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**ORAL SUBMISSIONS MADE TO THE TRUTH JUSTICE AND  
RECONCILIATION COMMISSION HELD ON MONDAY, 9TH  
JANUARY, 2012, AT MKUNGUNI LAMU FORT, LAMU**

**(Public Hearing)**

**PRESENT**

<b>Tecla Namachanja Wanjala</b>	-	<b>The Acting Chair, Kenya</b>
Gertrude Chawatama	-	Commissioner, Zambia
Berhanu Dinka	-	Commissioner, Ethiopia
Ahmed Farah	-	Commissioner, Kenya
Tom Ojienda	-	Commissioner, Kenya
Yassin	-	Commissioner, National Cohesion and Integration Commission
Mr. Steven Ikua	-	District Commissioner
Tom Chavangi	-	Leader of Evidence
Simon Njenga	-	Hearing Clerk

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

*(The National Anthem was sung)*

*(Opening Prayer)*

**The Acting Chair** (Commissioner Namachanja): Welcome to the Coast Truth, Justice and Reconciliation Commission (TJRC) hearing; in particular, welcome to Lamu hearings. For about 20 days, the TJRC will camp in the coastal region starting with Lamu, Hola, Kilifi, Mombasa, Kwale and Wundanyi in that order.

On behalf of the Commission, I would like to thank you, the coastal people, for patiently waiting for these hearings, after having recorded individual statements and memorandum over one and a half years ago. In total, the Commission received from the coastal region over 5,600 statements, the second-largest number of statements received nationally. From this region, the Commission also received 300 memoranda from groups and communities. In Lamu, the Commission received 786 statements and 12 memoranda. On that note, I would like to sincerely thank our regional co-ordinator, Madam Sylvia Chidodo and her assistant, Mr. Ahmed Hamisi, and the statement takers who helped us record these statements and prepare for these hearings.

Ladies and gentlemen, in total, as some of you may be aware, the Commission received over 30,000 statements nationally and over 1000 memoranda. The mandate of the Commission is only two-and-a-half years. Therefore, the Commission cannot conduct hearings for each and every statement that was recorded. What the Commission has been doing is to look at the statements and pick out those that are representative of the

historical injustices and the human rights violations that this Commission is investigating. Having selected those statements, we conduct the hearings so that while you are seated there, even if we will not conduct your own statement if you recorded it with us, when you hear the testimonies from your sisters or brothers, you will be able to relate with them. What we can assure you is that each and every statement received; each and every memorandum received will be analyzed and will form part of the historical records that this Commission is expected to come up with. So, take heart and, please, understand.

What I would like to caution you is that, the testimonies we are going to hear are very painful. Some of the testimonies that you are going to hear from the witnesses who will be sharing with us, maybe it is the first time that they are opening up to share it in public. So, what is our role then as a public seated here? Our role is to listen patiently, to empathize with those who will be giving their statements, be there for them, but more importantly, affirm the experiences they have gone through. Some have lived with them for decades, for many years; we should do that. Brothers and sisters, I would request that we give them a keen ear, so that they can share their stories. We cannot do that when you have your mobile phones on, because as you move out or as the phones ring, they will be disrupting the process. We can also not listen to them when they are obstructed. So, we have a designated place for the media. When you arrive, please, find out so that they can put you in a place where you can follow and take pictures without flashes.

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

Amongst us, we have Commissioner Yassin from the National Cohesion and Integration Commission (NCIC) because at the end of this Commission, one of the long term Commissions that will take over and ensure the implementation of the recommendations that we shall come up with is the NCIC and the Kenya National Commission on Human Rights (KNCHR).

In terms of the procedure of the hearings, we shall have the witness sworn in and then he or she will give the testimony. After that, we will have the Leader of Evidence who will ask some questions for clarification. Then, after that, Commissioners may also ask questions for clarifications. The focus, ladies and gentlemen, will be the witnesses who have been selected. So, please, do not raise your hands with the aim of, may be, also participating for this is a prepared process.

I will now invite the Hearing Clerk to swear in the first witness.  
Thank you.

**Mr. Tom Chavangi:** Madam Acting Chairperson and Commissioners, kindly note that this witness is not listed; he is the witness who had a special request and he is speaking on behalf of about 50 people on their case of wanting to save Lamu. They have presented a three-page memorandum which he is going to read before this Commission.

I seek your guidance, Commissioners.

**The Acting Chair** (Commissioner Namachanja): Leader of Evidence, let the witness go ahead and read his memorandum. Be assured that the testimonies that you are going to share with us today are in the right hands.

Thank you.

**Mr. Tom Chavangi:** Thank you very much, Madam Acting Chairperson and Commissioners

*(Mr. Hussein Sudi El-Maawy took the oath)*

Mzee El-Maawy, kindly for the record, just state your names again?

**Mr. Hussein Sudi El-Maawy:** My names are Hussein Sudi El-Maawy.

**Mr. Tom Chavangi:** What do you do for a living?

**Mr. Hussein Sudi El-Maawy:** I am a retired senior lecturer. I retired in 1996 and then we formed a Council of Elders, and this is what I am currently doing for the benefit of the community. I am also a member of the Save Lamu Movement, and the memorandum which I am going to read represents all the groups mentioned at the end of the memorandum.

**Mr. Tom Chavangi:** Kindly proceed and present your memorandum.

**Mr. Hussein Sudi El-Maawy:** Prior to the new Constitution, land in Lamu County was categorized as Government land. This nomenclature was greatly abused as the political and financial elite were the only beneficiaries of land, while the local indigenous population was considered as squatters on their own land.

It has been found that the land insecurity and inequitable access to natural resources led to vulnerability and is one of the biggest causes of poverty. It, therefore, comes as no surprise that Lamu County remains one of the poorest in Kenya. Decades of inherited poverty have led to the disenfranchisement of the people; they have been denied access right over their land since colonialism; later, they were forced out of their homes during the *Shifta* War of the 1960s. Lamu has reached a boiling point after the Government failed to address the historical injustices as well as curtail ongoing fraudulent land procurement in the area. Although the new Constitution and the National Land Policy have finally acknowledged indigenous ownership of land, and the importance of addressing historical injustices in the coastal province, the delayed reforms and political blockage towards development of power to manage our land and natural resources have been very alarming.

One such delay in reforms is the delay by the President to sign the Indemnity (Repeal) Bill, 2010, that will finally allow the people of Lamu to speak against the injustices inflicted on them. We, therefore, submit this memorandum in the hope that the TJRC will

push for measures to address our concerns, as well as hasten the reform process on the matter of land and natural resources in Lamu.

Now, issues of concern; number one, illegal and unprocedural adjudication of Government land. From the onset of Independence, Lamu residents were unaware of the extent of the Government land; they were precluded from obtaining land; land was provided as gifts to individuals who were deemed loyal to that administration, or on the basis of ethnicity, thus advocating nepotism within Government ranks. These allocations were done illegally as the individuals concerned failed to follow the proper procedures as mandated by the Land Acquisition Act. An example is publicizing the distribution of land. The people who were involved in this irregular allocation were the surveyors, the physical planning officers, Lamu County Council Chairman, Members of Parliament, chiefs, the District Commissioner and the Commissioner of Lands.

Number two, lack of compensation for displaced persons. While the Kenyans who were displaced by the post-election violence of 2007 are considered Internally Displaced Persons (IDPs), little consideration has been given to the Lamu Community members who were forced out of their farmland in 12 villages, including in Shakani, Shendeni, Vundeni by the security forces during the *Shifta* War in the 1960s. These locals, who were, in essence, the first IDPs in Independent Kenya, were forced to move into slums in Lamu or to migrate to other areas of Kenya and Tanzania and, to date, no form of redress has been given.

Number three, unprocedural settlement schemes. To further exacerbate the problems faced in Lamu County, during the 1970s, the Government of Kenya embarked on a policy of distributing land around Lamu area to landless Kenyans through the late Kenyatta's settlement schemes. These settlement schemes were established in a dubious manner as numerous land owners were not informed or compensated for their land that was appropriated for resettlement. The proportion of the indigenous community members settled was much lower than indigenous title ownerships; it was between 15 and 20 per cent. Some of those who received letters of allotment had their land illegally misappropriated from them despite their having paid all the fees due to the Ministry of Lands.

Number four, failure to recognize natural resources rights. Alongside these historical injustices, there were numerous land rights violations in our gazetted national reserves. Since the gazettement of the Kiunga Marine National Reserve in 1979, the Kenya Wildlife Service (KWS) has continually harassed locals who wish to develop their land, despite the locals having lived on Kiwayu Island before the Gazettement of the reserve. The KWS allows foreign investors to develop large hotels on the island, even though they hold fraudulent title deeds issued by the Ministry of Land. At the same time, community members have been denied resource rights to the gazetted reserve despite their having lived in the reserve for long; for example, community members lived in the temporary shelter in Dundori National Reserve. This is double standards of allowing external parties, based on ethnicity, race and financial advantage access to land carved out, and to

have ownership while continually failing to recognize indigenous people's land rights; this is a gross violation of the new Constitution.

Number five, misuse of State power to gain land without consultation or compensation. There have been reported cases where private individuals have been known to have used their powers in the Government to procure land in ecologically sensitive areas without adequate consultation, or compensation or mitigation of effects of their development. For example, fish landing areas have been grabbed by renowned politicians; this has threatened local people's livelihoods in Kiwayu, Mkokoni, Manda Island, Manda Toto, Tenewi and other areas. The Government itself has also misused its power to procure land under the pretence of public use while poorly compensating those concerned. This includes the procurement of Magogoni area intended for Lamu Port; we were misinformed that the land was to be used for a Navy Base in 1965. We only recently found out that a port is to be constructed in the area. At the same time, a majority of non-indigenous Kenyans were settled in Hindi Magogoni area, an area also meant for the port. Considering that title deeds in these settlement schemes were given to Kenyans from other parts of the country, Lamu locals do not stand to benefit.

With regard to the Lamu Port, there is a rush to develop it for it will enhance the transport to Ethiopia. This will have to cut into a significant proportion of the indigenous land. This is supposed to be community land. The resource should be communal and it should belong to the local community.

With regard to the constitutional dispensation, as per Article 67 of the Constitution, a National Land Commission should be instituted and it will initiate investigation on its own initiative or upon a complaint on the historical land injustices. It will also recommend appropriate redress. According to the National Land Policy, 2009 this is to be carried out within one year of the appointment of the National Land Commission. The creation of this Commission, however, has been delayed.

Furthermore, while the new Constitution recognizes administration of public land, since the passing of the new Constitution title deeds have been issued in Lamu using the Government Land Act which is due for repeal. We, therefore, hope that the TJRC will take the necessary action to hasten the addressing of these violations so as to prevent the perpetual cycle of human rights abuses that have been taking place in Lamu since independence.

On the way forward, we would like the Commission to address the irregular adjudication of land. They need to fast track the coming into place of the National Land Commission Act. The other issues are land reforms; lack of compensation for the displaced persons; irregularly established settlement schemes; land owners whose title deeds were used for settlement schemes or other Government projects be adequately compensated – compensation should take into account inflation rates from the date of appropriation; failure to recognize natural resources; and misuse of State power to gain land without consultation and compensation; and intimidation by powerful groups and leaders.

*(Microphone hitch)*

**Mr. Tom Chavangi:** Thank you, Mzee El-Maawy. Do you wish to produce this memorandum as an exhibit before this Commission?

**Mr. Hussein Sudi El-Maawy:** Yes, and also the other one which is a booklet. The appendix is therein.

**Mr. Tom Chavangi:** You wanted to mention some individuals. Could you please mention them so that the Commission might recognize them?

**Mr. Hussein Sudi El-Maawy:** They are: Ali Swaleh from Magongoni; Mbware Haji Bwana from Bondeni; Omar Shamina, Barani; Omar Mohammed, Kibokoni; Mzee Kalmen, Koreni; and Abubakar Hatib, Lamu. These are the spokespeople.

*(The Spokespersons stood in their places and were recognized)*

**Mr. Tom Chavangi:** I have no further questions, Presiding Chair.

**The Acting Chair** (Commissioner Namachanja): Thank you so much for articulating issues about land from this region. I will now ask Commissioners to seek clarification.

**Commissioner Chawatama:** Thank you for your respective testimonies. The issue of inheritance was prominent in your testimonies. It is almost clear that participation has been zero from the locals with regard to issues of land allocation. Are you aware of how many local people, that is, the indigenous people who hold title deeds?

**Mr. Hussein Sudi El-Maawy:** Title deeds, especially on Lamu Island were obtained even before independence. It was agreed in the Lancaster Conference of 1962 that the Coastal strip be amalgamated to the rest of Kenya under five conditions. One of the conditions was that when land is adjudicated the first to be considered should be the ones from the Coastal strip. Most people in Lamu had got title deeds even before independence. For the people in the islands such as Faza, Pate and so on, this was not the case. Up to now we find outsiders with title deeds, but locals do not have. This is a clear injustice to the locals. It is possible to show this. It is evident.

**Commissioner Chawatama:** You talked of intimidation by powerful groups and leaders. You said a gentleman was arrested for tearing down the walls of a property that was as a result of unprocedural land transaction. Can you share the name of this person? Do you know if he was ever charged in a court of law?

**Mr. Hussein Sudi El-Maawy:** The people from Kiwaayu will be in a position to name that person who was incarcerated. It is said the person died in prison. I can get that information before this session ends.

**Commissioner Chawatama:** Thank you.

**Commissioner Dinka:** Thank you, Mr. Hussein for your testimony. During the 1960s when the population was being removed to the 12 areas, was the Government doing that to protect the people from the Shifta or is it that they suspected these people were supporting the Shiftas?

**Mr. Hussein Sudi El-Maawy:** This was in Kiunga Division. They were neighbours. They were living peacefully indeed. It was now said that Shiftas were responsible in involving the people of Kiunga. The people of Kiunga have evidence that their houses were burnt down and their women raped. Many bad things took place. They had to run away. For example, here in Lamu many unplanned villages like Gadeni, Kashmir, Kihobe, Bosnia, and Bombay cropped up. Some are built on valleys and others on hills. There are those who ran to Malindi and Tanzania. There has been no form of compensation. These people need to be fully supported. They are the first IDPs in Kenya. I know some of them have gone outside Africa.

**Commissioner Dinka:** How many persons were affected by that move?

**Mr. Hussein Sudi El-Maawy:** I do not know the exact number, but those families are in the villages I have mentioned. More than six villages cropped up here. There are others in Malindi. I think they are in their thousands.

**Commissioner Dinka:** With regard to the Port of Lamu, if the Government does environmental impact studies well and compensation given well, is there any other objection to the idea of creating the Lamu Port?

**Mr. Hussein Sudi El-Maawy:** I want everybody here to remove the idea that the people of Lamu are against the Port. Everybody knows that the Port will bring so many advantages. However, what the people of Lamu have been talking about is that decisions have been made by the central Government without consulting the local people. We just hear that the Port will be constructed. It has been the Government's trend to do things without consulting the people. For example, five years ago the Government wanted to deepen Mkanda Creek. They did it without consulting the people who were using that place. They dug the place, but what they dug went back to the waters. It is now more dangerous than it was. This is because the local expertise was not consulted.

At one time when the Government intended to build a sea wall from Kanu to Wiyoni this was decided in Nairobi. People were never consulted. The council of elders of which I am the Chairman, opposed that. I told the DC then, Mr. Onyango, that at least five people had to be consulted, that is, Lamu Museum, Lamu County Council, the dhow owners, the dhow builders and the KPA. These groups needed to be consulted. The Government listened to us and they left space for the dhows.

Back to the Port of Lamu issue, there are people who will lose means of livelihood. What other means of livelihood will they get? People will not be able to fish in certain areas. What is the Government intending to do for these people? Others will have to lose land. Will these people be compensated and will it be after consultations? We are in the dark.



This is what we have been talking about. We know that when we have a port even if you put a stone it will start producing. Even a small hut will get people to rent it. Those who will be cooking *maharagwe* will have people to buy it. Lamu will have an increased population. Probably, Lamu Town will extend to Matondoni which is about 12 kilometres away. I can visualize that. Those are some of the advantages, but what about our environment and all these things I have mentioned?

What will be the advantage of the local people? Are we not to be considered? This is our problem. Nothing has been done like consulting us. This is where our problem is.

**Commissioner Dinka:** Thank you very much, Mr. Elmaawy. I now completely understand you. You have nothing against the port but you are saying that you want the Government to have close consultation with the population and to do a proper study of the environmental impact, and the livelihood of the people after the port construction begins. Thank you very much and I have no further questions for you.

**Commissioner Farah:** Thank you very much, Mr. Hussein. I have no question for you but I would like to congratulate you for having so eloquently presented your views. What you have written and said is very clear. It is going on record and we will consider it and make appropriate recommendations.

*(Applause)*

**The Acting Chair** (Commissioner Namachanja): Excuse me, my brothers and sisters. The procedure of the Commission, which we have been following for almost a year now during the hearings, is that we listen patiently, keenly, appreciate but without applauding like just what I have just heard. So, kindly listen and appreciate in your heart; this is what we are also doing here.

**Commissioner Ojienda:** Thank you, Mr. Elmaawy for your contribution. I also want to thank the fourteen organisations that were able to compile this memorandum. You have raised very important issues. I think one of the most important issues that I see here is the concern about irregular allocation of land and the settlement of outsiders, or the preference of outsiders at the expense of locals. You have also raised the question of consultation. I want to assure you that your recommendation on the land commission has been taken very seriously, and it is only the National Land Commission once created that will sort out the complex land problems that this region faces. The same issues that you raised are at the centre of the concerns by an outfit calling itself the Mombasa Republican Council (MRC). This Commission would want to see to it that the land question is resolved once and for all. I also want to confirm to you that as far as this Commission is aware, the National Land Commission Bill is now with the Commission on the Implementation of the Commission (CIC), and will soon find its way to Parliament for debate; of course there is need to ensure that this Commission is created within the timeline set out in Chapter 5 of the Constitution. Consultation is a matter that is in the Constitution and every community must be consulted before any project is developed or undertaken amongst its people. As you have said, the Lamu community needs to be

consulted so that it is part of the process of the development of the port. I am glad that mechanisms have been put together in the report; civil society organizations will see to it that the consultations are continuing. The advantage that we have is that it will no longer be possible for the Government to do anything without consultations because it is a constitutional requirement. Thank you very much. I do not require any response from you but you have made very important recommendations that we shall take into account.

**The Acting Chair** (Commissioner Namachanja): Elder Hussein, I also do not have any questions for you. You were very articulate. Most of the questions were asked and you answered them well; but also, I thank you on behalf of the Commission for representing your people in the issues that you have shared with us; you have presented them very well. God bless you.

Leader of evidence, I see that he has something to say.

**Mr. Hussein Sudi El-Maawy:** For the last eleven years since I retired, I and another group of people formed a council of elders. I have decided that one of the things that will help you--- All the correspondence that the council had with different organizations that lean on the question of land like the Ministry of Land and so forth, and any other issue pertaining to land--- I think apart from that one, very hastily I had decided to photocopy all the letters that we had been writing to different people concerning these issues. I will give it to the Commission. I was sorting out the original and the photocopies. I did not have enough time when I came here to remove the original from the photocopy. I am giving it to you. Sort it out. If you have two of the same thing, keep one and return the other one to me. I think it will go a long way in giving you a full picture of what has been going on. Not only what we have been talking of but you will get even more. We talked to the Njonjo and Nyagah inquiries about land. We have talked to Mudavadi about land and other people. Unfortunately many of the letters have fallen on deaf ears. So, keep these ones. I will be very thankful if the letters that I have given to you are more than one. Take one and at the end return the rest to me. Thank you very much.

**Mr. Tom Chavangi:** Thank you Mzee El-Maawy. We shall follow your request. Commissioners, these are the documents. We shall sift through them and act as directed by Mzee El-Maawy.

**The Acting Chair** (Commissioner Namachanja): Leader of evidence, do you want the memoranda presented today admitted?

**Mr. Tom Chavangi:** I had already requested that, Presiding Chair.

**The Acting Chair** (Commissioner Namachanja): Okay. It is so admitted.

*(Mr. Hirsi Sheikh Dulow took the oath)*

**Mr. Tom Chavangi:** Presiding Chair and your fellow commissioners, this is witness number 3. Witnesses number 1 and 2 are not yet in. I am going to brief the witness on how to proceed since most of the issues have been discussed by Mzee El-Maawy; I can

also see in his statement, he talks about his tour of duty in Garissa and Trans Nzoia districts. I want to assure him that all those areas have been visited by the Commission and he does not need to repeat what is already in the Commission's ambit. Thank you very much. Mzee Sheikh Dulow, for the sake of the procedure and the record, tell us your full names.

**Mr. Hirsi Sheikh Dulow:** My names are Hirsi Sheikh Dulow.

**Mr. Tom Chavangi:** What is your occupation at the moment?

**Mr. Hirsi Sheikh Dulow:** At the moment I stay at home. I have been a politician since retiring from the police service.

**Mr. Tom Chavangi:** There was a time when you submitted a memorandum to this Commission about the issues that are affecting the people of Lamu and its environs. Please, tell the commission what has affected the locals of Lamu?

**Mr. Hirsi Sheikh Dulow:** As I said before, I have been in the civil service. I came to Lamu in 1985 and I have worked in nearly all the areas here like Ishakani, Kiunga and others; I left this place in 1993 and went to Mombasa for about three to four years and came back in 1996 up to 1999. At the moment, I live here in Mpeketoni after retirement and for all this time; I understand very well some of the issues afflicting the people in this area. The biggest problem is the land issue which people have complained about for a very long time. The witness before me has covered all this and I would not want to repeat. I would like to emphasize the pain that the locals feel. For all this time people have lived here and when the Government decided that adjudication should be done selectively and some areas be residential, I believe that no adequate consultation was done and the main problem that the people around here complain about is that the people who recently moved into this place were given land and they have been awarded documents which are important when you want to engage in business, or get loans; this is security for our development.

However, the original inhabitants do not have these title deeds to show possession. As a security officer who has lived in this area, the homes look like their homes but according to history, these people ran away during the *shifita* war and either came to the island or they went to other areas. These were the initial Internally Displaced Persons (IDPs) in the country and nobody bothered about them and now the Government has decided to make some of these settlement schemes, and these people have been left behind. They have never had access to possession documents in order to develop this land or use it as security. As a civil servant for thirty one and a half years, when I listen to the complaints by the people, I see that if this issue is not addressed immediately, it might lead to a strike between the communities living in this area and in all other areas in Kenya; the issue of land has been a big problem. I would like to stop here because the person before me has covered a lot in terms of land.

I lived in Trans Nzoia between 1990 and 1991. I come from Tana River which is part of the coastal area. When I lived in the Rift Valley, I never saw land like that in any part of Kenya. There are large parcels of land. It is an area that has rich produce but what surprised me was the huge chunks of land. You could traverse the land for several kilometers and you found that it belonged to one person. I knew that this land was once owned by the colonial settlers and when they left, the Government gave money to the Settlement Fund Trustees (SFT). Most of the people who were the original inhabitants did not have access to this money and they did not even know that such a facility was there. Those who had the opportunity to do that went through some companies and acquired land. Some people came from other parts of Kenya. Some were working for the whites. They lived there. When the whites left, they did not benefit from this land.

**Mr. Tom Chavangi:** Mr. Sheikh, I want to tell you that on the issues of Trans Nzoia, the Commission has been there. So, you are just repeating what we have already heard. There is a portion in your statement where you have said there is marginalization, and that you come from Tana River. Tell us why you decided to come and speak in Lamu, and why you did not want to make your presentation in Hola and then we can finish that part. Afterwards, give us your recommendations or your views about the problems of the people of Lamu as a whole.

**Mr. Hirsi Sheikh Dulow:** Thank you very much. The reason that made me come to raise issues of Tana River in Lamu is because I worked here for a very long time; I was fortunate to settle here and so when the Commission came here, I decided that I should come to it. I recorded a statement and requested whether I could talk about Tana River and I was told to do that since I live here.

I come from a small community known as Munywayaya which lives in the northern part of Tana River. During Independence at about the time the whites were leaving, there was a referendum in order to find out about those who wanted to remain in Kenya and those who wanted to join Somalia. Our community at that time wanted to remain in Kenya. As soon as Kenya gained its Independence, those who wanted to go into Somalia went to Somalia and those who were willing to remain as part of Kenya remained. In 1963 just after Kenya attained Independence, the secession to Somalia side started and our community became victims. This was because we voted in favour of remaining in Kenya. The *shiftas* who were fighting against the Kenyan Government targeted our community and because of that our people were attacked and evicted from the area they were living in. They were evicted. In my statement I have not explained that, but I have a document on where our community was living and the places they were displaced from such as Badana, Mochu, Kulaboshe, Emalkakone, Tuluboma, Warawesa, Ijarajara, Malkaboshe, Mbalambala, Buradansa, Nkalankala, Burati, Michirama, Randile, Gashe, Budabale, Sololo and Saku. Our people lived on the banks of River Tana and they used to farm on both its banks. After the *shiftas* attacked them, they ran away; they left their farms and went to the upper parts. Some went to Hola, Malindi and Galole and that area remained uninhabited. After the *Shifita* war ended and after independence, we returned to safety but there was ordinary banditry which existed in our community for very long. Bandits would even attack in Kambaland. Sometimes they would be practising cattle rustling and they

would come with the cattle. They would cross to the other side of the river. Whenever the military personnel came in, they would simply go to the locals and collect all the cattle from around, then go and redistribute it among the Kambas and the people would be left without any property. These people are still there up to now and you will be told who they are. It is not a matter of guesswork. If you went now you would find them, and some of them have no chance of being heard. The people are very poor and marginalised and it is not a surprise that they did not know that this Commission was going to visit Tana River. As one of those from this community, and having worked as a civil servant for long and joined politics, when I heard that the TJRC was coming over, I would rather take the opportunity even if it is in Lamu to explain this; that is why I am here.

Now, as I am talking as a retired senior officer and a member of this community, I would like to talk about marginalisation because I have just finished with victimisation. You will be surprised to hear that in Kenya, this community does not have a single officer in the Government, not even a District officer. You cannot find a lieutenant in the military, the Kenya police or the Administration Police. Their highest rank would be that of sergeant. In terms of education, we do not have officers. The few who are there are clerks. This is because of victimization. There is no development in our area and in terms of education, we have been so much marginalised that we cannot compete effectively with other communities in Kenya and that means that when it comes to employment we have a problem. It is only recently that we had a few people who studied to degree level but before that the level of education was so low. So, when we talk of being marginalised and receiving no justice in Kenya, we know what we are saying. Those who are displaced are hundred times better than this community that occupies the northern part of Tana River.

On the farms that they were forced to leave, we have no access to them on that side of the river. Farmers have come to this side but you cannot cross over. Places like Jarajara have now been occupied by the National Youth Service (NYS). Jarajara is a name of somebody who is very well known. His family still occupies that area and they used to plant rice but because of the problem that displaced them from the area, we are wondering why the Government has decided to farm this area instead of resettling us back on our farms. So, these people have problems and I thought I should take this opportunity to explain because you could not talk about these things when you were a public servant. I think that this is the only chance that I have to explain to this Commission that this community has suffered great injustice after Independence. Even long after attaining Independence, they have been victimized. They have not received sufficient education and they are left behind on all fronts of development and we think this commission should address that. The current Constitution addresses issues like this. So, I would like the commission to look into these issues through affirmative action so that this community can be considered like other Kenyans. The Government should take steps to redress the issues either by sponsoring the children in this community to enable them to attain an education. Those who get D grades are unable to go to secondary schools. Even if they are not admitted by the Joint Admissions Board (JAB), they are unable to pay for the parallel degree courses and because of that they rush to join the security forces.

**Mr. Tom Chavangi:** Thank you. Now, give us your recommendations briefly?

**Mr. Hirsi Sheikh Dulow:** My recommendations are about land and it has been mentioned. I would like the Government to take steps to make sure that everybody has the right of accessing land. Adjudication should be done in every area, especially in Tana River where very few people have title deeds. Any rich person seems to be able to get title deeds. Most of the land is community land. When you go down, we border the Tharaka people. The land belongs to the Government and anybody can come in and claim it at any time; these people have no way of claiming this land. So, I would like the Government to ensure that everybody gets their own area according to the new Constitution. Most of the people from this community who were evicted died but their children are still there. I would like these people to be compensated.

Fourthly, I have talked of affirmative action not just to my community but also to those people who are the minority here in Lamu like the Wakore. So, all the small communities should be considered by the Government and they should be assisted to access education and also schools and colleges. The Government should make sure that schools are built or expanded so that children are helped to join colleges and universities, and so that these communities can feel that they are Kenyans and they are at the same level of development with the others. This is because when they visit other parts of Kenya, they say that they are going to Kenya. I would like this Commission to look at these complaints. There is a lot that you will hear about this community. In Tana River in general, we have a lot of problems. Let the Government hear this through you, so that the rights of the communities living in Tana River, especially those of the Munywayaya, are addressed.

**Mr. Tom Chavangi:** Thank you very much for speaking on behalf of your community of Munywayaya from Tana River. Commissioners, I have no question for this witness.

**The Acting Chair** (Commissioner Namachanja): Thank you for sharing with us the difficulties of your people. Do the commissioners have any questions?

**Commissioner Dinka:** Thank you very much, Mr. Dulow. I just want you to point out the size of the population of the Munywayaya? Secondly, is it a tribe?

**Mr. Hirsi Sheikh Dulow:** These people are between 30,000 and 40,000. When the 44 tribes of Kenya were registered, they were probably not in a position to be recognized. They were lumped with the bigger tribe; when the census is done and when identification cards are issued, they are referred to as other Kenyans. In 1979 we rejected that; the whiteman used to call us Korokoro, which is a derogatory term. This is because when they were getting slaves for work, they used to talk in their language and they said that they would run away in different directions. The officers could not prevent them from running away. So, when they would be captured they would be told to stop talking Korokoro. So, the whites referred to us as Korokoro, the same way some people would be referred to as Kavirondo. People from Orma who originated from the same place as us

where referred to as Wagalla, but we said that we are not Gallas but the Munywayaya. We left huge chunks of land to the Kora National Park; instead of the Government helping us to recover this land, they annexed it to the national park. The Government should compensate us in a just way.

**Commissioner Dinka:** Is it a discrete self-dependent community?

**Mr. Hirsi Sheikh Dulow:** We are an independent community. The people in Tana River know us as a certain tribe, but at Independence we were categorized as another tribe; whenever we went for an identification card or during the census, we would be regarded as other Kenyans. We would be forced to be classified with the people with whom we share the language. We came from the Ethiopian highlands; together with the Ormas we were the first inhabitants of Tana River; this is so, if you go into the history of migration long before Independence. The surprising thing is that since we are not recognized and are few, we were not distinguished as a distinct community; that is one thing we are rejecting. We do not want to be referred to as other Kenyans because we came to Kenya several centuries ago, before most of the other communities migrated into Kenya. Why have they been recognized and we have not been recognized? We are not recognized as a community!

**Commissioner Dinka:** What is your relationship with the Orma? Are you related?

**Mr. Hirsi Sheikh Dulow:** We are related and we speak the same language.

**Commissioner Dinka:** Thank you; I do not have any other question.

**Commissioner Farah:** Sheikh, you now live in Mpeketoni?

**Mr. Hirsi Sheikh Dulow:** Yes.

**Commissioner Farah:** But you go back home where your people live?

**Mr. Hirsi Sheikh Dulow:** I am here temporarily; I farm here but I am involved in politics and I have contested for the Bura Member of Parliament position. I am always in contact with my people in Hola.

**Commissioner Farah:** Thank you very much for your presentation; I think we will hear of other Munywayaya people in Hola, presenting to us their bigger problems. I have no questions for you.

**Commissioner Ojienda:** Thank you Sheikh, for your testimony. You have touched on the question of marginalization and that is one of the functions of this Commission; to reintegrate communities that have been left out. We will have to investigate what other communities are lumped in the category of other tribes and who feel marginalized so that all communities are equal in accordance with the Constitution.

**The Acting Chair** (Commissioner Namachanja): Thank you! Leader of Evidence, you may stand down the witness. We will have one more witness and break for prayer and lunch.

*(Mr. Ali Gubo Baldo took the oath)*

**Mr. Tom Chavangi:** This is witness No.5 and he was supposed to be accompanied by Doza Diza Kururo. He was to talk about the communities while Diza was to bring out the issues of women.

**Mr. Ali Gubo Baldo:** I am from Balgoni, from the Boni community and I represent all the Boni in Lamu District.

**Mr. Tom Chavangi:** You presented a memorandum to this Commission concerning the Boni community. So what is it that you want to tell the Commission?

**Mr. Ali Gubo Baldo:** It is the issue of land, infrastructure and the Port. I do not want to repeat it but the Commission knows that we are not happy about what is happening to us. One of the elders before me talked about what he knows and I will talk about what I have experienced and what my family has experienced. This information has been discussed by somebody but the Commission may not know how angered we are by this information. If you needed only one person to present then you would have done just that and you go back.

I will talk about what we have experienced from the Government of Kenya from the time of the Shifta war, how people were displaced. Just after Independence, there were people who said that they did not want to be part of the Government of Kenya and they started the war. The Boni and the Bajuni who live in the border area, the Shifta would come to your home, take your property and go. Then the army or the military would follow and accuse you of bringing and feeding the Shifta. We were forcefully evicted by the Government of Kenya and everything was taken away. We were not evicted by the Shiftas but the Government of Kenya. Some of our people were shot by the GSU who had forced them to show them where the Shiftas were. There was no compensation even though there were some who were injured by bullets.

So we were victimized and not paid anything and there was a time that I was wondering whether we had a government because it had denied that it had killed its people. It said that it was people who had come from Somalia with automatic weapons to come and kill elephants and the KWS would attack our people. So many people have been killed by the KWS wardens wrongfully. My colleague who was here lost his eye to the KWS people yet there is no compensation. So many commissions have come here, interviewed us and we have told them our problems but we have not witnessed any change and so we hope that this Commission is going to take a good step that will ensure that people are happy. This is the TJRC and so we are waiting to see.



The other issue is land. We have lived in Lamu for close to 300 years and we do not have any documents of possession, whether for the houses or land. However, the Government has established a scheme that they have settled people from outside with title deeds and we are just there. This is unfair and it should be addressed. There is a settlement up to the point where the Port is being built and so when other people from other places come and get title deeds, we find it unfair. They laugh at us and say we sleep around. So we need to take a step before there is loss of life because we hear that people from other places are fighting each other but we have not fought. We know that a monkey is cowardly but when cornered, it can finish you. So we are like monkeys; we are cowardly but one day--- We are pleading with this Commission to take a step and ensure that the marginalized and minorities – the Boni, Bajuni and Somali - get their rights. Since the Constitution was changed, there is individual land and community land and Government Land. We were hoping that this would be so but the Constitution is being disregarded. Even regarding the port land, we cannot get compensation because we do not have documents. Do you think that is right? Will that not bring war? The war after Independence was not because of elections results; people were just bitter from before and it is the same thing we are seeing here. This will later bring problems and will mess up the peace in the area. If you keep on trampling upon people, one day they will look for a knife and injure you in the stomach.

I have been told to be brief but we need to be educated. The people who were brought here and given title deeds can go to the bank and educate their children. Because I do not have a title deed, I cannot educate my children. When they want to employ people, they need a certain level of education and so our children cannot be employed. Even in administration like chiefs and councilors, they are people who are from other places. We have four or five councilors but they are people who have migrated into the area. Will the TJRC manage to remove this injustice? When they first moved in they were working for us but now we are forced to work for them. We would like to see justice and reconciliation.

If I get answers to all this injustice I will be very happy. If people want to live in peace and justice, and reconciliation they should look at the people of Lamu and the ones who border with us. Our land is used when other parts of the country is full. Just after Independence, the people who thought that our land would be set apart for future use and that is why we have people coming in from other parts of the country. This is the reason that people are selling their land because they are afraid to lose it. If you are allocated ten acres and told to show some development within 90 days and yet you do not have a penny, and somebody else has been promised your land--- there is a commission that is going round and I think this is a question of justice and reconciliation. It should look into this issue: Why is it that we are not Kenyans? We are human beings! We could get angry later. We are old now but the youth will not accept the injustice to go on forever. When the war starts, you will start wondering why the conflict has broken out but that is because somebody has gone to Nairobi and managed to get ownership documents.

So you would have to leave or if you lose your temper, there would be people waiting behind you with documents who I will deal with although the Government will send me

the GSU. So I would like this Commission to look at the injustices that we have suffered. People laugh at us telling us that they got the documents in 1974 yet you know they went to Nairobi yesterday. They will ask you if you are leaving and if you do not, they will go to the DC. The DC will give them the GSU to come and evict you. That is why I am very bitter and happy to express it before this Commission.

Thank you for the opportunity!

**Mr. Tom Chavangi:** Thank you, Mr. Ali. When you say you border the Somali, are they Kenyans or indigenous Somali?

**Mr. Ali Gubo Baldo:** These are Kenyans. I am from Ijara District. If you do not know Kenya, we border Ijara District. There is Faza and Kiunga divisions which are Bajuni.

**Mr. Tom Chavangi:** On which side of Lamu do you live?

**Mr. Ali Gubo Baldo:** Kiunga Division in Mararani, Masuba and Milimali. There is also Hinda Division which is in Bargoi-Borani and Hindi. We have some in Witu Division who are found in Pananguo who on one side border Tana River and on the side the Somalis.

**Mr. Tom Chavangi:** Is it a big community?

**Mr. Ali Gubo Baldo:** No! The census puts them at between 7,000 and 10,000.

**Mr. Tom Chavangi:** Thank you, Mr. Ali! Mr. Diza, is there anything that you want to add?

**Mr. Diza:** Yes!

*(Mr. Doza Diza Kururo took the oath)*

**Mr. Tom Chavangi:** Go on, Mr. Diza!

**Mr. Doza Diza Kururo:** First of all, I would like to throw the ball to the Government of Kenya. When we got Independence, Kenyatta said that whoever was sleeping should be given another blanket. After Kenyatta, Mr. Moi came up and said we should follow in the same footsteps. When Mr. Kibaki took over, he said that the work should go on. We have suffered a lot of injustice as my colleague has said. We live in all those areas that he has pointed out. We had been given a bed but below it, there was a fire as well as another fire above it. So we were burning in between. Somalis from Somalia burn us from one direction and the Government of Kenya burns from another direction. I am disabled as a result of beating from the Government of Kenya (GoK). We have not got a single service from 1963 until today from the Government. Our land was taken by the KWS, a reserve as well as some corporate organizations.

We have a forest in Lamu; one of the best in the whole of Kenya. It is unique and we have very fertile land. We have tried planting Khat from Meru, and I believe that we can also have coffee flourishing here but we have suffered a lot of injustice. We do not know how title deeds or letters of allotment look like. We just hear about them but I would this Commission to be keen on the land that belongs to us because it is owned by us. We are a very small and poor community. There is a system of displacing people from their land by those who have money. We have tried and corporate organizations come to our place. We have recommended that we should be given community land. If an individual is moved from his piece of land, at least, he has a place to be buried. Until today, the Government has not shown us any direction or how we can benefit from this land that is indigenously ours.

In terms of education, we are lucky if our children go up to Class Eight. They do not go beyond that because we have no way of educating them further. We have less than ten who have completed secondary school because there is no money to send them to colleges. Some people say that we are opposed to the port being constructed but we are not opposed to it. It is just that it aiming at taking land that belongs to the Boni Community, especially the Bargoni areas including Magogoni where we border with the Bajuni. All that land is being allocated to the port. Where is the community living there going to be resettled? Why are we not involved in these things? We do not know whether you are going to take our complaints or they will remain here with us but we are never consulted. The fact that you are here listening to us is like a dream. You are godsend to come and listen to our concerns!

You can see I have spectacles and it is because of the KWS, the anti-Shifta unit. We were beaten up to give up firearms and that is how I lost this eye. We have suffered such injustice from the Government from Kenyatta's regime where our people will be taken to Mokowe and forced into some kind of concentration camps. Their houses and crops would be burnt down! People ran to Boni Forest and lived there. So, if this is the TJRC, take our complaints keenly so that we can get our justice. Our people have lost their lives. Women have been raped by people from Somalia and the GSU. I was only adding onto what my colleague was saying but we have a lot of bitterness with the injustice that we suffered from all the three presidents regimes have been unfair to us. We thought the last one was good because he brought the port but it taking all our land without any alternative resettlement. So none of the presidents have been fair or just; they still continue oppressing us.

**Mr. Tom Chavangi:** Thank you very much for your explanation. Will the Lamu Port be established on the parcel of land of the Boni Community?

**Mr. Doza Diza Kururo:** We have lived in this area for many centuries. We are not Boni. Our community is called Awer. The term "Boni" is from the time we were hunters and gatherers and a community that moved from place to place. So the Bajuni called us the Bunis and that is where the term Boni came from. We do not have any permanent crops or documents. The whole of Bargoni area has been fenced off for the port and the area of

Buzai and Milimani; that is where the railway has been planned to pass on its way to South Sudan.

**Mr. Tom Chavangi:** Thank you; I have no further questions and I will hand you over to the commissioners to ask you questions.

**Commissioner Ojienda:** Thank you very much Messrs Gubo and Doza for highlighting the fate of the Boni community and directing this Commission towards specific recommendations. I also want to thank you for your testimony about the port and concerns for the community. Are there any peoples occupying the area that is fenced for the port? Do you want to confirm to this Commission that there are communities or individuals currently occupying the land because you have said it has been fenced off for purposes of port development?

**Mr. Doza Diza Kururo:** The area that is going to occupy so much is the area of Bargoni. We do not own that land but have used it in our shifting ways for a year or two as we moved to other areas. The very large area that the port is taking is Bargoni. That is what has been the threat to us because we have not been involved and nobody is explaining anything to us. We have not been told what the arrangements are. If that area goes with the port and the area that will be left with us, nobody is involving us and we just hear about it. Every time we try to look at the map, it is taking all the area that belongs to our community and that is the biggest threat we have at the moment. We do not understand; we are confused!

**Mr. Ali Gubo Baldo:** That is why I was asking this Commission to follow up. We are not opposed to the port *per se*, but even if we have not gone to school, we want to know how we will benefit from it. What will happen to the community that has been using that land in that area? I would like to ask this Commission to look keenly into this issue. Ours is a small community. Once many people come in, we will get lost among them. We will lose our identity as a community.

**Commissioner Ojienda:** Mr. Ali Gubo, thank you very much for dealing with the question of land and for encouraging your people to vote “yes” during the referendum. However, you raised concerns about whether the chapter on land is being implemented as you had desired. I just want to confirm to you that it is upon your community to establish interest in that area you referred to as community land. This is because the community land is protected by the Constitution. I think the community needs to come together to claim its right because the National Land Commission (NLC) is about to be formed. Once it is formed, it shall deal with all issues of historical injustices and all issues touching on community land. Also county governments will be established after the general election. I want you to encourage your community to claim what belongs to it. This is the only way it will empower itself in preparation for the Commission that shall be created. Let me say that the Constitution of Kenya 2010 does not permit the acquisition of land of any person without compensation so, that even those who will lose their land to the court must be compensated justly and fairly through a fair and just process. They must be consulted and must be part of that process of acquisition. It is

important that you have highlighted the issues. I want to encourage you to inform your other members of the communities to know that they have rights because they are Kenyans and they live here. So, I think that the Commission will make specific recommendations with respect to land that belonged to the Boni Community. Thank you.

**Commissioner Farah:** Thank you, Mr. Ali Gubo Baldo and Mr. Doza Diza. My commissioner friend here who has just spoken is a professor in law and he specializes on land issues. So, I have nothing to add to what he has said. I am sure he will advise the entire Commission properly based on your presentation. Thank you.

**Commissioner Chawatama:** I would like to thank you for your testimonies. As we have travelled in Kenya, we have heard from witnesses whose testimonies have been filled with pain, bitterness and have really pierced our hearts. Listening to both of you, my heart has been pierced that you have suffered for so long when the leadership of this nation should have looked into the issues that affect you and be able to resolve them. I have heard you talk on issues concerning empowerment. It is not clear to you what the benefits of Independence was or is. You have also touched on corruption. I will only ask one question to Mr. Kururo. When you said that Kenyatta said that those asleep should be given another blanket, what was your understanding of this statement? I apologize for taking up time. I know that you all want to go for prayers. This is why I am only asking one question out of respect. So, briefly, please, what was your understanding?

**Mr. Doza Diza Kururo:** This statement was meant to deny us education and medical care. There was no school at all in the whole area. During all the time that Kenyatta was in power, there was not a single school or a hospital that was built in that area. There was no road. Even as I speak now, the road to Kiunga is in a pathetic state. We have problems with *Al Shabaab*. The Kenyatta Government accused us of aiding the shiftas and unleashed the General Service Unit (GSU) units on us. All the people from our community were moved to a village in Mukoe. We did not get any service from the Kenyatta Government until he died. When Moi took over, he pledged to follow the footsteps of Mzee Kenyatta. He did not do anything for us. Nothing was done for us for all the years he was in power. He actually followed Mzee's footsteps. However, after we made a lot of noise, a school was put up. It was just a building without enough teachers. Our children would go for many months without being taught, especially when there was heavy rain. Teachers could not access the school. There is no progress in that school. The situation in that school keeps on deteriorating. When Moi left power and Kibaki took over, nothing much has been done about that school. He wants a port here. It seems as if this port will completely finish us because we are not being involved. Would that not be the same issue of adding us more blankets and following the footsteps?

**Commissioner Chawatama:** Thank you for that explanation. I have no further questions.

**Commissioner Dinka:** Mr. Ali Gubo and Mr. Doza Diza, I would like to congratulate you for your testimony and for your presentation in defence of the community. I have no questions for you.

**The Presiding Chair** (Commissioner Namachanja): One quick question elders before we break for prayers. About five witnesses that have listened to this morning and this afternoon talk of lack of participation on their part in the whole of this port planning and all that. Is the community willing to sit down with the planners if they came at the community level to discuss the way forward?

**Mr. Ali Gubo Baldo:** We are very ready to sit down with the Government. With regard to your first question that you asked my colleague, the port will occupy the land of Boni, Bajuni and the land belonging to Kenya Somalis on that side. It will affect the three communities. However, nobody listened to us or took our recommendations on board. When the Minister came here, he said: “you people of Lamu are very lucky. You are very fortunate and you will be rich. There will be a port in your area.” By that time they had already surveyed and decided everything. It is like inviting somebody to attend a wedding of a very close friend which he was not involved in planning. Even if he does not attend it, it will still go on. So, we were not involved. Had we been involved, we, probably, would have given our recommendations. We need to know where the road will pass. If it takes up our land, how much will we be given in terms of compensation?

If an oil refinery or a godown will be built, we need to know where it will be. This area belongs to our people. So, the Government should come out clean and tell us what is happening. Since we do not have the documents, it appears as if the land does not belong to us. Whenever they want to give documents, they bring in investors and they give them all the documents that are required. But because we are there, the Government is not interested in giving us these documents. They just do what they want. We are told there will be a school here and here, we will build this. It is my forefathers’ land but I have no voice because I have no documents. Yet where would I get the documents from if the Government is not willing to give me the documents? Whenever they want, they bring in aid from foreigners. We have the GTZ that has come to establish a scheme in Mpeketoni.

So, when the Government wants anything, it only asks other foreign governments to come in and bring aid where they want. In our area, they do not want any documents. So, the port belongs to some people, but because they do not have the documents, nobody knows.

**The Presiding Chair** (Commissioner Namachanja): Thank you elders and members of the public. We have come to the end of our hearings for the morning session. We shall break for lunch and prayers. We shall come back at 2.30 p.m. Thank you, so much. God bless you.

*(The Commission adjourned for lunch at 12.55 p.m.)*

*(The Commission resumed from lunch at 3.00 p.m.)*

**The Presiding Chair** (Commissioner Namachanja): Welcome back. Please, be seated so that we continue. Hearing Clerk, please, swear in the next witness since this is a continuation of our morning session.

**Ms. Emily Kimani:** Our first witness this afternoon is witness Code 10 as per the course list.

*(Mr. Mohammed Lali took the oath)*

**Ms. Emily Kimani:** Before we proceed, could you kindly tell us your full names for the record?

**Mr. Mohammed Lali:** My full name is Mohammed Muhamad Lali.

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

**Mr. Mohammed Lali:** I was working for Bamburi Cement from 1979 up to 2002. I have also been a representative of the community of the Lamu people through the organization known as Shungwaya Welfare Association. I am the chairman at the moment.

**Ms. Emily Kimani:** You are seated before us to make a presentation on the marginalization of indigenous communities in Lamu. Is that the position?

**Mr. Mohammed Lali:** Yes.

**Ms. Emily Kimani:** As you make your presentation, highlight the issues. You have already given us a memorandum which is in our records. So, just bring out the issues and then proceed to give us the recommendations.

**Mr. Mohammed Lali:** As I have said, as one of the representatives of the communities in Lamu through the Shungwaya Welfare Association, we are talking about the community of all the residents of Lamu. Our elder who spoke on behalf of the said Lamu where Shungwaya is one of the groups within that area has highlighted a lot of issues. We agree with all those issues, except just to add a few.

Also, there is a memorandum from Kiwayu Island Welfare Association and I am the organizing secretary. I would also like the Commission to admit this memorandum which had already been presented to it. It contains also evidence and further information with regard to injustices visited upon the people of Kiwayu and Manda.

Briefly, I would like to explain a few issues. If there are any questions with regard to that, then I will expound on it. So, I would like to discuss the injustices of the people of Kiwayu. The chairman of Lamu said that among the very many people who suffered historical injustices are the people of Kiwayu. I would like to expound on this issue.

Kiwayu is an island which is in the division of Kizingitini. Kiwayu Island has had the residents of Kiwayu long before Kenya was Kenya. After Kenya gaining her Independence in 1963, the residents of Kiwayu were embedded within the Kiunga Marine National Reserve in 1979. The people of Kiwayu have been complaining about this. They wanted an explanation as to how we, as human beings, would find ourselves embedded within a reserve. However, this has not been explained.

A letter was written by the then area MP, hon. Madhubuti on 21<sup>st</sup> July, 1992, reminding the then Minister for Lands, hon. Darius Mbela, during a parliamentary sitting group sitting they had under the chairmanship of the then President of this country; Daniel Toroitich arap Moi, with regard to grabbing or illegal allocation within the Kiwayu and Manda islands. The then Minister Darius Mbela wrote a response on 19<sup>th</sup> August, 1992 responding to Madhubuti's letter saying that he was not aware of such issues. Madhubuti proved to him how the allocation was going on. The letter is in the report which I will submit to the Commission. As we go on with this, we discovered there are people who have title deeds within the reserve. So, we wrote to the warden in charge of the Kiunga Marine National Reserve to explain about the people of Kiwayu and the ownership of land within Kiwayu because we are part of the reserve and there are people who have come in and allocated themselves the land. The warden responded to our letter. We had a court case through the Shungwaya Welfare Association. The lawyer of the Shungwaya Welfare Association wrote to the warden and told him that all the information he had was not conclusive. There was a pending case in court and he said that it should be left to the court to determine whether human beings or animals have more rights. He advised him so, therefore, we should wait until the court determines the matter. The director of the Kenya Wildlife Services at that time wrote to our advocate explaining that for Kiwayu to be part of the reserve, it had been done legally and to follow the law, it would be important to know how it would be determined. The surprising thing is that all this did not come to pass. And right now, it is still going on. A number of people have used the money because of people's ignorance because of people not being able to ask. They have grabbed land. Despite Kiwayu being inside the reserve, there are individuals with ownership documents within the reserve. We have asked the KWS and they have not responded. It appears that all the issues that we try to present to them just fall on deaf ears.

Due to that, we would like to urge the Commission to look into and consider this issue. Owing to that, we have given evidence of letters of allotment within the memorandum and you will have it. You will be able to see for yourselves. If you may have more questions through the Shungwaya Welfare Association and the Shungwaya Welfare Association and the Kiwayu Island Welfare Association, we are ready to co-operate with you at any time. We are ready to answer any arising issues with regard to the historical injustices within Lamu, so that we can have one voice and so that we can have development or progress on this issue.

With regard to the issue of the port, Mr. Maalim talked about it and some questions came up to the effect that the Lamu people do not think they will benefit from it. What do you think about the port? Are you opposed to it or are you supporting it? Mr. Maalim Sudi



talked about it in detail, but just to add to what he said. The Swahili people say if you have been bitten by a snake, any time a string falls on you, you imagine that it is a snake and you will definitely jump and you might even get hurt more than at the time that the snake actually bit you. This is because you feel a lot more pain when it is just a bit of string and not the snake. This means that they talk about the port. Word started spreading and it reached people. Discussions were held. Between 1974 and 1976, people in this area were affected. Those who were affected by this are those who lived in Manda. It was well known that the port will be built even if it takes 20 or more years and that those who live nearby will be the beneficiaries. The then PC, Mr. Mahihu, took that opportunity using his juniors; the DCs and the chiefs, to enable himself to get land on Manda Island. This led to six people losing their right of property that they possessed or owned and whatever they were doing on Manda Island. Among these were Swaleh Salim, Bakari Sheikh, Mohammed Bakari, Kima Ali, Ali Asman Mawiya and Shelali Bakari Shelali. These people were told that a naval base was going to be built on Manda Island and that they were meant to move and that they would be paid compensation for the trees on their land and that they had to leave. They agreed because they did not understand and left without any compensation.

How did I know this? Mr. Swaleh Salim is my in-law. He was most affected because his children did not go to school. They missed the opportunity to get the basic things that a human being requires and all that. That has affected him since then until now.

It did not end there because the people went on complaining. Eventually, the Government thought of giving a different area to those who had lost the chance because the one who took up the opportunity had already invested and it would be very difficult to remove them. Six people were given the opportunity. Unfortunately, the six people I have mentioned did not benefit. It was only one person who benefited. He was given that land. He also took the opportunities of those who had remained and he wants to sell those pieces of land. Among those who were left behind are Mr. Yakub Kombo, Ali Sheikh, Obo Sheikh, Salim Ali Obo, Yusuf Bwana Heri, Mohammed Sheikh and Twaha Obo Sheikh and Zuaj. There was a plot because they were ignorant of what was going on. They were to be taken to court, but they did not go. An order came and we have put a copy of that in the memorandum. There was an order that they were to be forcefully evicted. Their properties were demolished and they had to camp at the District Commissioner's Office. Through the Shungwaya Welfare Association, the Council of Imams and other organizations, we got together and made sure that these people went back to their original property and we presented a case. We told them if there was an order coming from a lower court, we had an order from the High Court preventing the division of land until the case was determined. The High Court order was ignored and we realized that if we also disregarded the lower court, we would come before the law to have the matter justly determined. So, we would like to plead with this Commission to consider this keenly to prevent any future conflict because we know that if this comes up, it will bring up a problem in the entire country.

As my colleague spoke before me said, in 2007, there was a conflict in this country. The conflict was not because of the elections. It was not because of the vote tallying. It was

because of bent up emotions and people were waiting for an opportunity to vent their anger. The whole world saw what happened in this country. So we do not want this to happen in Lamu or anywhere else in our country.

It is only that time does not allow, but as we talk about the issue of rights, truth and reconciliation, people must get a chance reconcile. This will enable us to know where the lies are hiding so that the truth can expose them and people may reconcile over the injustices that have happened in the past. If it is possible, the Commission should plan another sitting within Lamu or call the Lamu people to some other place to explain the whole truth so that truth will come out so that justice and reconciliation can be achieved.

The issue of Manda is very serious and it can cause problems. One of the six people who tried to seek redress is Mohamed Bakari, but unfortunately, he is dead. He tried; he got arrested, and was jailed. His child died while he was in jail and he was not even allowed to attend his child's burial. This was so hurting.

When this issue came up, you could ignore it, but when injustice continues there is bound to be problems. The eight people whom I explained about were left out in the first round and they have a case in court which is still pending. What do you think we will feel in terms of such issues?

**Ms. Emily Kimani:** Thank you for your presentation. Before I proceed to ask you questions from your presentation, you have given me a detailed memorandum and various attachments, some of which you have highlighted in your testimony. Do you wish that the same forms part of the Commission record?

**Mr. Mohammed Mohamud Lali:** Yes. It is okay.

**Ms. Emily Kimani:** Now, I have a few questions from your testimony. You have talked about Kiwayu. Which community inhabits this place known as Kiwayu?

**Mr. Mohammed Mohamud Lali:** The community that lives in Kiwayu is the Bajuni.

**Ms. Emily Kimani:** I know you talked about making the presentations on behalf of the indigenous communities. I hope I am right in referring to the Bajuni as the indigenous community. What is their estimated number?

**Mr. Mohammed Mohamud Lali:** The Kiwayu Island has a population of between 1,500 to 1,800 inhabitants, including children.

**Ms. Emily Kimani:** Thank you very much for that answer. Now, your presentation has capitalized largely on the contentious land issue. What about other issues like social amenities? What is the state of this reserve?

**Mr. Mohammed Mohamud Lali:** Could you, please, repeat your question?

**Ms. Emily Kimani:** In your presentation which is before us, you have capitalized on the issue of land. Are there other issues facing the inhabitants of Kiwayu other than the land issue?

**Mr. Mohammed Mohamud Lali:** Yes. The land issue is a life issue and it combines all other issues because you cannot do anything if you do not have a place to live in. The people of Kiwayu have no residence. That means there is nothing else that they can do. They brought us negative effects when we were put inside the reserve and there are no plans going on at the moment on squatters' settlement scheme.

If you look at the memorandum we presented here, you will find that Kiwayu was the second in priority on squatter settlement, but it was removed because the people of Kiwayu are within the reserve. Even up to now, they do not know their fate in terms of property ownership. So, there is no meaningful activity they are able to do in spite of the fact that we are in an area that has a lot of potential in tourism and minerals because there are prospects for oil. There is a high probability of finding offshore oil in Kiwayu area, which is not going to benefit the Kiwayu people because it is within the reserve.

The residents of Kiwayu have been displaced and we do not know whether they were thought to be sea creatures or some land animals for them to be put in a reserve. Even then being put in the reserve and being afflicted within the reserve - what I mean by being afflicted is: How did some people get ownership or possessory documents within the reserve?

**Ms. Emily Kimani:** You have exhaustively touched on the very contentious land issue. Now, you have said that you need the Commission to assist you in this land issue. What specific recommendations would you give to the Commission in solving this land issue facing residents of Kiwayu?

**Mr. Mohammed Mohamud Lali:** Our first recommendation is that we would like the Ministry of Lands to take responsibility as required and to explain the exact truth on the owners of land within Kiwayu reserve.

Secondly, we would like the Kenya Wildlife Service, through this Commission to degazette Kiwayu Island so that people of Kiwayu could have a chance to own their indigenous land within Kiwayu. Being within the reserve has brought a lot of bigger problems because whenever there is an issue, some start businesses out of these problems. From the issue of reserve and grabbing of land, a lot of civil society organizations came up, like Kenya Secure Projects, to get the land quickly. They chose areas of Kiwayu, Mkokoni, Kiunga and Boni as pilot projects. But the surprising thing is that, when we ask people of Kenya Secure Projects, together with the Ministry of Lands how they would legally own land within the reserve--- How was it that the Government gave people titles deeds within a reserve? So, we would like the Government to investigate such organizations which try to benefit from the problems that afflict people.

**Ms. Emily Kimani:** Thank you for that answer. Now, in an earlier memorandum which you had furnished the Commission with, you talked about banning of harvesting of mangrove poles. Is that correct?

**Mr. Mohammed Mohamud Lali:** Yes.

**Ms. Emily Kimani:** Could you give an explanation for the ban?

**Mr. Mohammed Mohamud Lali:** The ban on cutting down of the mangrove trees has affected the people of Kiwayu and Ndao areas. This was a continuing business and people were benefiting. Because we were put within a reserve - the mangrove areas and swamps - instead of the mangrove benefitting people, it is affecting them because they are unable to harvest and sell them. Whereas, previously our elders or the people who lived in these areas used to decide when and where to cut or harvest the mangrove poles and when they should leave them to grow, they used to grow well. Since they imposed the ban, it means that the mangroves cannot regenerate as the older ones grow and spread over.

**Ms. Emily Kimani:** Thanks, Mr. Mohammed. I have no further questions to ask you, but before I hand you over to the commissioners, there is a gentleman on my far right who has accompanied you. If you do not mind, please, introduce him to the Commission.

**Mr. Mohammed Mohamud Lali:** Yes, he is a colleague who has accompanied me and he is called Mohammed Mbwana Sheikh. He is the vice-chairman of the Sungwaya Welfare Association. We have been together in trying to fight for the rights of our people especially on issues of land. May I request, if the Commission will give him a chance, just in case there is anything that I have forgotten and; if there is anything that he would like to add. We will really appreciate.

**Ms. Emily Kimani:** Thank you very much, Mr. Mohammed, for your presentation. I have no further questions for you. I now hand you over to the commissioners.

**The Acting Chair** (Commissioner Namachanja): I would like to find out if Mr. Mohammed Sheikh has something else to add. If so, can he be sworn in?

**Mr. Mohammed Mbwana Sheikh:** Yes, I have something to add.

*(Mr. Mohammed Mbwana Sheikh took the oath)*

**Ms. Emily Kimani:** Maybe, before I invite you to proceed, would you tell us your full names for record purpose?

**Mr. Mohammed Mbwana Sheikh:** My names are Mohammed Mbwana Sheikh, the vice-chairman of the Sungwaya Welfare Association. I am a resident of the areas we were told in the morning which have experienced injustices; first, being displaced by the shiftas in 1964.

I have been working with the cement factory from 1978 up to 1987. After that, I became involved in problems that affected our community after having been displaced from our indigenous land.

**Ms. Emily Kimani:** You requested for an opportunity to make quick additions, from what Mr. Mohammed Lali left out. Could you go ahead?

**Mr. Mohammed Mbwana Sheikh:** First of all, I want to tell the Commission that, I would like to emphasize what was said by Mr. Maalim Hussein Sudi and my brother Mohammed Lali. What may have not been said, I would like to start it in the morning as it touches on the issue of historical injustices. I wanted to tell this Commission to listen to me for the few words I would say.

I would like to ask because I have a problem. I came from an eye operation on 10<sup>th</sup> December, and I had other problems. Therefore, I cannot talk a lot because the doctor recommended that I should not talk much. Because of the urgency of this issue, I would like to ask the Commission to allow this memo to be read out by your representatives. The first thing that I should talk about is that, after the Second World War, there are no people who were more affected than the Lamu people.

Secondly, I would like to say that there will be issues to be addressed. I took the oath today and I would explain the question that you would ask me. If it is on what I had already presented in my memorandum, you will be able to know because it will be on the information that is already presented to you. This is because we have issues to do with land and historical injustices. But we the people of Lamu are fortunate to get this opportunity, and that is the reason why there are many people who would want to talk because of what came out in 2007. We are very lucky because the issues that we have--- We did not have UN or any media to come and highlight the issues that happened here.

I was asking that the information that I would like to present should be read to make my work easier and also to shorten the time that I would take.

**Ms. Emily Kimani:** Thank you very much. I would like to request that you put down those issues in writing and then later on pass them to the Commission and also give the recommendations thereto. Our doors are wide open for that.

Thank you very much.

**Mr. Mohammed Mbwana Sheikh:** I already have it here. That is why I wanted to say that you could allow me to present the information that I wanted to give. I would like to present you information by reading from the memorandum which I will present to you as it will give me a chance and will reduce the emotions that go with what we have experienced. I believe that the information in my memorandum will not take a lot of time.

**The Acting Chair** (Commissioner Namachanja): How many pages are those, sir?

**Mr. Mohammed Mbwana Sheikh:** It is very small because one of them is two pages only and this other one has three pages. In total, there are five pages.

**The Presiding Chair** (Commissioner Namachanja): Sir, I would like you to look at the two documents; the ones that the previous witnesses have not spoken about and then you can pick one of those because you were just to add on what Mohammed Lali had shared with us. So, pick the two issues that were not highlighted so that you can read between the two documents that you have.

**Mr. Mohammed Mbwana Sheikh:** All the information here has not been talked about. There is some information that I will present because this was not presented by my colleague, the Chairman of Sungwaya Welfare Association. I have corrected this information with regard to historical injustices. I have given an example of the Second World War.

After the Second World War, there was no any other place that was more affected than Lamu. As you can see, no one else has presented anything with regard to that. Also, to save on time, I would like to make my presentation so brief because I have taken an oath by the Koran.

**Commissioner Chawatama:** Through the Chair, we have spent quite a bit of time in you, just laying that foundation. I think what we are going to do is to have the documents so that we can quickly peruse them. Then we can advise what points could be focused.

Thank you.

**Mr. Mohammed Mbwana Sheikh:** I think this is a memorandum and a copy of the Indemnity Act.

**Commissioner Chawatama:** Thank you.

**Mr. Mohammed Mbwana Sheikh:** The one I have at the moment is on the issue of land which my colleague did not talk about. The issues we are discussing now are on the port. The information I want to present to you--- We have 22 ranches which are about 300,447 acres stretching from Witu to Kiunga. I wanted to talk on the issues of land and the port, as I talk about historical injustices.

With regard to 22 ranches, they did not belong to anybody who is originally from Lamu. We are talking about more than 300,000 acres. When we talk about the issue of the port which is to be constructed in the areas, including in on one of the 22 ranches and that is the Enkamani Ranch, covering 6,200 acres, which is land that belongs to our elders. Some of them have gone before because of justice; Messrs. Rusifu and Omo Maalim. They were all farming in these areas and there are those who died and they are some who are still alive. This ranch which is the indigenous land belongs to us, Enkamani Ranch. This area was first sold to the Navy and whoever took the land was the leader of the Navy

and later the Army. He was called Rufu who conned our elders. He went to talk to them and went with them and helped them. Eventually, he requested them to give him a piece of land where he would do his own things.

The elders gave him land and he went round and because people were ignorant, he got them to sign and that was a way of signing away the piece of land which was taken away from the elders. Some of them are people of Pate. One of them came here, Mr. Fumu, and he is one of those few people who are still alive and so we are looking at the issue of the port being constructed. This land had been passed on to the Navy. The 6,200 acres, part of it has the Naval Base and the other part is supposed to house the port. Therefore, we are asking ourselves: "Whose property would the port that we are thinking of constructing be?" If you look at the documents whose copies we have here, this piece of land, the Enkamani Ranch, was advertised on the internet on 2<sup>nd</sup> November, 2009 and it was being sold for 2 million Euros - please read it for me because I cannot see clearly - and that is where the President is supposed to come and lay the foundation stone for the new port.

**Ms. Emily Kimani:** Could you kindly give us the recommendation? What do you think would remedy this issue of the Enkamani Ranch?

**Mr. Mohammed Mbwana Sheikh:** Our recommendation or solution for this is that, with this Commission coming and we know that we are already giving recommendation for historical injustices and land injustices like the ranches that I have mentioned; for the sake of security-----To highlight the problems and the unfortunate things that we have experienced as people of Lamu, we do not want anything to happen. Noting what others has said, and because of the land that has been taken away from us, we do not want to hear about the issue of the port because it will highlight historical and political injustices.

We were prospecting of oil because of what the indigenous people of Lamu are going to benefit. Where are they going to farm when we have people coming from outside the country like the Etemeres who are coming and getting land? We have also been told that the Internally Displaced Persons (IDPs) will be resettled here. So, this issue of the port should be allowed to die first as we resolve the historical and land injustices where 65,000 people were displaced from Lamu East.

Secondly, of the 47 counties, it is only the Lamu County that has two Members of Parliament because of the historical injustices that the people who are in these areas--- The people were moved from where they were and I would not want to present this. So, as the Government is thinking of this, and for the sake of security, the Bajuni and the Lamu people are not planning any violence. It just does spring out sometimes and we do not know when this could happen, like you saw the Islamic Party of Kenya the other day when people were burning houses here in Lamu. So, it is something that can explode at any time even before the Government could know. If it explodes, we do not know the magnitude it will have. So, we would like the issue of the port, through the TJRC--- We do not want the issue of the port to be discussed at the moment.

**Ms. Emily Kimani:** Thank you very much, Mr. Mbwana. Could you, please, present the records that you are showing us so that it can form part of the Commission records?

**Mr. Mohammed Mbwana Sheikh:** Okay. This other one is the sitting that we had together with the former DC, Mr. Wilson Wanyange. This is in regard to land and to show some of the injustices that we are experiencing. I would like to ask this Commission that all the documents I am presenting, if it is possible for you to go and physically see the areas because part of this land disappeared after the dredging of the Lamu Port and all the soil was taken there. Through the director of physical planning that land should be public utility. I would like you to go and see for yourselves that there are people who have already constructed houses there and we do not know what authority has allocated them this land.

We are not opposed to people being given land, but there is a way or a procedure that is used on allocation of any public utility land. People were thrown out and some people are now putting up houses and we do not know whether it is land registrar in the Ministry of Lands, physical planner or the DC who is involved. We do not know who is allocated that land while it was public utility land, especially in Lamu where we do not have places where the boys could go and rest. The only way for children to pass time is to go and swim in the sea while that land has already been grabbed. So, I would like you to go there and physically survey the area.

**Ms. Emily Kimani:** Thank you, Mr. Mbwana. Presiding Chair, I request that the same be admitted as records of the Commission.

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

**Ms. Emily Kimani:** Thank you.

**The Acting Chair** (Commissioner Namachanja): Thank you so much. We shall have questions to our two witnesses.

Yes, Commissioner Ojienda!

**Commissioner Ojienda:** I want to thank the two presenters for their concerns. I have seen the memorandum that has been submitted by Mr. Sheikh on behalf of the community and it raises very serious issues. I have seen a case that was filed on your behalf by Mr. Gikandi Ngibuini. I have also seen orders given by the court stopping you from doing a number of things and removing settlements from land that you consider as community land.

I want to just advise the first presenter that you have a new opportunity under Articles 5 and 67 of the New Constitution, and the National Land Commission is going to be formed. Those historical injustices that relate to land - I am telling the presenter and he does not have earphones on. Mr. Mohammed, I am saying that the historical injustice about land will be dealt with by the National Land Commission.



Inasmuch as the Bajuni people have recourse now to go to court because community land is recognized. I have seen cases that you have filed or that has been filed against you by private land owners. We contend that they grabbed them because they did not follow proper channels in getting the land. I think you have a new opportunity to challenge the title deed issued to those people.

I have also seen a memorandum that has been submitted and it raises issues about the Indemnity Act, Cap. 44, Laws of Kenya.

The Indemnity Act was intended to caution those Government officials serving in the forces that were responsible for human rights violations during the Shifta war.

The TJRC Act gives this Commission specific mandate under Section 6 of the Constitution to investigate acts that were committed by Government officials and other officials and that touches on the violation of human rights. So, despite the fact that the President may not have signed the bill of repealing the Indemnity Act, this Commission is expressly mandated under the TJRC Act to investigate and deal with issues that touch on the violation of human rights up to and including the time of the Shifta War. This is because our mandate commences from 12<sup>th</sup> December, 1963 until 28<sup>th</sup> February, 2008.

So, I just want to assure you that, upon hearing from you and we will investigate and find that violations have occurred, nothing will bar this Commission from making recommendations whether or not the period in question relates to the period covered by the Indemnity Act because the TJRC Act is very specific on the mandate of this Commission.

The last witness has talked about the grabbing of land in Lamu Port, and I say again, there is a new opportunity to deal with acts of illegal and irregular acquisition of land under the New Constitution. Indeed, Article 68, Sub-article C (3), provides that title deeds irregularly issued are not valid before the eyes of the law.

You have mentioned people's names and you have mentioned the residents of this area who grabbed land. I think it is important that the Commission is provided with such information and we will make our recommendation as you have said, so that Lamu Port is not developed when there are claims that some of those who may be compensated do not deserve compensation. So the community or the rightful owners of the land are the ones who ought to be compensated in the event that the Government provides compensation.

Thank you very much for helping this Commission to understand some of the issues that have raised concern amongst the people in this region.

Thank you very much.

**Commissioner Farah:** Mr. Mohammed Mohamud Lali, you have raised very pertinent issues on land in Kiwayu and the portion of land in Kizingitini. Some of the cases are in court and some will be sorted out by the Land Commission to be formed.

However, we will conclude our work before that and we have seen your memorandum. We will read it thoroughly and we will recommend appropriately. What is the acreage of the land that was grabbed, on which the port is to be built?

**Mr. Mohammed Mohamud Lali:** I think that issue came up from my colleague and he is the one who highlighted on the number of hectares that have been grabbed in the areas prospectively for the construction of the port. I talked about Kiwayu and the grabbers at the Kiwayu and in the Manda area. So, my colleague can clarify how many hectares are earmarked for the construction of the port that has been grabbed.

With regard to the report on construction, you find that the Galana Ranch is the main area. The President is expected to come and lay a foundation stone. There is also Majengo Ranch which is 12,000 hectares. There is also a proposed ranch which is 3,200 hectares and then there is Umoja Ranch which is approximately, 5,000 hectares. All these are in areas that have been earmarked for the development of the port.

There is a Abothei Limited which is 7,000 hectares. All these have been earmarked for the construction of the port. There is Mongone Ranch which is about 10,000 hectares. There is also another proposed ranch, which is 8,000 hectares. There is also Mogogoni which is a settlement scheme where some of our brothers from up country were settled. There is another 8,000 acres which is Magogoni settlement. These are not indigenous people of Lamu, they were settled here. These are about eight ranches, which is 85,000 acres. Our brothers were brought in 1972.

The people who were living here were displaced and people from other areas settled. Instead of resettling them, people were brought in from other areas and developed economically. That is why I was saying that we would have wished that this Commission listened to us. This historical injustice was planned. We were evicted by *Shiftas*. I do not know why the Indemnity Act is being brought. We were affected by people who were not Kenyans. That is why I am talking about historical injustices. There has not been any historical injustice worse than what we Lamu people experienced. We were evicted and then a law was brought in. It is not the army that brought in the Indemnity Act. If you go back to 12<sup>th</sup> December, 1963, why is it that on 25<sup>th</sup> December, the late President Jomo Kenyatta directed that people who were from the areas of Witu up to Mashakani should give up illegal firearms? We wonder what agenda had been in place.

**Commissioner Farah:** I think I have now got the idea. Thank you very much for your presentation, I have no further questions.

**Commissioner Chawatama:** I would like Mr. Lali to share the experiences that he has had with the courts of law. It has to be very brief. One of the things we are going to do is to look at institutions, among them the Judiciary. So, we want to find out how in the view of Kenyans, an institution such as the Judiciary has performed. Could you, please, just inform us, very briefly your experience with the courts of law, because we still have a number of witnesses whose testimony we would like to hear.

**Mr. Mohamed Lali:** We thought we did not get justice, because people were using the authority to prevent others from accessing justice.

We are suing the Government, the Commissioner of Lands and the Attorney General. There was a lot of opposition; they would not appear in court. There would be delays in the hearings, until a former President of this country, at some point, at the State House in Mombasa, told delegates from Lamu, among them Members of Parliament for Lamu East and West to tell Chungoa Welfare Association to withdraw the case from court so that their land could be adjudicated. In the year that has passed, there has not been justice in courts, except to those with authority and money. That is from the lower courts to the high courts. This affected the people of Lamu. We called the Press and told Kenyans and the world that we had presented a case in court, so that the truth could be known and justice would be served. We did not withdraw our case from the court; we are demanding for our rights. Once we get our rights, then the case will definitely go. So, we did not see the reason for us to withdraw the case.

We did not see the leader of the Government as his friends were giving out our land as gifts to the people that he favoured. He wanted to compel us to withdraw this case, but we refused. The subdivision is still ongoing. Land grabbing is still there. You will find that somebody was allocated land in 1999. This has made people in organizations such as the KWS to take this opportunity to visit injustices on our people. Our people are still afflicted by these problems up to now. It is our hope that with the current reforms and changes in the Constitution, we might get some injustice.

We have seen so many commissions and we have been asked so many questions, but at the end, we do not get any answers. Every time they go, we are left with the hope that one day truth will come out.

**Commission Chawatama:** Thank you very much. One of the assurances that I would like to give you is that the Act that created this Commission makes it mandatory for the recommendations of this Commission to be obeyed. The Minister for Justice, National Cohesion and Constitutional Affairs will from time to time make presentations before Parliament on how far the recommendations of this Commission have gone. So, you have done well to speak before us. We will do our best as we make recommendations to ensure that the cries of many Kenyans like yourself, are heard and taken care of. Thank you very much.

**The Acting Chair** (Commissioner Namachanja): Mr. Mohamed Lali and Mr. Mohamed Ngwatha, thank you so much for your testimonies.

Mr. Mohamed, you asked the Commission if it is possible to see one of the land that has been grabbed. In case we have time tomorrow, we shall consult and we shall get back to you. Otherwise, thank you so much for your testimonies.

Leader of evidence, please, step down the witnesses and call in the next. Kindly approach us for consultations.

*(Mr. Mohamed Abdikadir took the oath)*

**Ms. Emily Kimani:** Mr. Mohamed Abdikadir welcome. Before I ask you to kindly tell us your full names for the records, I would kindly ask you to confirm that you have been sent by Mr. Abubakar Shekue.

**Mr. Mohamed Abdikadir:** Yes.

**Ms. Emily Kimani:** What is your relationship with Mr. Abubakar?

**Mr. Mohamed Abdikadir:** Mr. Abubakar Shikwa is the Chairman of the CIPK, Lamu Branch. I am a member of the CIPK, and the Chairman of the Lamu anti-drugs. I am also the Chairman of the Coast Interfaith Council of Clerics, which brings together both Christians and Muslims. I am the Chairman of the council.

**Ms. Emily Kimani:** If you could kindly once again tell us your full names for record purposes.

**Mr. Mohamed Abdikadir:** My full name is Mohamed Abdikadir Mohamed. I am a businessman in Lamu.

**Ms. Emily Kimani:** Thank you very much. You are seated before us to make a presentation on general issues facing the Muslim Community. Is that the position?

**Mr. Mohamed Abdikadir:** Yes.

**Ms. Emily Kimani:** During the course of the day, we managed to hear most of the issues in the county; you had the benefit of listening to Mr. Hussein Elmani, quite a detailed testimony about the issues facing people living in Lamu. So, I invite you to make additional issues having sat in his testimony and also give us the recommendations thereto. Welcome.

**Mr. Mohamed Abdikadir:** Thank you very much. First, before I come to my issues, I would like to start as the representative of Abubakar Shakue. I will give a story to demonstrate what I want to put across. The story is about a beautiful daughter who is about to wed. She is loved by the two parents so much so that she is the apple of the eye. Unfortunately, during the wedding the parents are not involved. They are not told anything. They just hear that the wedding is taking place. You can imagine how the parents feel about the whole thing that is done behind them.

As I speak, majority of us here are parents. I gave that analogy of a marriage to demonstrate how devastating parents can be when their daughter weds without their blessings. There are various communities in Lamu. We have Bajunis, Bonis and Swahilis. They have been marginalized for a long time. Things have been happening here without them being involved. That is why there could be issues of discord. We know

there is a lot of injustice; that is why there is need for the UN and AU. These institutions are thought to bring about equality and equity, so that people can develop their lives. Even the tranquillity that we have at the moment is what is being searched for all over the world.

The second issue is what I would not want to repeat, but I just have to mention it. This is the issue of the *Shifita* War in the Bajuni areas. About 15 houses were demolished. Only four were left out of the 15 Bajuni areas. This is Kiunga Division. There are some areas such as Mpeketoni, Mkunumbi, Witu and Wosanya where our people were evicted by the *Shifita* and Ormas. They kept losing their livestock. So, what we are talking about today is very true because we all presented our statement at different places. We have only met today and it looks as if we have discussed this. But this is the truth. The *Shifita* War hurt the people of Lamu. I was one of those that were personally affected in 1991. My niece was killed in Garissa Express. There was also a German that was also shot dead, and the Government did nothing. It is very sad that even up to now our vehicles do not come up to here without escorts whereas in all parts of Kenya, vehicles go around without escorts. But from Lamu, you must have armed escorts. That shows that we do not live in peace.

The second issue that I would like to explain to the TJRC is that of the Indemnity Act. I do not know how far we have gone. We just hear that there is the Indemnity Act. The other issue is the law that is based on Islamic teaching. Muslims have had Kadhis court. You find that Kadhis Courts in the whole of Kenya are only 17. There are very many areas that have Muslims, but Islamic courts are not in those areas. This shows that Muslims are being marginalized.

We also lack employment opportunities. If you look through all the Government departments, there is a very small percentage of us. In some, we do not exist at all. This hurts us.

We also have the thorny issue of drugs. As the Chairman of Lamu Anti-drugs, I have been concerned with drug issues for over ten years. This has led to a lot of under-development in Kenya, especially in Lamu. Schools in Lamu do not perform well in national examinations. We also have many prisons here because of too much usage of drugs. If you go to our local jails, 80 per cent of the people are drug users. It is sad that the Government has not addressed this issue as it should. Coast region has only three rehabilitation centres. One of them is in Mombasa. We have MEWA in Kisauni. We also have Omar Project in Msabaha in Malindi.

In Lamu, there is none although local residents have donated land for a rehabilitation centre. Drug issue has been a big challenge to us. In Lamu, we have requested several times for sniffer dogs and machines which can detect these illegal drugs. We think we are being discouraged so that we can forget about this issue. We fear for the demise of our community, but we will fight on.

We thank the police in this area because anybody arrested with illegal drugs in the area cannot get a police bond. They are thrown in. I believe that the court has also done its work, more effectively of late.

The other issue is about poverty. There is a lot of poverty in Lamu. This has forced people to sell their property. A woman gives out her gold, which she inherited from her parents, so as to get basic commodities. There are no industries. Banks do not give loans to our people. As a community, we know that we are also a bit lax, but we believe that Lamu is one of the leading areas in terms of poverty. There are many areas without electricity, especially Lamu East. Therefore, we cannot have meaningful development, because the world is now a global village where everybody has access to electricity. Most of Lamu East and a big part of Lamu West have no electricity. There is no clean water. Poverty has been entrenched.

Those who spoke before me have spoken about land grabbing. I would like to mention briefly about land grabbing in this area. With the introduction of multiparty politics, former President Moi used to give land to tycoons and his supporters as he would share out his birthday cake with school children. In Manda Toto, for example, he gave a big chunk of land to a tycoon. This land belonged to fishermen, but now it has become personal property of one tycoon. We would like this Commission to tell us when its recommendations will be implemented. We want a feedback so that our recommendations do not remain as fairy tale to be told and read by future generations.

The other issue is about infrastructure. We do not have good roads in Lamu. No concrete steps have been taken towards improving roads in Lamu. There is always budget for construction of roads in the country. However, our roads remain in a pathetic condition. Even if they cannot tarmack our roads, why can they not gravel them? I wish you, as Commissioners, will use this road so that you know what I am talking about. Muslims usually say that whatever you hear is the same as what you experience.

In terms of health, we have the King Fahd District Hospital, but it does not have sufficient facilities. The most fortunate thing is that the American Navy Marine visited the hospital and pledged to support it. They have tried to support it, but some of the equipment they brought has not been installed. One day, two women had premature deliveries, but there is only one incubator in that hospital. When one of them was placed in it, the other one succumbed to death because there was no incubator for him. Losing an innocent child like that is very unfortunate. It was very sad. The Government knows all this, but we see that we have been neglected.

The other issue is poor performance in national examinations. We have shortage of teachers in Lamu. We do not have sufficient equipment. You find that we have schools, but no laboratories. They do not have sports equipment and libraries. This has made it impossible for them to compete effectively against other counties. Out of 47 Counties, we are ranked 44<sup>th</sup> position. This is very sad because we know that our children would like to study like others, so that when it comes to employment they can also compete with the rest of the country.

The other issue is on the issuance of national IDs. What we believe is that we have been victimized because of our religion. When it comes to the statistics, you find that most of the IDs that are released are those that belong to non Muslims although the majority of the people in this area are Muslims.

I would also like finally to submit to this Commission that every time it comes here they need to win our confidence in them. This Commission has very few Muslims as its members. I can only see one among them. For us to have more confidence in the Commission, we would like to see those that we can confide in, because the current law gives you the right to say that you have no confidence in a certain magistrate and, therefore request to be allocated an alternative magistrate.

This Commission came to Lamu and very many of us walked out because the Chairman was Kiplagat. We saw the change. At the moment, we wanted to have at least, one-third of the members being Muslims. But with only one, we believe that is further marginalization of the Muslim Community. If I had a lot of time, I would have said a lot. However, I am ready to answer any questions or clarify some issues.

**Ms. Emily Kimani:** Thank you, Mr. Abdikadir for that brief but concise presentation. We are very grateful. All those issues and recommendations that you have given will be taken on board when we write our reports.

I do not have many questions for you because your presentation was very clear. You have talked about the drug issue. You have praised the police and courts in Lamu in their quest to fight this menace. As a religious leader, what other efforts have you made to eradicate this issue of drugs in Lamu?

**Mr. Mohamed Abdikadir:** In order to deal with the issue of drug abuse, we have gone round the schools. We have three main categories of people; those who have never tried drugs; those who have used them and those who are seeking rehabilitation.

So, we send our advocacy to schools and prisons. We have a lot of cases of people who stopped using drugs.

**Ms. Emily Kimani:** My second and last question is about education in Lamu. You have raised the issues of poor performance in the national examinations. You have emphasized on the fact that there are enough schools, teachers and books. Is that correct?

**Mr. Mohamed Abdikadir:** It is very true.

**Ms. Emily Kimani:** In your opinion, do you feel that they are well trained?

**Mr. Mohamed Abdikadir:** The teachers are well trained, but they have to employ them through the PTA and parents do not have the money. The Government says there is free

education, but there are not enough teachers. So, it is a very big challenge. The community has problems because you find that the children are not able to complete the syllabus.

**Ms. Emily Kimani:** Thank you very much for your presentation. I have no further questions for you. I now hand you over to the Commissioners.

**The Acting Chair** (Commissioner Namachanja): Thank you very much. Professor Ojienda, do you have any question?

**Commissioner Ojienda:** I have no question for Mr. Abdikadir, but I thank him for making his presentation.

**Commissioner Farah:** Abdikadir Mohamed, you said once you got sniffer dogs, but now they have not been brought. Could you tell the Commission when those sniffer dogs were brought, whether they had any impact on detection of drug peddlers?

**Mr. Mohamed Abdikadir:** Yes, they are brought in especially when there is a function like the cultural festival or the Maulid. This is only twice a year. So, if there is a function and we inform the security personnel, they bring them. This year they were here. Our request is that we have the sniffer dogs permanently here in Lamu.

**Commissioner Farah:** I think I had a question of the identity cards. How often do the people who issue the identity cards come here?

**Mr. Mohammed Abdikadir:** Once every month.

**Commissioner Farah:** To give to Muslim youth, that is what you are saying?

**Mr. Mohamed Abdikadir:** Let me explain that further. The Muslim youth are supposed to present all the documents. They are required to bring their parents' IDs, their birth certificates and their parents' birth certificates including those of their grandparents. Sometimes this is a big challenge because the parents could be dead or divorced. Without ID cards, it becomes extremely difficult for the youth to join universities or get employed.

**Commissioner Farah:** Thank you very much for your good presentation and for clarifying those questions. I have no further questions.

**Commissioner Dinka:** Thank you, Mr. Mohamed Abdikadir for your testimony which has been very helpful and casts a lot of light on the number of issues that we have not been familiar with. I want to find out one important point. You mentioned that the courts and the police are very effective and efficient against those who use drugs. You also said about 80 per cent of drug users are in custody.



In Lamu, people do not produce drugs. Somebody must be bringing them and distributing to the street peddlers. How effective and enthusiastic is the police and the Judiciary against those who are poisoning your young people?

**Mr. Mohamed Abdikadir:** At the moment, it is working. Previously, it was a very big problem. There are two main peddlers, one has been jailed for ten years, with Kshs1 million fine, and another one was jailed for five years, with Kshs500,000 fine. Another one has been fined another Kshs500,000 and jailed for five years. Previously, the fines were very lenient. They ranged between Kshs10,000 or Kshs20,000. When we sat down, we came up with a joint team that works together very well.

**Commissioner Dinka:** In your view as community leader, and also somebody who is concerned about drug use in society here, do you believe that clearly the people who are bringing in drugs in the first place; the first chain, the big fish are detected as the peddlers on the streets? Are the police and the Judiciary really identifying and pursuing these people vigorously, in your view?

I am asking this because we need that kind of information for our final report.

**Mr. Mohamed Abdikadir:** The peddlers are very well known. They have appeared before the police severally, in fact more than ten times. They are very well known because of two reasons. One, they go to the police all the time. Secondly, if you go to any school and ask who the drug dealers are, you will be told. Those who are in Standard Four and above will tell you because they know them. Lamu is a very small town. Whatever one engages in, it is known by people. Previously because of corruption, many drug peddlers went scot-free. We had three OCPDs, but very few drug peddlers were arrested. This year, we have destroyed and burnt drugs twice. We do this every six months. This is because if we leave them with the police or in court, they find their way back to the community.

Now we have what we call the court-users committee and I am a member. Abubakar Shekue is also a member. We have the public health officer as a member. These things go very smoothly. Every time, if there are 200 doses, after they are given as evidence in court, we burn them.

**Commissioner Dinka:** Thank you very much. I have no further questions.

**The Acting Chair** (Commissioner Namachanja): I must say that you have represented Mr. Abubakar very well. You highlighted all the issues very well and you have given us your recommendations which will form part of our report. However, before we close, I would like to check whether the Judge has any question for you.

**Commissioner Chawatama:** I only have one question for you. I remember you very well. The first time we came to Lamu, you walked out on us. As a first time Commissioner, I was worried on where this Commission was headed to. In other places that we went, others also walked out on us and they told us it was because of the Chair.

So, you can imagine someone like myself who had left my home to come and be part of this big job and be part of this process how I took it for granted that this is the process that Kenyans wanted. I am happy today to sit before you and hear your testimony. I am happy with the way Kenyans have engaged this process and the way they have ended it. The course we have taken as Commissioners is not one that can be taken for granted. We know the price that Kenyans have paid by the way they have engaged in the process and the way they have owned it. The confidence they have shown in us is not one that we can take for granted. We know the price that Kenyans have paid because we have listened to them through the statements they have given us and through their testimonies. So, thank you for taking time to engage with us today. We have not heard a repeat of what happened the first time we met. You have articulated the points that you have talked about very well. As a person who is interested in justice, I only have one question to ask.

You have said that the lawyers, based on Islamic jurisdiction that existed in Lamu before were banned during Independence. Were you ever told the reason why this banning took place?

**Mr. Mohamed Abdikadir:** We were never told why. I think it is because anyone who studied law did not study deep English Language. The only thing they know is “Fikri”. Previously, the elderly who understood the Fikri, if they had anybody who had been accused they would use it. Right now, it is secular. They do not know anything about religion and that is a big problem in our area. I do not know how we can address this thing. In trying to fight against this, we passed a by-law in 2001 that cattle should not come into Lamu. We convinced all the councillors to pass this and all that had been left was for the Minister for Local Authority, Mr. Kamotho to sign it but he refused. That was in 2001. After that we had Uhuru Kenyatta whom we approached, but he also refused. Finally, we had Karisa Maitha who also refused. We then had Musikari Kombo who refused to sign and now we have Mudavadi whom we have approached through Sheikh Mohamed Dor and he has also refused to sign. We think one of the problems we have is drugs because the people who chew *miraa* are the ones whose children go to school without food or uniform. They are the ones who deny parents a chance to buy books, that they would have bought for their children. I have a research paper I can present on this from Meru. Even the Meru blame *miraa* for the low rate of school going children. Children have stopped going to school and they go to harvest *miraa*. People think it is better to send their children to go and harvest *miraa* because they get Kshs3,000 from each child and Kshs9,000 a day from three children. Sometimes, those who go to school insult other children. This is something we can share with you and it is a problem in the whole country, especially in Lamu.

**Commissioner Chawatama:** Thank you very much. That is the only question that I had and you have covered my second question.

**The Acting Chair** (Commissioner Namachanja): Thank you, Sir. That is all from us. Leader of Evidence, please, step down the witness and call in the next.

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

(*Mr. Athumani Ali took the oath*)

**The Acting Chair** (Commissioner Namachanja): How are you this afternoon?

**Mr. Athumani Ali:** I am fine thank you.

**Ms. Emily Kimani:** Could you give us your full names for record purposes?

**Mr. Athumani Ali:** My name is Athumani Ali from Kiunga.

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

**Mr. Athumani Ali:** I am a peasant farmer as well as a fisherman.

**Ms. Emily Kimani:** You recorded a statement concerning the impact of the *Shifta* menace. You had the benefit of being in the upper part of eastern Kenya and other areas where in previous presentations the issue has largely been tackled. As you make your presentation, I would like you to be specific on how the *Shifta* issue has affected your family and you will thereafter give us your recommendations.

**Mr. Athumani Ali:** As the people from Kiunga, we got our independence and really danced in celebration.

**The Acting Chair** (Commissioner Namachanja): The leader of evidence, please, assist.

**Mr. Athumani Ali:** We got our independence and really celebrated and slaughtered many goats. We danced and celebrated. The colonial Government took away our ammunitions. The Somalia Government entered Kiunga and they killed one police officer. All the police officers in Kiunga did not have ammunition but *rungus*. After six months, all our villages were raided by the Somali and Bajunis. We shifted from the islands because of fear. The GSU from Kenya were also torturing us. After a while, we came to the village to look for water. We found tractors demolishing our villages. The administration told us that we could not stay in those buildings and that it was not the Somalia Government which had problems with us but our own GSU who were destroying our houses. People started splitting and going to other villages like Rasini and Mtanga Wanda which were islands. Since that time up to date, we have been separated. We felt that we did not have any independence. People who came from other lands had somewhere else to settle and had title deeds but we did not have. We were farmers and when we were about to harvest our crops, the GSU came to attack us. The GSU were beating us very brutally. One of my brothers who is here does not have legs because they were broken by the GSU personnel. We feel that even though Kenya got independence, we still do not have any independence. We just face brutality. What I see are people coming from different places and taking loans and buying our land. The people from Lamu cannot access any loan because they do not have title deeds.

**Ms. Emily Kimani:** Thank you very much. I wish to ask you a few questions on what you have said here, with your permission. You have described a series of incidents like the killing of a policeman to the injury of your brother, looting and demolition of houses. When did all these happen?

**Mr. Athumani Ali:** The name of the *askari* who was killed initially at Raskanga was “Bonaya”. He went to an island called “Mtanga Wanda” to farm. He was shot by a *Shifta* and the GSU brutally beat up my brother and up to this moment, he does not have legs. My brother was beaten up by the GSU in 1965.

**Ms. Emily Kimani:** What do you think the Government should do to remedy the actions of these security officers who were supposed to be protecting people but ended up harming them?

**Mr. Athumani Ali:** The Government should compensate us because we are in danger. We now have children who know about our history. Mpeketoni and Hindi Magongoni are our areas and our land. Our children know that and if the Government does not correct that and give the right ownership of our land to our children, it will not be good.

**Ms. Emily Kimani:** What is the name of the GSU officer who attacked your brother?

**Mr. Athumani Ali:** I cannot remember the name.

**Ms. Emily Kimani:** What is the situation at the moment in Kiunga?

**Mr. Athumani Ali:** Right now in Kiunga, there is a lot of security because the Government is known very well. However, the *Al Shabaab* is also there. Our Government is on its two feet and the security is alright. We believe that they are okay now because there are no bad intentions.

**Ms. Emily Kimani:** I have no further questions. I will now hand you over to the Commissioners.

**The Acting Chair** (Ms. Namachanja): Thank you very much for coming before us to share your testimony on what you, your brothers and the rest of the community went through during the *Shifta* War and in the hands of our own armed forces. These are the stories we have been hearing all over right from North Eastern Province up to Mount Elgon. That is why this Commission was set up to make recommendations on issues like the one you have shared with us so that we record them and hear them so that our future children do not suffer the same.

Although Kiswahili is a bit complicated to me because I come from a border area, I am also a Bajuni from Kiunga. We are the pure Bajuni and the central people. I am talking Kibajuni and not Kiswahili. I have a few questions for you. Let me start with Judge Getrude.

**Commissioner Chawatama:** Thank you very much for your testimony. I join the Presiding Chair in saying that we have heard you on the issues of compensation and on education and medical attention for your brother. Amongst the things I will take from this sitting is a very sad thing because it is in your statement in which you have asked yourself, as a citizen, where the Government was during those times of need. After this Commission, as citizens, you will enjoy the presence of the Government. That Government will be there to meet your needs. This is a deep cry from your heart. I thank you for your participation and hope that the education of your grandchildren will be good.

**Mr. Athumani Ali:** Thank you. I am grateful.

**Commissioner Ojienda:** Thank you, Mr. Athumani for highlighting those gross human rights violations, before and after the transition. How do you compare the colonial period and the current period? Has there been any change for you as the Bajuni?

**Mr. Athumani Ali:** We, as the Bajuni feel that we were better off when we were under the colonial Government than the post colonial period. During the colonial period, we did not have any problems because at that time we even had our own villages. After independence, our villages were destroyed. They were at Kiunga, Kishakani, Funambai, Vibondenini which is our home, Ashwei and Materoni. These are the villages which were destroyed after independence. We were left with two villages and we had the Bajuni. We did a lot of farming and exported a lot of farm products during the colonial period. We were better off during the colonial period than the post colonial period. I can tell you that when we got independence, we were very happy and we celebrated.

**Commissioner Ojienda:** What in your view should the Government do to improve the lives of the people here?

**Mr. Athumani Ali:** The Government should reform and correct the injustices so that the economy of the Bajuni can improve because we are now living as squatters. If they do not reform, this will turn out like the Somalia Republic. We would like to continue fishing because our children are in school. Things may be dangerous if the reforms do not take place. Our children will now have title deeds and the people from other tribes may come to talk to us.

**Commissioner Farah:** You were evicted from Ambai to Manda Island.

**Mr. Athumani Ali:** I came to Manda with my brothers and sisters. When I realized that I could not stay at Manda, I went back to Kiunga. After being at Manda with my family, the Government of Moi evicted us from Kiunga and Elephants destroyed our farms. One MP told us that it was not fair and he told us to go back. He said he was ready to face anything. So, many people who came from Kiunga never went back. We have many problems in Kiunga and we have no money. If you did not go to work at the airstrip, you were beaten. We were forced to work at the airstrip.

**Commissioner Farah:** You were kicked out of Kiunga by the GSU and the *Shifita* and then you went to Manda? How many other Bajuni live in Manda as IDPs?

**Mr. Athumani Ali:** There are still some Bajuni at Manda and here in this venue, we also have people who are coming from Manda. My father and mother are here but my immediate brothers are all in Manda. I left there with a lot of bitterness.

**Commissioner Farah:** When you left Manda, did you go back to your original land or are you a squatter at Kiunga?

**Mr. Athumani Ali:** Kiunga is not our home. My village is Sinambai but my village is Kiunga. I now have my home in Kiunga from Nambai to Mburi, Sinambai, Mvondeni and Ashwei. There are no villages at all. There are just animals. There is only Kiunga and Kokoni. The Government destroyed all the villages because eight Somalis with two guns cannot destroy all the villages.

**Commissioner Farah:** I now understand. All the villages were destroyed and the animals stolen. Apart from you and your family who went to Kiunga, the rest of the Bajuni are in Manda as IDPs?

**Mr. Athumani Ali:** That is very true. My relative who is here is really crying that he does not have anything. He is at Manda and he is just waiting to be evicted one day so that the land is give to a Kikuyu. Mpeketoni is ours and Hindi is ours. One cannot just pick the pieces of land in Hindi and start selling them. I do not know what we did to our God so that this had to happen to us.

**Commissioner Farah:** Thank you. We will see you another time.

**Mr. Athumani Ali:** We hope that this Commission will apply truth and if that will not happen we hope that God will intervene.

**The Acting Chair** (Commissioner Namachanja): let us have the next witness, please.

**Ms. Emily Kimani:** The next witness is Nuru Bashora.

*(Ms. Nuru Bashora took the oath)*

**Ms. Emily Kimani:** Thank you very much. We request that you give us your full names for the record.

**Ms. Nuru Bashora:** My name is Nuru Bashora Hajilo. I am a resident at Kipini Divison. I am also a Member of Kipini Community Group.

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

**Ms. Nuru Bashora:** I work in our community group.

**Ms. Emily Kimani:** Today, you were to make a presentation on issues affecting the community. I request you to make the presentation and the recommendations on the issues you will raise in your testimony.  
Welcome.

**Ms. Nuru Bashora:** I am going to speak about five issues. The first one is about land. The second one is about transport and communications and the third is about health. There are also issues to do with education and recruitment.

With regard to land, I would like to say that most people of Kipini--- Kipini is a cosmopolitan place and at the moment, there are more locals. Before independence, there was the Swahili tribe, the Giriama and the Pokomo. Other tribes came afterwards, like the Akamba and the Kikuyu. About the indigenous land, most people of Kipini area do not have title deeds because they find it difficult to access the documents. They found that in 2010 soldiers came to subdivide land. They subdivided the land into five acres. After that, some local people got land but some did not. It was decided that the locals get five acres each. But the astonishing thing is that there are people who got and some who did not get anything. Some got two acres while some did not get anything at all. Those who did not get went to court and the case is still pending in court. There are also pastoralists who came during the drought season. They were welcomed by our councillors but there have been many conflicts between these people and our farmers. The pastolists have been taking their livestock to the farms and when farmers complain, that becomes a conflict. Most of them have been injured due to such issues. The other issue is about transport and communication.

In terms of infrastructure, the roads are very bad, especially if you look at the road heading to **Gamba**. That road has many potholes and it is destroyed. We find difficulties in transportation because the road is used by the residents of Kipini to go to Mombasa. They have to use that road to Garissa and we have many problems with it.

The other issue is about health. We have a hospital in Kipini and it is well built but late last year it was wound up. However, the most astonishing thing about it is that there are no adequate services due to lack of facilities to be used by the doctors who are very few and are unable to cater for all the patients. It becomes a problem when one doctor goes on leave and probably one remains on duty. We also have a vehicle there but it is not in good condition. It is also difficult for the residents of Kipini to transport patients when they are in bad condition. Therefore, it is difficult for them to be taken to referral hospitals. We have a vehicle but it does not help much due to its poor condition.

About education, the performance in Kipini Division is very poor because the pupils are very many in schools and the teachers are few. You find that a class has around 100 pupils against one teacher. This becomes very difficult for the teacher to sufficiently cater for the pupils. About recruitment especially of the youth in Kipini Division, most of them have completed Form Four and they expect to be recruited into the Army or the Police and other areas. In these recruitments, there is no fairness. Most of the youth have passed

and have attained the qualifications that are required but it becomes difficult to get recruited because of corruption.

**Ms. Emily Kimani:** Thank you for that presentation. I have a few questions from your testimony and also the statement that you recorded earlier. Which community inhabits the Kipini area that you have told us about?

**Ms. Nuru Bashora:** As I mentioned, there are different tribes but the indigenous people of Kipini before independence are the Swahili, the Pokomo and the Giriama.

**Ms. Emily Kimani:** Then you talked of the land issue. What is the acreage of the land that you have told us about?

**Ms. Nuru Bashora:** There are certain areas of Kipini and other parcels of land that are in Kipini Division that were subdivided last year. Those are the parcels that I have been talking about.

**Ms. Emily Kimani:** You said that people in Kipini are facing an issue of title deeds. Is it that the Lands Office is not issuing them or the people have not applied for the same?

**Ms. Nuru Bashora:** It is the department of lands that is not issuing the title deeds after the subdivision of the land to the community.

**Ms. Emily Kimani:** You told us that you belong to some youth organization in Kipini. What are some of the initiatives that you are carrying out to remedy some of these issues that you pointed out?

**Ms. Nuru Bashora:** Some of the things that we are working out to bring fairness in the community is to try our level best to sensitize the community so that they can look into the issues of land to fight for their rights so that they can get title deeds.

**Ms. Emily Kimani:** You could also tell us some of the issues that are unique to women in Kipini and also the larger Lamu, if you can.

**Ms. Nuru Bashora:** I cannot say anything about it.

**Ms. Emily Kimani:** I want to thank you for your testimony. I have no other questions for you and I hand you over to the Commissioners.

**Commissioner Chawatama:** Thank you very much for your testimony. As a woman, I would like to celebrate your life. I am excited about the work that you are involved in and I am sure it is encouraging for the elders who are in the public gallery today to hear of some of the responsibilities that the youth are taking on and that you courageously speak of issues that the adults have spoken about. From the point of view of the youth, you have pointed out how you would like to see the issues of land, transportation and communication, health, recruitment and education solved. I would like to encourage you



to remain focused because focus is the womb of accomplishment and just by listening to you I know that you will accomplish much in your life. So, continue the good work. Thank you for making time to participate in this very important process. I wish you well in future.

**Commissioner Ojienda:** Thank you, Madam Bashora for your presentation and generally for speaking for the youth; a marginalized group of the society. It is often the elders who are represented in such fora. I want to ask you a few questions. You have said that there is only one high school or secondary school in Kipini with a population of 400 students. What is the ratio of girls to boys in this school?

**Ms. Nuru Bashora:** I cannot ascertain the ratio but the girls are fewer than the boys.

**Commissioner Ojienda:** Do all the ladies complete high school or are there a number who drop out of school?

**Ms. Nuru Bashora:** There is a number of girls who have completed secondary school.

**Commissioner Ojienda:** Are there any who drop out? If so, what is the main cause?

**Ms. Nuru Bashora:** Mostly, the girls drop out of primary schools because some are married off early and others become pregnant. This forces them to drop out of school.

**Commissioner Ojienda:** I have not heard a recommendation on how early pregnancies and early marriages contribute to this problem. What can be done to prevent that?

**Ms. Nuru Bashora:** My recommendation is that the Government of Kenya should deal with men who mess up with school girls. Also, it should take action against parents who marry off their girls early.

**Commissioner Ojienda:** What about high schools in Kipini?

**Ms. Nuru Bashora:** In Kipini Division, I would like other two or three primary schools to be established. Several of them can be added, but the problem is that there are very many pupils and the classes are few.

**Commissioner Ojienda:** Do you want hospitals constructed as well?

**Ms. Nuru Bashora:** I would like the Government to provide a vehicle to Kipini Hospital, so that it can assist the community. Also, there should be enough doctors and facilities to cater for the patients.

**Commissioner Ojienda:** In Kipini, students seem to get C- and below. If a university is built in that area as you have recommended, who will be admitted there?

**Ms. Nuru Bashora:** It is not true that students in Kipini attain C- and below. There are others who attain C+, C and B.

**Commissioner Ojienda:** In your presentation, you have written that the highest score is often C-. So, we have C+ and B?

**Ms. Nuru Bashora:** Those students come from Kipini Division but have studied in different schools where they attain high grades and not the C-.

**Commissioner Ojienda:** I want to seek your views, just tell us the relationship amongst the communities living in Kipini. You have referred to up country people buying land in the region and getting titles, what is the relationship among the people; the upcountry people and the locals in that region? Can anything be done to improve that relationship amongst those communities?

**Ms. Nuru Bashora:** The relationship amongst the people of Kipini and the other tribes is that they live together. We do not refuse to live with them but we do not want them to oppress us. They should not come to claim land that does not belong to them.

**Commissioner Ojienda:** Thank you for your testimony.

**Commissioner Farah:** Thank you for your presentation. I have been to Kipini and I know the area and I know what you are talking about. When you say that there are no roads there, it is true. There is no electricity, no piped water and not even a single tarmac road yet the place is very near the sea. So, we have taken note of your memo and thank you very much.

**The Acting Chair** (Commissioner Namachanja): Thank you Nuru. I have two questions for you. When was this school established? Do you know?

**Ms. Nuru Bashora:** It was established even before independence in the 1950s.

**The Acting Chair** (Commissioner Namachanja): Do we have bursary funds for poor students?

**Ms. Nuru Bashora:** Yes, but they are very few.

**The Acting Chair** (Commissioner Namachanja): How many students access bursary funds per year?

**Ms. Nuru Bashora:** I cannot ascertain the number of those who get bursaries per year but I can say that they are not many. They are very few. For example, in our division, you can find five or ten and that is all and it is very little money, maybe for one term only.

**The Acting Chair** (Commissioner Namachanja): Thank you. Those are all the questions that we had for you. Thank you for coming to represent the youth. Leader of Evidence, please step down the witness and call the last witness for today.

**Ms. Emily Kimani:** Our next witness is Witness Code Eight as per the cause list.

*(Mr. Bakari Ali Mohamed took the oath)*

**Ms. Emily Kimani:** How are you, Mr. Ali?

**Mr. Bakari Ali Mohamed:** Very fine.

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

**Mr. Bakari Ali Mohamed:** I am Bakari Ali Mohamed.

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

**Mr. Bakari Ali Mohamed:** I am a farmer.

**Ms. Emily Kimani:** You are seated before us today having recorded a statement as a victim of a bandit attack. Is that correct?

**Mr. Bakari Ali Mohamed:** That is the truth.

**Ms. Emily Kimani:** Make your brief presentation and also give us your recommendations.

**Mr. Bakari Ali Mohamed:** Bandits came to our village of Mapenya soon after independence during the days of Kenyatta. They caused chaos and took away our property. Finally, they raped our girls. Up to now, some of them have not been married. Some have all manner of diseases. They are not well until today.

**Ms. Emily Kimani:** You have told us that this incident happened in your village known as Mapenya. Which year did this happen?

**Mr. Bakari Ali Mohamed:** This was in 1963 or 1964. From there, they came back in 1999 and robbed people of money and shot one man who was badly injured.

**Ms. Emily Kimani:** You have stated the incident as rape for the women and beating and injury. How did this particular attack impact on you as a person?

**Mr. Bakari Ali Mohamed:** It affected me because all this happened to my family.

**Ms. Emily Kimani:** Were you hurt physically?

**Mr. Bakari Ali Mohamed:** I was hurt spiritually. I was not touched physically but all those who were injured were members of my family.

**Ms. Emily Kimani:** The issue of banditry; was it prevalent then and what is the position now?

**Mr. Bakari Ali Mohamed:** Now, things are okay. It is not as bad as it was before.

**Ms. Emily Kimani:** So, I would be right to conclude that the security situation is okay now?

**Mr. Bakari Ali Mohamed:** At the moment it is okay.

**Ms. Emily Kimani:** About bandit attacks, what recommendations would you give to avert such attacks?

**Mr. Bakari Ali Mohamed:** My recommendation is for the Government to look after my people who are ailing up to now. They are not in good health and some have not been married up to now. The one who was shot and those who were robbed were made very poor. The Government should look into this and see what it can do to help these people who have been made lame.

**Ms. Emily Kimani:** Other than the bandits attacks that you have told us about, are there any other issues that the people of Mapenya face?

**Mr. Bakari Ali Mohamed:** Nothing.

**Ms. Emily Kimani:** In terms of infrastructure, hospitals, schools?

**Mr. Bakari Ali Mohamed:** We have a hospital. Everybody is talking about the shortage of teachers in schools. Parents have to employ some teachers. Children do not perform well because the school committees are not able to employ teachers.

**Ms. Emily Kimani:** Thank you for your brief presentation. Your sentiments will be taken on board. We have no further questions for you. I will hand you over to the Commissioners.

**The Acting Chair** (Commissioner Namachanja): Professor Ojienda, do you have any questions?

**Commissioner Ojienda:** I have no questions. I just want to thank Bakari Ali Mohamed for his testimony and to express from the deepest of my heart sympathies and shared pain for the tribulations that his family underwent. I simply empathize. Of course, the underlying problem is that of security in the region. We will make appropriate recommendations on the question of security because Kenyans, wherever they may be

should be safe from attacks by militia and/or illegal groups. That is what is highlighted. I thank the witness.

**The Acting Chair** (Commissioner Namachanja): Mr. Bakari, thank you for coming to share with us concerning torture that your close family members including your sisters went through. A lot has been written about human rights violations and we have read that. We have also read a lot about torture, but it is one thing reading about a situation and another thing experiencing it. It is unfortunate that you experienced it. You are not alone. We have many witnesses who have come before us sharing similar experiences. When you were asked whether you were injured, you said that you were not injured physically, but you were injured psychologically. Unfortunately, after such an incident, the physical injuries are very open and can be seen and they can be dealt with, but what is left unattended are the internal wounds; the psychological wounds because they are not visible and they are never taken care of. Unfortunately, research has shown that when one goes through such an experience and is wounded psychologically, unless he is assisted, those psychological wounds will continue being there. It does not matter how long or how many decades it takes, they need to be dealt with. I know that you are an eloquent person, but also somebody who is still psychologically affected and hurting. I just have one question, after this incident, was there any support that was given to the victims to deal with their emotions or what is known as psychological wounds?

**Mr. Bakari Ali Mohamed:** The first group from 1963 and 1964 got help traditionally. The one who was shot in 1999, we put him on a lorry and brought him to Lamu hospital where he was treated and taken back but he has since died.

**The Acting Chair** (Commissioner Namachanja): Did any of them receive any counselling, including yourself?

**Mr. Bakari Ali Mohamed:** We received some counselling.

**The Acting Chair** (Commissioner Namachanja): We have been to other places where such counselling never took place. So, we thank the people who assisted you. Thank you for coming to share your painful story. Before we close, I would like to check if my sister Gertrude has any questions for you. She has no questions. Leader of Evidence, step down the witness.

*(Mr. Bakari Ali Mohamed was stood down)*

People of Lamu, the testimony from Bakari Ali Mohamed marks the end of our session for today. On behalf of the witnesses who have appeared before us, that is Hussein Said Elmawi, Helsi Sheik Dulo, Ali Gubo, Dosa Disa, Kururo Mohamed Mohamed Lali, Mohamed Bwana Sheikh, Mohamed Abdikadir, Athumani Ali Famao, Nuru Bashola Hajilo and Bakari Ali Mohammed, I would like to thank them for coming to share with us their testimonies. I would also like to thank the public for patiently staying with us, listening to the testimonies of the victims and affirming what the witnesses have gone through. Also, the team that prepared for these hearings, thank you very much. Our leader of evidence and the team, our regional coordinator and the team, thank you so much. The

hearings will continue tomorrow but we will have two parallel sessions running together. We shall have continued public hearings conducted by our male Commissioners, but for us, the female Commissioners, we shall have a special session with our fellow women. As you can see, they are very far and we have been straining to see them to gauge how they are reacting but tomorrow, we would like to get closer and share as sisters. Thank you so much. I hand over the programme to our Regional Coordinator for this region, Madam Sylvia Chidodo, welcome.

**Ms. Sylvia Chidodo:** Thank you very much, the Presiding Chair for today's hearings. I take this opportunity again to thank the Commissioners of the TJRC, ladies and gentlemen for your patience. As the Chair has said, tomorrow we will continue as you have been told. The venue for the women will be at Chepilago from 10.00 a.m. I know the women are aware of that and for those who do not have that information, please, tell them so that they can come tomorrow in large numbers. I will take this opportunity to call Maalim to pray for us. After that, I will ask you to stand up so that we can allow the Commissioners to go out after the prayer.

*(Closing Prayer)*

*(The Commission adjourned at 5.55 p.m.)*