. Now I understand that you have a more detailed memorandum and I think we have recorded your presentation. We shall combine all that, analyze it, take action and recommend to the Government to take action. I have no question for you because you were very clear.

**The Presiding Chair** (Commissioner Dinka): Thank you very much for your testimony. I have only one question for you. Those salt mining companies were established 31 years ago. You were evicted and you say that you are suffering from the consequences of the salt mines. What have you done in terms of approaching the Government for compensation, for resettlement or improvement of terms and conditions of work and what was the response that you received? Have they not done anything for the last 30 years and they are just beginning to confront the problem?

**Mr. Harrison Kingi:** The community members have really struggled. They have approached the relevant organizations. For instance, they wrote to Kenya National Commission on Human Rights for assistance and I would wish to thank them because they came in to assist. Sometimes, we go to submit our demands to NEMA, the water

department and we have gone to the relevant offices that we feel can assist us. But what we get are promises that are not fulfilled.

**The Presiding Chair** (Commissioner Dinka): The Human Rights Commission came to your assistance and provided you with a lawyer in 2005. That is 25 years after the salt mines started working. Why take all that time if the people have been suffering?

**Mr. Harrison Kingi:** What you should know is that the people are very poor and they cannot forward their cases to the court. The Kenya National Commission on Human Rights came and provided the necessary assistance that they could afford. What we have in this country as my colleagues have said here, the leadership has problems because there are so many cases pending in courts and the court orders are violated.

**The Presiding Chair** (Commissioner Dinka): I just wanted to have some idea of what had happened in between but if you have any documentation that you wrote to Government, NEMA or any other authority, please do give it.

Leader of evidence, you may stand down the witness and call the next one.

**Ms. Emily Kimani:** Commissioners, our next witness is Witness Code 20 but we do not have a write up in the files. He will be presenting issues on Kilifi youth.

**The Presiding Chair** (Commissioner Dinka): Does the witness have a memo that he has given to you?

**Ms. Emily Kimani:** The witness confirms that they are in the process of compiling one but they will be e-mailing it to us later after his presentation.

**The Presiding Chair** (Commissioner Dinka): I will allow him to testify after he takes the oath but I would like the witness to do a very brief presentation. You should go through what the youth are suffering from and what you think are the solutions.

**Ms. Emily Kimani:** He is in agreement with that position.

*(Mr. Samuel Mwangala took the oath)*

**Ms. Emily Kimani:** How are you this morning? Before we proceed please tell us your full names once again for record purposes.

**Mr. Samuel Mwangala:** My full name is Samuel Mwangala.

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

**Mr. Samuel Mwangala:** At the moment, I represent the youth.



**Ms. Emily Kimani:** Thank you very much for being part of this truth process. Before I invite you to make your presentation, I join the Presiding Chair in pleading with you to give us highlights of the issues, having heard most of the issues yesterday from three youth representatives from various parts of Kilifi. If you could kindly give us a summary of issues unique to Kilifi town and the recommendations thereto.

**The Presiding Chair** (Commissioner Dinka): Excuse me leader of evidence, what file number have you given to this witness?

**Ms. Emily Kimani:** He is one of the additions that requested for a slot yesterday. He is 20.

**Mr. Samuel Mwangala:** Thank you very much for giving me this opportunity. I am a youth leader and I represent the youth in the Kenya Youth and Governance Consortium as a treasurer. I also represent the youth from the Kilifi County in the youth parliament as the chairman and I also represent the youth in Kilifi District Steering Committee. The issues that we have as youth in Kilifi town are among others, the history of grabbing of land which should be given to the youth and creating employment to the youth. The most unfortunate thing is that according to Section 65 of the newly promulgated Constitution, non Kenyans own large tracts of land in Kilifi Town. One of the saddest things is that the local council does not have the authority to repossess the land especially the ones whose lease of 99 years has expired. For example, there is a piece of land in Mnarani area that is supposed to be given back to the community or the town council but that has not happened up to today. That is a very sad issue.

Secondly, we were allocated the parcel of land on the Indian Ocean around the area of the members club by the council as the Kilifi youth in order to create employment to our fellow youth. We were surprised to see a person of Asian origin claiming that he bought that parcel of land for 20 million shillings. We as the youth are taken as destructive by the Government or criminals when we stand up to demand certain rights that we have been denied. Everyday, we hear that justice will be done but we have not seen it served. If I talk about investors in Kilifi, we are surprised that within Tusksys, all employees are from non coastal areas and we also need employment. When you talk about the NGOs, most of the people who are employed are not from this region. This irritates us and that is why you saw us yesterday demonstrating because the Constitution allows us and that is why you saw us demanding to be heard.

I want to move from Bahari Constituency and go to Ganze Constituency. So many rights have been violated in that area especially in the main offices which are supposed to provide essential services. For instance, the Gender, Children and Social services Ministry is not far in that area. This is annoying to the youth of Ganze because whenever they sit down and agree and analyze the issues that affect them, it is very hard to be registered and recognized as youth groups advocating for their rights and development in the area. There are children below the age of 18 especially female, who have not been allowed to access education. When we try to uplift them and talk about their rights, we are told to keep quiet or we are given warnings. There is a man called Jackson Mulila

who investigated some projects within the Ganze area. He was attacked by unknown assailants and he was strongly warned because he was trying to investigate the projects that were in the newspapers which were supposed to have been implemented, but were not implemented in that area. This is another issue that has made the Ganze youth to be angry because they are not getting the services that they are supposed to be getting.

We have not been getting important information. For example, getting to know that the TJRC will be visiting this area was very difficult. There is no proper guidance and a way that this information can flow to reach the youth groups so that they can express the issues that affect them. We are also surprised as youth with regard to the Commission. We were surprised that the youth have not been represented in the Commission, especially from the Coast Province. We can authoritatively say that we are not properly represented.

To conclude, there are police officers who believe that we are just criminals whenever they see us. When we demonstrate like we did yesterday, we are seen as criminals and yet we are just advocating for our rights and the rights of our community. It is very sad indeed for us but we are grateful for this opportunity. As I said, I will be very brief. Our recommendations are that if and when the Truth, Justice and Reconciliation Commission (TJRC) and other commissions, visit this area, we would like the information to flow and reach the targeted community. Writing a memorandum is not difficult but many people were not aware that this will be happening.

**Ms. Emily Kimani:** Thank you very much, Mr. Mwangala for that brief and articulate presentation of the youth issues in Kilifi. I have one question for you. As a youth leader, have you initiated any projects to empower the youths in form of employment?

**Mr. Samuel Mwangala:** First of all, I have instructed the youth from the Kilifi County to come together and come up with our own Savings and Credit Society (SACCO). We have also sat down and agreed to go to the District Commissioner (DC) and explain our problems. If they do not listen to us then we will demonstrate like we did yesterday even if we are only two. We have also decided that we will look for information from websites so that we can be aware.

**Ms. Emily Kimani:** Thank you for your answer. Are you aware whether the youth have benefitted from the Government Youth Enterprise Fund or the *Kazi kwa Vijana* programme?

**Mr. Samuel Mwangala:** Regarding the *Kazi kwa Vijana* programme, it is difficult to get the right information from the Ministry. We have never heard that there is work for the youths in Kilifi. We just hear that people already registered and are already doing the work.

**Ms. Emily Kimani:** Thank you. As a Commission, we look forward to receiving your memorandum with the issues that you have highlighted before us this morning. You have said that awareness levels were low about our work but our doors are wide open for

anyone who wishes to present a memorandum or even a statement and the recommendations will be taken on board.

**The Presiding Chair** (Commissioner Dinka): Thank you very much Leader of Evidence. I will now ask my colleagues to ask the witness some questions.

**Commissioner Farah:** Thank you, Mr. Mwangala. Your demonstration yesterday was unfortunate because the Truth, Justice and Reconciliation Commission (TJRC) has been there since 2009. There are other youths who instead contacted the Commission and were listened to. I think your organization is still young. You should come together and look at the benefits of the Commission even for years to come. We know no reason why you should demonstrate because we can accommodate you at any time. Our mandate is to investigate human rights violations since Independence to 2008, when the two Principals signed the accord after the post-election violence. We go into a few years before Independence but our mandate ends on 28<sup>th</sup> February, 2008.

Thank you very much for coming before us. I just want to seek clarification by asking one or two questions. The first one is about a piece of land that was sold for Kshs20 million in Mnarani area. Could you explain so that the HANSARD can capture you? What exactly brought about that purchase? Who owns the land and what is your complaint?

**Mr. Samuel Mwangala:** The parcel of land that I have complained about is a piece that is on the shores of the ocean which is not exactly in Mnarani. There are some youths who were working there through the *Kazi kwa Vijana* initiative and they were trying to establish a garden where traders and tourists could utilize. What we are complaining about is that after the youths had done the work and were given permission by the chairman of the town council, so they were supposed to write a letter requesting for that land. We also planted flowers but after a few days, an Asian came and claimed the land. He said that there is nothing that we could do. He started fencing off the area saying that he had bought the land for Kshs20 million. That issue took us by surprise. We started demonstrating and condemning the claims by the Asian man. We know that we are the natives of this place but we do not know how the Asian got that land. We would like to be allowed to own that land especially after we had beautified and made it attractive.

**Commissioner Farah:** There are records in Kilifi County Council. What do the records say about who owns the land?

**Mr. Samuel Mwangala:** At the moment, we do not know exactly who the owner is. The case was reported to the police and we are waiting for a response. Our chairperson was given a stern warning because he is very young.

**Commissioner Farah:** You better follow up with the authorities especially with the council. There is the chairman of the county council and the land registry where all information about the possession and history of land is. There is a lot of land along the

coastline that is private. The other issue is about police harassment. Is your property registered as a youth organization?

**Mr. Samuel Mwangala:** We are not officially registered as a youth group but we believe that as citizens we should be respected.

**Commissioner Farah:** You need to register yourself as a society. Even the Maendeleo ya Wanawake is registered and other youth organizations are also registered. This is to enable you to be national so that when the *Kazi kwa Vijana* programme comes you will be recognized. You should have a chairperson and other officials. This will enable the programmes to give you money. But if you are just with an identity card then it will be against the law to have an organization that is not registered. You should elect your officials and register as a society. When you do that you will be recognized and if you demonstrate the police will protect you from other people. In other words, you will be recognized but we have taken your complaints although we cannot do much until you follow the law. Are you getting my point? When you are registered, you will have a bigger voice and you will develop yourselves. You can even get money from the bank.

**The Presiding Chair (Commissioner Dinka):** Thank you. I just want to make a comment then ask you a question. I understand you are not a registered youth organization. You are just a group of youths who know each other and are trying to do something. It is good to be registered because you will be a legal entity and everybody will recognize you as such. In any case, whether you are registered or not, there are things that really matter to the youth. You have mentioned something about employment opportunities but you have not mentioned something about drug abuse, drunkenness, prostitution, early marriages and so on. I do not want you to respond to that now but in the memorandum that you are going to give us you will cover those major issues.

You have said that the people from the coastal region do not get opportunities like the others in the country. Have you as the youth leader approached the employers like the *Tuskys* on that issue and what was the reaction?

**Mr. Samuel Mwangala:** As I said previously, when individuals go to town, they are arrested but we do not move around in a group. When you go to the *Tuskys* Supermarket beginning with the sweepers to the managers none of them is from the coastal region. We would like the locals to be employed because they are capable of doing something.

**The Presiding Chair (Commissioner Dinka):** I do not think you got my question right. My question is, have you talked to the management on this issue explaining that since they are in Kilifi, you would like some of your people to be employed instead of bringing 100 per cent of staff from other regions and if you did, what was the response?

**Mr. Samuel Mwangala:** At the moment we have not taken that step but we are planning to do so. We would like to take up this matter with the DC and the religious leaders.

**The Presiding Chair** (Commissioner Dinka): Finally, you mentioned about TJRC coming here without having made good communication. I would like you to know that when TJRC was coming this side, it was preceded by several things like civic education carried out by some of our staff. They came here and discussed with several stakeholders about the coming of the Commission and the reasons for their coming. Even before that, we usually sent out a team to take statements. That team has been working for the last one year and they have been in Kilifi several times. If you wanted to record statements or present a memorandum, they were there not only to record your statement but also to help you draft your statement. We also have advertisements in the newspaper like the *Daily Nation* and the *Star* where we publish the schedule of the Commission.

So, you had all kinds of sources in which you could have received absolutely correct information about the coming of the Truth, Justice and Reconciliation Commission (TJRC) to Kilifi. I think we have done sufficient publicity to inform the people of this county to be prepared with their presentations and memoranda. I have no further questions for you.

Leader of Evidence, you may stand down the witness and call in another one.

**Ms. Emily Kimani:** Commissioner, next we have four witnesses under the theme of forced evictions. We have informed them that they will be presenting together. Although their stories may differ, the theme is the same. They are Witness Code 12, Witness Code 14, Witness Code 10 and Witness Code 8. Witness Code 7 is not present.

*(Mr. Justus Ndolo Kalama, Mr. Mohamed Shali,  
Mr. Hamisi Ali, Mr. Kenneth Kapasho Jefa took the oath)*

I want to welcome all of you here and I want to thank you for agreeing to participate in the truth finding mission. The witness I wish to invite first is Mr. Ndolo. Mr. Ndolo before I invite you to make your presentation, please, tell us your full names for record purposes.

**Mr. Justus Ndolo Karama:** My name is Justus Ndolo Karama and I am an officer working in Vipingo Ranch.

**Ms. Emily Kimani:** You are before us because you recorded a statement about various injustices regarding land. Yesterday we had many speakers who laid a very solid foundation on the issue of land. We heard about the issue of Vipingo Ranch, Gatecha Scheme and Mtwapa. That is what you have stated in your statement. Mine is just to seek additional views from you on the matter and also your recommendations on the said issues.

**Mr. Justus Ndolo Karama:** Thank you, Commissioners. I greet all of you. I am an officer at Vipingo Ranch. In the past, I used to live in Maweni, Mtwapa which is my home. There is a place called Customs Beach which was owned by a "Whiteman". The man had leased the area but he returned it to the Government in 1973. At that time, he

wrote a memo saying that those who had been working there and their families should benefit from that land. There were several homes like that of Kochengo Kasha, Chengo Baya, Karari Ngua and Mwajila. All these people were our grandfathers, brothers or mothers. The white man wrote all the names of the people to benefit from that land. A year after he had left, another person called Mwinyi Hamisi came from Kongowea. He asked my grandfather to allow him to keep his cows in the shamba that we were using. My grandfather refused but he used administrators to force him to accept.

**Ms. Emily Kimani:** I beg your indulgence. With me here is a very detailed statement with all those issues that you are pointing at. We also had witnesses here yesterday who laid a very good foundation on various issues that we wish to talk about. My plea to you is to simply give us the additional thoughts on what should be done about evictions as per your statement in various settlement schemes that you have talked about in your statement.

**Mr. Justus Ndolo Kalama:** I would have wanted to ensure that the parcel of land is given to the rightful owners. There was one person called Philemon Mwaisaka who came and demolished people's homes. That was against the law because he was using his authority as an administrator. All the residents of that area are still very bitter. All that land should be given back and if possible the Commission should make sure that the houses are reconstructed. Philemon Mwaisaka said that he had been given that land as a present by Mr. Moi.

The first government headed by Mzee Kenyatta, the Moi regime and also this one of Mr. Kibaki are bent on denying people their right to their land in Coast Province. That is why I am before this Commission. You have told me that people have already made presentations on this matter so I will go to another topic.

The people of Maweni were forcefully evicted and told that they will be given alternative settlement but up to now, they have not been resettled. There are places where they were told that they will be settled and given title deeds but nothing has happened yet. That was in 2004. I presented that memorandum to you showing the map of that area during the days of Ngala. He wrote a letter to Mzee Kenyatta. Mr. Ngala was suggesting that since the lease of the sisal land was ending, it should be sub-divided for the people. But unfortunately, that land was taken by administrators like the District Officers (DO) and so on. Mr. Ngala wrote to Mzee Kenyatta but he ignored. Mr. Moi also ignored and Mr. Kibaki has also ignored it. I would like to recommend that the land be given back to the locals so that they can have homes.

**Ms. Emily Kimani:** Thank you very much, Mr. Ndolo, for your concise testimony. I now invite Mr. Shali to give us his testimony. Before he does so, he could start by telling us his full names for record purposes, and then proceed to highlight the issues of forced evictions, how they have impacted on him and the recommendations preferred.

**Mr. Mohamed Shali:** My name is Mohamed Shali and I live in Malindi. I am a businessman. My problems are three: We have a problem of land. My parents have lived

in Malindi since Independence. There is another owner of the land who came and told us to move out. In 1998 there was a fire which destroyed everything. After that, people were unable to rebuild them. So, whenever one wants to rebuild the owner does not accept. I would like this Commission to investigate and find out if this land belongs to him or not. If it finds that it is his then the Government should buy back that land and sub-divide it amongst the original owners.

**Ms. Emily Kimani:** Thank you, Mr. Shali. Our third witness is Mr. Hamisi Ali.

**Mr. Hamisi Ali:** My name is Hamisi Ali Mbolani and I am a mason. The memorandum concerns the parcel of land LR.No.1452/5 but we live as squatters. We are about 4,000. The farm belongs to a tycoon called John Keen, a Maasai. He has very big land in Kilifi. It extends to Kagaa.

The farm belongs to one tycoon known as John Keen who is a Maasai. He has a very large piece of land in Kilifi County that goes up to Kagaa. When we tried to follow up, we found that it has a lease of 999 years. We have lived there as squatters for more than 30 years. I was born there. There is a suggestion that this person would like us to move out of this land because it belongs to him. He has brought agents who are selling plots from that piece of land. The buyer comes and evicts that person and brings another agent. When a new agent comes in he says that he does not recognize those who have paid. He shows us new documents from John Keen. Some continue paying and after three years he goes and a new agent comes in. After this Commission was put in place, I was one of those who were informed. This farm has a lease and John Keen cannot sell it. When I told them that I was persecuted by the chiefs and District Officers, I was told that if I am not careful I will be the first to be evicted. I have two plots in that piece of land. The first one has already been sold and developed. The case was taken to court and it is going on. Among the documents that they are using to sell the land to the citizens are the receipts of Coast Development Company. Those who are selling the land are brought in as agents. They use some documents as sale agreements. For instance, I have this one which I bought from somebody called Njoroge. There is a private surveyor who was brought in to delineate the land. He usually gives beacon certificates which if you go to court, you will find that they are presented by those who were sold to. There are also receipts that are used to pay. This is a beacon certificate which is not approved because it has no letterhead. If you go to the Lands Office, you will find that, that land has not been registered because the farm has not been transferred from agricultural land.

We followed even more in a bid to salvage this. The DO and chiefs summoned the committee that wanted to move on and it was dissolved. We were removed from the committee and a new committee that would agree with the chief and DO was put in place. When we complained that the farm has not been transferred, we were given another paper showing that they had passed a change-of-user by the Town Clerk in Kilifi just recently. When we got this piece of paper we tried to go to the Lands Board to find out who did the change-of-user yet there are squatters there who are unaware. The board said that they did not know. We tried to pursue the clerk and he also said that, that was a fake rubberstamp. So, there is a lot of injustice going on and people are being defrauded

of their monies. All the farms around there belong to the Giriama. How did it happen that John Keen would own all this land? When we did a search we found the lease and the year that it started.

The other injustice that still goes on there is that when you get to court and ask for a title deed to be brought, the people there give letters showing that the title deed is lost. What hurts me most is that we have lived there and so, why is it that the Government knows all and it does not give all citizens at the Coast title deeds? The Government that we have does not listen to us or take us seriously. Recently, we voted for the Referendum that would help us solve such issues. The Referendum abolished the office of the Provincial Commissioner (PC) and the other people. Why is it that they have not been removed and yet, they are the ones who are causing all our land to be taken away? They use the chiefs who are our fellow Giriama and the chiefs cannot do anything because they are cowards. They are used to visit these injustices against the Giriama.

From yesterday I have heard that there are Commissioners in this Commission who are not from Kenya. If the report will be taken back to the same leaders I do not see us getting any justice. I would like to ask this Commission to give us a report before the end of this year. If we do not get this, the coastal people will make a decision and the whole of Kenya will know. Kenyans will know that the coastal people are tired and want their rights. If they kill us we will pursue our rights. I would like this Commission to take this seriously.

**Ms. Emily Kimani:** Thank you very much, Mr. Hamisi Ali for your testimony. I will now invite Mr. Kapasho Jeffa to give us his side of the story. Before he does that I request him to tell us his full names and what he does for a living.

**Mr. Kenneth Kapasho Jeffa:** Thank you very much. My name is Kenneth Kapasho Jeffa from Kibarani. I am a farmer.

I will not talk a lot because most things have been said since yesterday. I would like to just emphasize the issue of land. I have already recorded this in a statement. There are some names that I cannot mention because I fear for my own safety.

When Kibarani Settlement Scheme was subdivided in 1995, the citizens paid but they did not have title deeds. The tycoons who grabbed the land are the ones who have title deeds. They just want to sell the land. Recently, somebody whom I will not mention sold his piece of five acres, and yet there are squatters inside. He sold it at Kshs60 million so that he can use the money for campaigns. I would not like to mention him because if I did it now, by evening I will be finished. This is his title deed that he used to sell that piece of land.

I will give my recommendations because everything has already been said. The subdivision of Kibarani Settlement Scheme was not legal. If it is possible, the Kibarani Settlement Scheme should be declared illegal and re-subdivided. The citizens of Kibarani have sent me to say that before this Commission.



**Ms. Emily Kimani:** Thank you very much, Mr. Kapasho Jeffa for your testimony. It furthers what other witnesses have told us about the very contentious land issue in Coast Province.

I have a question for the first witness, Mr. Ndolo Kalama. In your statement and testimony, you told us that Mr. Philemon Mwaisaka was gifted with some 81 acres. Is that right?

**Mr. Justus Ndolo Kalama:** That is true.

**Ms. Emily Kimani:** How many people were evicted from these 81 acres?

**Mr. Justus Ndolo Kalama:** About 500.

**Ms. Emily Kimani:** How much land did your family own in those 81 acres that he was gifted with?

**Mr. Justus Kalama:** There were only two acres.

**Ms. Emily Kimani:** Did you have documents of ownership?

**Mr. Justus Kalama:** There were no documents because it was Government land.

**Ms. Emily Kimani:** I have no further questions for the rest of the witnesses given that their testimonies were clear. But my next question can be answered by any of them. It is on the recommendations about the Lands Office and the Provincial Administration that most of you have claimed have a lot of corruption. What recommendations would any of you have so that the public can receive efficient service from the various public officers in those offices?

**Mr. Hamisi Ali Mbwalame:** My recommendation is that the Truth, Justice and Reconciliation Commission should make an effort--- Everybody knows the injustices that happen in these offices. The Government should quickly give out the title deeds to the citizens who are squatters. If that will not happen then we will decide.

**Ms. Emily Kimani:** Thank you very much, Mr. Hamisi. Presiding Chair, the witnesses have furnished me with various documents in support of their testimony. Mr. Ndolo Kalama has furnished us with a letter dated 15<sup>th</sup> September, 1964. Mr. Hamisi has also issued us with various documents and correspondences in support of his testimony. Last but not least, Mr. Kapasho Jeffa has also furnished us with two documents. I pray that the documents be admitted to form part of the Commission records.

**The Presiding Chair** (Commissioner Dinka): All the mentioned documents are so admitted.

**Ms. Emily Kimani:** I want to thank all of you for taking time to appear before us this afternoon. May God bless you and may you keep on keeping on. I have no further questions.

**The Presiding Chair** (Commissioner Dinka): Thank you very much, Leader of Evidence and all of you. I will now ask my colleagues to ask any questions if they have.

**The Acting Chair** (Commissioner Namachanja): When we conducted these hearings in Rift Valley, I thought that we had the highest number of squatters there, but I am overwhelmed by the number of squatters here.

Maybe to use the case of squatters on John Keen's land, can we be helped to understand how they came to be squatters there?

The second issue is an appeal. We have our regional office in Mombasa. My appeal is to the professionals and researchers. If somebody has done any research on the issue of squatters in the coastal area, we shall really appreciate such a report before we finalize our report writing in April.

Thank you.

**The Presiding Chair** (Commissioner Dinka): Thank you very much. Yes, Commissioner Farah!

**Commissioner Farah:** I have no questions because I think most of the statements and evidence given is very clear. These are unfortunate issues of land. I see that you have issued very many documents. They need further study and consideration before we come to our final findings. Thank you very much.

**The Presiding Chair** (Commissioner Dinka): Thank you very much for your testimony. As the Acting Chair has said, we are really overwhelmed by the number of land issues and the negative impact it has on the people of the coast. It is true that we heard issues all over the country, but I think the land issues here are principal. We have taken note of that and will do our own investigations and research into what you have told us. We will make appropriate recommendations and findings in our final report. We will not take very long to issue our final report. It will be issued on 3<sup>rd</sup> May, 2012.

Thank you very much.

You may stand down the witnesses.

*(The witness was stood down)*

**Ms. Emily Kimani:** Commissioners, our next witness is Witness Code 19, who will be making a memorandum presentation on the community known as Kauma and also about the boundary dispute on Wamaya Farm. The memorandum is not in the file.

*(Mr. Josphat Bahati Karisa took the oath)*

How are you Mr. Karisa? I wish to welcome you to our session. Before we go further, could you kindly tell us your full names for record purposes?

**Mr. Josphat Bahati Karisa:** My name is Josphat Bahati Karisa. I am a resident of Kauma in Jaribuni.

**Ms. Emily Kimani:** The reason you are seated before us is because you furnished us earlier with a memorandum on behalf of your community. Is that correct?

**Mr. Josphat Bahati Karisa:** Yes, it is true.

**Ms. Emily Kimani:** You may make your presentation by briefly highlighting the issues and giving us the recommendations thereto.  
Welcome.

**Mr. Josphat Bahati Karisa:** As I have said, I am Karisa Josphat. I am a resident of Kauma. I am here to complain about our neighbours who are my brothers, in-laws and friends. There are a few people who have created conflict among us and people have lost their lives.

We would not like such a thing to be repeated and that is why we have come here to present our complaints, so that we can get some assistance from you. This is because of what was said by the very first speaker, Mr. Abubakar yesterday. We have presented our cries to the various people for a very long time but no solution has been found until today. If a solution had been found we would not be sitting here and presenting these complaints. I do not know whether it is the Government that has its own ulterior motives and does not want to listen to the minority tribes like ours.

The Kauma people live in Ganze Constituency. It is one of the small tribes and marginalized groups. This tribe borders the Chonyi to the south, the Giriama to the west and north. I was born in 1962 and when I was growing up I knew that there was enmity between the Kauma and the Chonyi tribes, but I did not know why. As I was growing up I discovered that there are some people who were bringing about the enmity. This is because people live peacefully but after sometime there is always a problem that makes them fight or disagree. I say this because in 1956 there was a disagreement between the Kauma and the Chonyi. I have brought this memorandum and given highlights. When that conflict occurred, the Kilifi District Commissioner (DC) was Mr. Stringer. When he noticed the disagreement between the two tribes he called the elders and chiefs. There was Masha Kifalu who was a Giriama, Buru Kunguni a Duruma, Chiringa Mwatela a Kambe, Benjamin Chimwenga who was a Ribe and Chiguba Mkanyi who was a Jibana.

He called the chief from Ganze who was Kirao Kaya and John Katembe Makongo who was the Kambe/Ribe. They solved the issue and people lived in peace for very many years.

There is one area called Ng'ombeni Sub-location which was in Kauma Location then. By 1976 the assistant chief of that area had retired. It was announced selectively and this brought about another problem. When the vacancy was announced in Pingilikani people started complaining. They asked: "Why should it be advertized openly so that people can apply and fill up the position?" They went to the then District Officer whose name I have forgotten, but it is in the memorandum. He wrote a letter to the DO of the southern area at that time. He asked: "Why has my chief retired and up to now we have not managed to know exactly why we have not advertized to employ another one?" He did not get any reply. The DO was called Kaniaru. The letter is in Reference IV, Volume II. This went on and there were quarrels and exchange of letters until 1979. It was obvious that Ng'ombeni had been pushed into Chonyi.

At that time there was an elder known as Japhet Mumba who was living in Ng'ombeni. When he got the information he was very angry that he wrote a letter which is in Folio 19, Volume II of 1979. He was a KANU Chairman and at that time, they had some authority. He wrote to the DC to complain why the area had moved to Chonyi when they had not been consulted. There was no reply but letters were being written all the time. Whichever DC wanted to help would be transferred. In the report you will see the DOs who were transferred. There is even one DC who had written a letter to the Provincial Commissioner to give his recommendations that the problem should be resolved so that people can live in peace. But when the letter got to the PC, it was taken away and hidden. It was later found being burnt in a dustbin and the evidence is here. Fortunately, it was given to us and that is why we kept it as part of the evidence.

In 1989 things deteriorated completely and after that the boundary that had been put there was a problem. We noticed that it was six kilometres interior from where it had been. That has created a problem and from then we tried to look for ways of making sure that these people live in peace. At one point I had to intervene in 2006. We had to sit down as elders and see how we could help. We wrote a letter to the Permanent Secretary who is in charge of administration and copied it to the PC. However, nothing happened.

In 2007 I became the councillor of the area. When I took over the elders came to me and asked: "What will we do?" We wrote a letter which we presented to the DC in Kilifi, Mr. John Elungata. He read the letter and said that he would give us an answer. After one month there was no answer and we went back. Mr. Elungata searched for the file but could not find it. It was eventually found and many documents were missing including the map that you have there. When Elungata read and understood it, he went to the ground to look for evidence. One day he came up to Zizoni and said that we would have a change one day that would be agreeable to us, so that we could live in harmony. But the DC did not stay for a month. He was removed from here and later we heard that he had gone to Israel for further studies. Since then we have not found a solution. That is why we have come to the Truth, Justice and Reconciliation Commission (TJRC), hoping that you will offer us a solution to this problem, because it has led to persistent conflicts

between the two communities and yet, we are brothers. They live in harmony in the grassroots, but at some point we do not know who goes and incites the citizens.

**Ms. Emily Kimani:** Before you proceed, you have given us a very good background on this issue about the Kauma and Chonyi. You have given a very good basis about the boundary dispute. In your opinion what is the solution to that issue before you proceed to your second issue?

**Mr. Josphat Bahati Karisa:** My opinion is that this issue should be solved before the coming elections. This is because Kauma is a minority tribe and we are oppressed by everybody. They pushed the boundary and divided the Kauma into two communities. They have gone to the other side and divided us in the middle. Now, we are almost invisible and it looks like they want us to completely be extinct. At the moment, the only Kauma who is in the Government is a councillor. The next one is a chief. There has never been any Kauma in other leadership positions since 1963. So, we want the boundary to be reinstated to where it was before. If there is any issue there should be reconciliation. But first of all, the boundary should go back to where it was in 1956 so that we can live in harmony.

**Ms. Emily Kimani:** Have you presented renditions to the Boundaries Commission on this boundary issue between the Kauma and Chonyi?

**Mr. Josphat Bahati Karisa:** As I said before, we have written very many letters. We sent our complaints to the Commission that recommended new boundaries. We were surprised recently when the report came out to see that instead of being given the ward that we have at the moment, we have been combined with the Giriama in Palakumi Ward. They say that we are not enough in number and that our ward is very small. We have reported this.

**Ms. Emily Kimani:** Highlight the remaining issue and give us the recommendations.

**Mr. Josphat Bahati Karisa:** The other issue is that when this problem was going on there was a disagreement between the two communities which brought about land clashes. There is a place called “Viambani” or “Ngamani”, but according to the land adjudication it is called “Chizweni/Bizombo”. This area has been the centre of conflict because, at first, it was mistakenly called that name instead of Ng’ombeni/Ng’ambani. We had no problem with that, but in 1989 people were told that there would be land adjudication. They were sensitized and told to be ready. That is the time that there had been a conflict. As we talk, this is the time for ploughing. Before we get to the time for planting people will fight and sue one another. There will be cases every morning in this area. I remember in 1986 people were preparing their land and before they finished, the brothers from the Chonyi side came with bows and arrows; pangas and other crude weapons and attacked the Kauma.

I was not around but I was told it was on a Sunday. When people dashed to find out what was happening they found out that there were skirmishes. Because they were not ready,

one of them lost his life. He was called Tshivashi Mwazuma. Another one called George Munga lost an eye. He is here at the front.

Because this situation has led to fighting and disagreement I would like to request this Commission to order the Ministry of Lands to order the land adjudication to be nullified and done again so that bona fide owners of the land can benefit. When the initial adjudication was done the Ganze DO and Chonyi DO were called in. The former Assistant Chief of Kauma Rodious Ngala is here. He was present on that day.

When they were summoned to be part of the adjudication the Chonyi DO came with administration police officers who were about 10 and were armed with guns. The Chonyi chief came in later. Before they started the adjudication they told the Kauma chief to go ahead together with the Chonyi chief and the DO to do the adjudication. The Kauma people were told to stay back. However, one of the Kaumas by the name of Stephen Kalama was very bitter; I believe he is somewhere here. He complained and asked, "Why is it that the Kaumas cannot accompany them and yet the land is ours?" When he protested, he was arrested, handcuffed and put in the vehicles. He was detained there until after the adjudication that ended at 6.00 p.m. He was then abandoned at the Kauma bridge and had to come back footing. The adjudication was not done in a transparent manner. When the chief saw that, he rejected it and said, "If the Kaumas will not go to show the boundaries of their land, I will not go".

The Ganze DO also said he will not accompany them. When they finished their work, they went back to the vehicle and people were eventually told to go back home. So, it was not done in an open and transparent manner. We would like that adjudication to be nullified and be re-done. We would like this Commission to help these people get their land reverted to them.

Because of corruption by survey officers here one parcel of land has more than six numbers. Whenever you go there, you are told to pay some money and you are given your number. When you go to court you realize that the reference number has been in hearing and has gone up to the Lands Board and someone else is presenting a case. It is case upon case for the same piece of land with different numbers. That is why we are saying this adjudication was not properly done.

We also ask the Commission to ensure that those who were affected are compensated. The person who died, the family has undergone a lot of problems: their children are not going to school and the family is still suffering. The affected should be compensated.

**Ms. Emily Kimani:** I also thank you for your efforts to prepare for us a very detailed memorandum. Time may not have allowed us to let you go into details but we will surely take all the recommendations and views that you have given as we prepare our report later on this year. I have no questions on what you have presented.

**The Presiding Chair** (Commissioner Dinka): Thank you very much Leader of Evidence. Are you admitting the documents into the record?

**Ms. Emily Kimani:** Mr. Karisa do you wish that this memorandum and the attachment form part of the Commission records?

**Mr. Josphat Bahati Karisa:** Yes, I accept.

**Ms. Emily Kimani:** I pray that the documents be admitted to form part of the Commission record.

**The Presiding Chair** (Commissioner Dinka): It is so admitted.

I thank you very much and thank and thank Mr. Josphat Karisa for his testimony. I will now ask my colleagues if they have any questions.

**Commissioner Farah:** Josphat Bahati Karisa it has never occurred to me at any one time that there was a problem between Mijikendas. I always assumed that Mijikendas were one people with your Kayas and your good culture. You are very calm and nice people. I never thought there was a problem, but then in any family there is always a problem; even a man with his children. I have taken note of that.

Is Kauma the smallest of the nine clans?

**Mr. Josphat Bahati Karisa:** Yes, the Kauma are small and marginalized group among the Mijikenda.

**Commissioner Farah:** When the Chonyis marginalize you, don't the Jibanas and Kambes come to your aid to help you?

**Mr. Josphat Bahati Karisa:** From time to time we have been cooperating but now the Jibanas, Ribe and Kambes are a bit far away. However, most of the time we cooperate and share ideas.

**Commissioner Farah:** I just want to tell fellow Commissioners here that Mijikendas consist of; Girima, Digo, Duruma, Chonyi, Jibana, Kambe, Kauma, Ribe and Rabai. We have been taking note of your marginalization. All the same on the issue of land or border, we have taken note and I thank you.

**The Presiding Chair** (Commissioner Dinka): Mr. Karisa, I have one question; the Kauma and Chonyi are sub-tribes of the Mijikenda community as Commissioner Farah has just mentioned, what has been the contribution to the dispute resolution locally of the Kaya elders to settle this conflict?

**Mr. Josphat Bahati Karisa:** When we go into it keenly we realize that the biggest contribution is from some leaders who seem to live well but incite people into conflict. Even in this report there are some people we have there whose names I cannot mention here because of my security. These people would want to expand their areas so that they can very easily get administration close to them. They therefore, try to oppress others. If you went to Kaloloni, I do not know if you got a similar problem. However, I know there has been a problem with the Jibana.

It is just a small clique of people who wanted to expand their areas. For a county to develop it is the people who have to increase in numbers. It is just a clique of people because the rest just live peacefully and inter-marry. At some point you find people in conflict because a few individuals incite them.

**The Presiding Chair** (Commissioner Farah): Thank you very much.

Ladies and gentlemen this brings us to our last witness. Before, I conclude, you may step down the witness.

I would like to ask Commissioner Hassan Yassin of the Commission for National Integration and Cohesion if he has any comment, advice or question to put to the people of Kilifi. He knows this area much better than any one of us.

**Mr. Yassin Hassan:** I will speak in Kiswahili so that you can understand. It will be translated in English for those who do not understand.

First, I would like to thank the Commissioners of TJRC for giving us an opportunity as a fellow Commission. As you know the TJRC is the last temporary Commission after the report under Agenda 4. The other Commission that will be left is our commission. So the burden that they leave behind will be taken over by us. This invitation helps us as a Commission to understand the issues that you have raised and as you discuss, we also find guidance in a way that will bring justice and reconciliation. As you know, once the truth is found, it leads to justice and reconciliation. When this Commission left Lamu on the second day, we held a meeting there to try and find out how we can have reconciliation.

They gave us their recommendations. It is possible and my prayer is that all that we say here; we know some is born from bitterness but you have been able to persevere for a very long time. Some of these things should be corrected before the end of this year. If that is not done, then they will take one or two steps. This is not in the culture of the coastal people; the coastal people are very careful and tread carefully, they are cautious, hospitable and persevering. If you have been able to persevere for all these years, why should we not hope that we are going to get a lasting solution if we cooperate and work together?

The Acting Chair mentioned that when they were in Rift Valley and other places the sentiments on land are shared by people in other places. They are not issues that I can promise you that can be solved today, tomorrow or this year. My hope is that we will get the guideline to help us resolve or deal with these issues for years to come. I think these things should be resolved before the end of this year.

I would like to urge the people of Kilifi and coast in general to continue being patient. I guarantee you that all that you have said and all that will come from the recommendations of this Commission will be taken seriously. You should not think that the TJRC has nobody from the coast. I would like you to be proud that there is another Commission which is ours and has somebody from the coast. I do not want to mention



his name. In the TJRC, all the nine provinces could not be represented because three Commissioners had to be from outside the country; we have a person each from Zambia, USA and Ethiopia. They are our brothers and we had to find a way of putting in some international flavor so that we have the valuable contribution from outside to know how they solve their issues. Please, let us have faith in this Commission.

I have told my fellow Commissioners that I will be in Kilifi and I will be with them in Mombasa. I will take my report back to my Commission on everything you have raised. I know that very soon we will come here to look into the reconciliation agenda. Thank you.

**The Presiding Chair** (Commissioner Dinka): I thank Commissioner Yassin for his extremely wise comment. I hope and pray that these wise words will be heeded and given serious consideration by the population of this region.

As far as representation of the coast in the Commission is concerned, we have someone who is a member of the Commission who is sitting on my left hand side; Commissioner Farah, who not only spent most of his working life in the coast but also considers himself as someone from the coast. I would like to assure you that you will have a fair deal. That is not only because his presence will help but also because all the other Commissioners would want to make this Commission as objective and as fair as possible.

**Commissioner Farah:** I would like to say that I came to the coast when I was nine years old. I went to Bakstan Primary School and then to Shimo la Tewa School. Later I joined the Kenya Navy and worked there for 35 years. I live in Mombasa at the moment, my home is in Nyali. I believe I am a person from the coast, I understand the problems of the people of the coast. You heard the way I mentioned the Mijikenda names. When I was captain in the Kenya Navy, I used to take water to the people of Faza and we worked every where along the coast. Although I was born in Garissa along time back, all my life I was at the coast and I will continue being here. Therefore, do not feel like you are not represented in this Commission.

**The Presiding Chair** (Commissioner Dinka): Thank you for that explanation. Ladies and gentlemen, we have now come to the end of today's session which is our last session. We just listened to the last witness we had.

Before I conclude, let me say as long as we are here the whole day, through our coordinator and some of our staff, anyone who wants to record a statement which will go into the record and report of the Commission, is free to do so.

Finally, today we have heard eight witnesses on different aspects on the issues affecting or impacting on the people of the coast. I thank all of them for taking their time to come and talk to the Commission. They have really enlightened us on the core issues that affect the people of the coast. We have taken full note of what they have said. We have the HANSARD records in addition to our own notes that we have taken. What you have told us is going to be investigated further but definitely will be reflected in our final report. We will make appropriate recommendations and findings.

I would also like to thank the entire audience in the hall for being patient with us; for even missing your lunch and for dignifying the witnesses by listening to them attentively and not making unnecessary commotion. I would also like to thank the Leader of Evidence, camera men, the HANSARD people and the interpreters. I hope that your statements have helped you to take this problem off your chest and also helped you in taking this matter one level higher from the usual Commission hearings.

This Commission is quite different from the other Commissions that probably you have addressed before. The findings and recommendations of this Commission have to be implemented; it is mandatory by law for the Government to implement them as recommended. I think every three months, the Minister for Justice, National Cohesion and Constitutional Affairs and other mechanisms will be reporting to the public what has been accomplished, what has not been implemented and why it has not been implemented. We will monitor the implementation and also pursue that it be implemented.

The report is not secret, it will be presented to the President of the Republic of Kenya on the 3<sup>rd</sup> of May and after that, it will be out in public for all of you to read. It will be in the newspapers in full and every one of you will become monitors of its implementation. If it is not implemented, it is not only the Minister or the Committee that is going to follow but you also have to follow and put pressure on the people that are supposed to implement it to do so. Therefore, it is a very different modality to what the country has been used to.

Have faith and courage and keep the faith.

*The Commission adjourned at 2.00 p.m.*