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**ORAL SUBMISSIONS MADE TO THE TRUTH JUSTICE AND
RECONCILIATION COMMISSION ON TUESDAY, 10TH JANUARY,
2012, AT MUKUNGUNI HALL, LAMU**

PRESENT

Ahmed Farah	-	The Presiding Chair, Kenya
Tom Ojienda	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Tom Chavangi	-	Leader of Evidence

(The Commission commenced at 9.45 a.m.)

(Opening Prayer)

The Presiding Chair (Commissioner Farah): Good morning. I welcome all of you to our second day of hearings. Like yesterday, we will listen to the witnesses. I ask that you be silent and that you do not interrupt them. We also ask that you switch off your mobile phones. Photographs may be taken, but do not take the photographs of witnesses as they give their evidence. Avoid flash photography. Yesterday, you were good and I expect you to be the same today.

Leader of Evidence, call in your first witness, please.

(Mr. Simon Njagi Kareke took the oath)

Mr. Tom Chavangi: For the purpose of the record tell us your full names and where you come from.

Mr. Simon Kareke: My names are Simon Njagi Kareke. I come from Mpeketoni in Lamu County.

Mr. Tom Chavangi: You submitted a memo to this Commission with regard to citizens living with disability.

Mr. Simon Kareke: Yes, that is true.

Mr. Tom Chavangi: Tell us something about that memo.

Mr. Simon Kareke: I will start with a brief history of how the people living with disability in Lamu got together. In Mpeketoni, we first formed a group called “Mpeketoni People with Disability”. The members are drawn from various communities and are of various ages. This group was started in 1998 and was registered by the Social Services Department in 1999 as a self-help group. The aim of the group was to bring together

people with disability and enable them participate in public issues, including development. We wanted to advocate for the rights of these people even as we encouraged them to be independent.

Our main objective was to see improvement in the lives of the people living with disability. We wanted to ensure that they are independent and self-reliant. Ours was to help them by sensitizing the community on how they could live with them. We guide them as to where they can seek medical help.

We also advocate for the rights of the people living with disabilities, whom we felt were being disregarded. We looked into the possibility of putting up income-generating projects for them. We also look for training opportunities and rehabilitation centres for them. We look for donors and funders to cater for training and transport for the disabled.

At the moment, there is a goat project in Mpeketoni.

Mr. Tom Chavangi: What are the violations that the people living with disability face, especially in Mpeketoni?

Mr. Simon Kareke: First, there is discrimination. It begins at the family level and goes up to the Government level in the offices. Within the family, the disabled persons are hidden, so that they are not seen by the public. They are kept away from engaging in issues at the community level. They are ignored and stigmatized. The stigma comes from within themselves or from the community. They get the feeling that they are incapable of living like other people. They feel they are less human.

With regard to finances, it is difficult for these people. We have tried to set up income-generating projects for them. We are unable to access loans for these people. They cannot get loans. We contribute about Kshs10 per person per month. This is not much money and income-generating projects would help. However, we have not been supported fully.

Marriage among the people living with disability is also an issue. People are discouraged from marrying those with disability. This has penetrated even the churches and mosques, and they run away from the responsibility of uniting such couples. When these people get children out of wedlock, they get even more stigmatized.

We are generally ignored when it comes to employment. I attended an interview at one time and one of the panelists approached me and told me that because I had only one hand, they thought I would not be able to do many things.

Another challenge is the rehabilitation centres which are very far away from us. The fare to get to that place is not easy to come by. In Mokowe, there is a large piece of land. I would wish that the Government sets up a rehabilitation center there. It will alleviate the problem of transport.

There are many schools that have started special units for the people living with disabilities, especially mentally retarded children. These children feel that they are different from others.

There are people who pretend that they are there to help. They form groups ostensibly to help people with disabilities when in the real sense they want to benefit from them.

We have managed to help people who have a problem with mobility. With the help of the Association of the Physically Disabled of Kenya, we have managed to get wheelchairs, tricycles and crutches. We have managed to help our children join special schools and rehabilitation centres through a donor; the Lilian Foundation. We have more than 50 members who have joined the goat project in Mpeketoni. We have asked each member that every time a goat gives birth, they should donate milk.

We have helped widows by donating clothes and food. We have bought orphans school uniforms and even paid their school fees. We bought materials for widows so that they could build houses for themselves.

I am grateful that in our objectives, we have been able to bring together three groups within the district. We have Mpeketoni People with Disabilities and Tawaka People with Disability from Mokowe area. There is also Furaha which is on Lamu Island and that is why we call it "Mpe Mola". In our Mpeketoni group, up to now we have not less than 300 registered members. What we intend to do from now on---

I am sorry there is something that I have forgotten to mention. Together with this, we have been able to plant more than 12 acres of mangroves and these are very many. This is something that the disabled people have been doing together with an organization called Rikomap. Through the National Fund for Disability, we have been able to plant mangroves in Mkunumbi in Manda. The mangroves have been planted by people living with disabilities through the Mpe Mola organization. As you move around, you will find that some dustbins here have been installed. There are also environmental issues that have been addressed by people living with disabilities, and we are trying to show that we can do things that can be done by people without disabilities. One of our challenges is that we have a fishing boat project which has not really progressed well. It is under repair and we know that it will be able to work in a while. We also have a project for eco-tourism which as we thought was not possible. We wanted to be able to take tourists to the marine parks but that did not work out.

On the challenges that I may have experienced as a person, I feel that my rights have been violated because I am living with disability. As you can see, I do not have my right hand. I was involved in an accident in 1969. When I followed up for compensation, the Ministry of Labour did not help me much. When I try to go through an advocate, I realize that even if he is paid anything, there will also be a problem. This Commission should think about victims' money being paid through lawyers. Many people may be involved in accidents and five lawyers may offer to help, but when the money is eventually paid to the advocate, 80 per cent will be lost to the advocate. In fact, some

people do not get anything at all. This is an issue that requires to be looked into. We keep on getting more people coming to us because living with disability is not a special thing. Anyone can become disabled any time. That is one of the recommendations that should be looked into.

On the issue of the advocates who try to help people, you will find that when the compensation is paid, all of it ends up with them. As the chairmen of Mpeketoni People with Disabilities and Rikomap, I am also in the leadership of many groups.

Commissioner Ojienda: Could the witness give recommendations?

Mr. Simon Kareke: I would like to give recommendations and I do not know if I can attach what I had written about myself later. On the recommendations, one on people living with disabilities, I would like to ask that any forum which makes any decisions on development, especially within our county, must have representation at all levels. It should not just have handpicked representatives. It should have representatives who have been fronted by an organization of the people with disabilities. A handpicked representative is not responsible.

Secondly, people living with disabilities should be given financial support to be able to progress in life. They should be given access to loan facilities if they are able to pay back. Also, groups of the people living with disabilities should be given sufficient funds to start income generating projects. I know that, for instance, in Mpeketoni, we would like to be involved in income generating projects. We should be able to access funds to be able to run such projects, and every piece of land that has been given to people living with disabilities should be registered under some organisations in order to avoid people from grabbing them. There should be documents to prove ownership because land grabbing is so rampant at the moment. So, any piece of land that belongs to a group of people living with disabilities should be given the right ownership documents.

Special units for children living with disabilities should be started in every school. Even if not in every school, at least in every division, there should be special units. If possible, they should be boarding units so that the parents can pick their children at the end of every term. There should also be established rehabilitation centre within this county. We recommend two but one will do instead of taking our children all the way to Bura or Mombasa, which is very expensive. People living with disabilities who have children in secondary schools should be given priority in the allocation of bursaries. You will be surprised to find that some of us have children in secondary schools but we only hear that bursaries are being given. We do not know whom they are given to or how. People living with disabilities who have children in secondary schools should be given priority in the allocation of these bursary funds.

The other thing that I would like to be taken into consideration is that any private institution or any organisation that is started as a non-governmental organisation, whether it is a home for people living with disabilities or whatever it is, has to be inspected before being registered, because whatever is given only gets to the people who purport to be

running it. It never gets to help the children as it is intended. Now that we have the National Council for Persons with Disabilities, there is money that is given for people with severe disabilities to try and help them. Money is especially given to the caregivers, but because some of them are in private institutions. You will find that the private institutions want to be the beneficiaries rather than the caregivers, who are responsible for buying clothes or other things. So, these private institutions should also be investigated, so that they are not registered to benefit the wrong people.

Also, many homes or public places should be constructed in such a way that they are accessible to people living with disabilities. They should be people living with disabilities friendly. Even if there are stairs, there should be a ramp for somebody with a wheelchair to easily access these areas. On legal issues as I had mentioned, let us make sure that advocates who represent people with disabilities implement the decision of the court on compensation.

Those are my recommendations with regard to the people living with disabilities and I hope that the commissioners have listened to me.

Commissioner Ojienda: Thank you very much, Mr. Kareke, for enlightening us on the issues that really affect people living with disabilities, especially in Mpeketoni area. I would wish to inform you that next month the Commission will have special sittings; thematic hearings, to hear such things.

The Presiding Chair (Commissioner Farah): Thank you, Mr. Kareke, for your good presentation. As we have been going round all over the country, we have heard presentations from people living with disabilities. Yours is just to add to that. I now ask the commissioners to ask for clarifications.

Commissioner Ojienda: Thank you, Presiding Chair. I want to thank Mr. Kareke for his presentation that was very clear and that highlighted the state of the organization of persons living with disabilities in Mpeketoni. As the chairman, he has represented the group by making a very good presentation.

I just want to answer one question which he has raised. He has raised concerns about advocates or lawyers and the fees they charge when they act for the public or for people like him. Mr. Kareke, I want to assure you that every advocate takes an oath to ensure that he does his best for the public. Advocates are governed by rules of conduct and they have obligations both to the court, themselves and to the public. When they serve you on instructions, they are guided on charging of their fees by the Advocates Remuneration Order. There are scales on the fees that they charge and those scales set out the minimum fee that lawyers charge and not the maximum. It is an offence for an advocate to charge lesser fees than that is set in the remuneration order. Where a person feels that an advocate has not rendered professional services, that person can write to the Law Society of Kenya (LSK) or to the Advocates Complaints Commission. Both are run by advocates and they will advice and where there are issues of misconduct, they will deal with the matter. I am sure that you have done further consultations with your lawyers and any

costs that are due, you can agree with advocates on the fees that you pay and most advocates do a lot of free work or *pro bono* work. I want to thank you for raising the issue because I think what we must all strive to do is to provide appropriate service to all people including persons with disabilities. I just want to ask you one question. How many persons live with disabilities in Mpeketoni area?

Mr. Simon Kareke: Thank you very much. I forgot to mention that as one of the challenges because to be honest, the registered people are about 317, but those who have not joined our group are many. There are those whom we know and there are those who have been hidden in homes. I am happy because there was the Disability Act to ensure that there are severe repercussions for anybody who hides a disabled person. This is because some people hide them on the pretext that it is embarrassing to have a person living with disability. In Mpeketoni, we have nearly 800 people with disabilities.

Commissioner Ojienda: Probably one of the things that the Government should do is to ensure that the provisions on taxation of persons with disabilities are operationalised or effected so that they are exempted from paying tax. What is the most prevalent form of disability in Mpeketoni?

Mr. Simon Kareke: At the moment, mentally challenged children are so many. We also have those with various organs which are disabled like those who cannot walk as a result of polio or losing their limbs. Some of them are farmers and some are running businesses.

Commissioner Ojienda: What specific recommendations would you give if we are to prioritise learning institutions for those with disabilities? Where would you want them built?

Mr. Simon Kareke: At the least, every location should have one school with a special unit for those with mentally retarded children; that would be fine.

Commissioner Ojienda: Thank you very much, Mr. Kareke, for your testimony.

The Presiding Chair (Commissioner Farah): Mr. Kareke, thank you for your testimony. I would like to congratulate you for your very articulate presentation on the challenges faced by members of your organization and people living with disabilities as a whole. You have talked about what your organization and the other NGOs are trying to do but you never mentioned what the Government is doing. Could you mention two important things that the Government has done for people living with disabilities in your community in the last five years?

Mr. Simon Kareke: I had skipped that part. We have been helped a lot by the Government and I appreciate it. As I have said, we have a goat project which has more than 50 members. We got the money from the National Fund for People with Disabilities; that was money from the government to us. They helped us to start that project and also there was a bee keeping project, but the goat project seems to take a lot of the funds. We are also happy that it is working out well. From the National Council of Persons with

Disabilities, we also received Kshs480, 000 to begin a revolving fund from which members can borrow money. So, the members who are able to run small businesses or do any other work have been given some money.

There was not so much money, yet we have so many members. According to the instructions from the Council if somebody has disabled children, their guardian could take a loan on their behalf. At the moment, we have not less than 30 people who have taken loans and they are paying back, but they have to pay 2 per cent interest on the loans that they take. We are very happy that, that money has come from the Government. Even the Constituency Co-ordinating Committee helps us. When we send our proposals, they always approve them and there are a lot of things that we have done that can be seen clearly in Mpeketoni. For the victims, it has been encouraging for them. These are the funds that come directly from the Government. I also mentioned something about supporting the environment and this comes from Rikomap via the national fund.

The Presiding Chair (Commissioner Farah): Thank you very much. My next question is that you mentioned that in Mpeketoni, there are about 317 registered people living with disabilities and you have an organization. You mentioned also that they could be as many as 800. What is your organization doing to mobilize these people to register themselves as members?

Mr. Simon Kareke: Together with the Ministry of Health and also the Ministry of Social Services, in our meetings we always try to sensitize people on the importance of registering. Also, the national council does so because it wants to give aid to groups of people. That is the challenge. Some people refuse to register the disabled. I also thank the divisional head because we do this together. Last week, we had a stakeholders' meeting and he promised to convene another stakeholders' meeting. So, the leaders in the division have to speak one language to emphasise on the importance of sensitization and registration. If we have the funding, we will probably have a seminar to train even the leaders, because some of them think the issues of people living with disabilities do not concern them until one day when they will have a disabled person within their families.

The Presiding Chair (Commissioner Farah): Thank you. Finally, I would like to encourage you to do a lot of mobilization, particularly in your society to make people understand that there is nothing shameful about living with disability. It is not something that they did to themselves. It is something that they found. They have to deal with it. So, it is just a matter of giving some kind of civic education within your society and getting the people registered as many as possible.

The second thing that I would like to encourage you to do is for the people to turn themselves into a national voice, so that you can talk to politicians from a position of strength. People who need your votes will come, lobby and promise what to give to your organisation instead of you going to them and asking them to help. They will come to you for help and that needs organization. You also need to organize yourselves at the national level because your interests are identical. It is just a matter of aggregating that interest and presenting it as one particular group of nationals. During election time, you

could be very decisive. There was an American senator the other day who won the presidency by eight votes. So, even the 300 people matter, but you have to be organized and give good civic education to the people living with disabilities. Disability is not inability. You can do a lot of things. Thank you very much.

Commissioner Dinka: Simon Kareke, I think my fellow commissioners have said it all. I have also told you that in our records, we have a lot of presentations nationwide from people living with disabilities. We now understand their connection with the national organization and their individual organizations. So, you better follow the advice of my fellow commissioner. We thank you for having come all the way from Mpeketoni to speak on behalf of your fellow citizens, who are living with disabilities.

Thank you very much. Leader of Evidence, can we have the next witness, please?

Mr. Tom Chavangi: Commissioners and Presiding Chair, I pray we admit this memorandum as an exhibit.

The Presiding Chair (Commissioner Farah): Yes, it is admitted.

(Mzee Mohammed Shali took the oath)

Mr. Tom Chavangi: Mr. Mohammed Shali, welcome. Tell the Commission your full names.

Mr. Mohammed Shali: I am called Mohammed Shali.

Mr. Tom Chavangi: Where do you live?

Mr. Mohammed Shali: Tangawanja near Harasini.

Mr. Tom Chavangi: There is a statement which you brought to the Commission relating to how Lamu residents, especially Muslims, are harassed and tortured by the police. Could you explain that to the Commission?

Mr. Mohammed Shali: I was beaten by Kenyan policemen when I was coming from my farm. I have forgotten them but I know that I came to---. I had been working in my farm.

Mr. Tom Chavangi: What made them to come to your farm?

Mr. Mohammed Shali: They just came to my farm as a battalion.

Mr. Tom Chavangi: Do you know what happened when they came to your farm?

Mr. Mohammed Shali: They said that I was harbouring Somali people. I had two kilograms of sugar and they said that I was giving it to the Somalis, yet I was not harbouring Somali people.

Mr. Tom Chavangi: How many policemen came?

Mr. Mohammed Shali: Three battalions came.

Mr. Tom Chavangi: Were they about 40?

Mr. Mohammed Shali: Yes and I was beaten by one Kenyan policeman.

Mr. Tom Chavangi: How did he beat you?

Mr. Mohammed Shali: He beat me with his boots and I cannot work.

Mr. Tom Chavangi: I am very sorry, Mzee Mohammed. I am just asking you this because the commissioners want to know exactly what happened. What happened after your beating?

Mr. Mohammed Shali: I went to the hospital.

Mr. Tom Chavangi: What did the doctors tell you?

Mr. Mohammed Shali: They told me that I was harmed and I did not get any treatment. Currently, I cannot do anything. My legs pain a lot and I cannot even sit and pray.

Mr. Tom Chavangi: How long ago was that?

Mr. Mohammed Shali: It is almost five years. My friend called Shebwana who is dead now was also beaten up by the police. He was also beaten and he died a normal death.

Mr. Tom Chavangi: Currently, what do you do?

Mr. Mohammed Shali: I just sit in the house because I cannot do any farming.

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

Mr. Mohammed Shali: I do not do anything.

Mr. Tom Chavangi: Do you have children?

Mr. Mohammed Shali: Yes, but I cannot take my children to school because I cannot pay fees.

Mr. Tom Chavangi: Do you have a wife?

Mr. Mohammed Shali: Yes I have a wife who is old.

Mr. Tom Chavangi: Do you have one wife or more than one wife?

Mr. Mohammed Shali: I cannot marry more than one wife because I do not have anything. I have one wife and four children.

Mr. Tom Chavangi: You are saying that your children do not go to school because you cannot pay fees and this is because of the way you were beaten up and cannot work?

Mr. Mohammed Shali: Yes, and I cannot get food except from charities. I just beg for food.

Mr. Tom Chavangi: What would you like to tell this Commission?

Mr. Mohammed Shali: I would like to be assisted.

Mr. Tom Chavangi: How would you like to be assisted?

Mr. Mohammed Shali: I would like to be assisted on the issue of school fees, food and medical care.

Mr. Tom Chavangi: The witness is 74 years old! I will give you an opportunity so that the commissioners can ask you some questions so that they can advise you on how you can be helped and the procedures that you can follow to get assistance. However, did you report the act of the policeman who came to beat you in your farm?

Mr. Mohamed Shali: I went to the police at Lamu Police Station and the District Commissioner.

Mr. Tom Chavangi: Did they give you the OB number?

Mr. Mohamed Shali: Yes, but I misplaced it.

Mr. Tom Chavangi: Do you know the year or the month when you reported?

Mr. Mohamed Shali: I cannot remember the year but there are people who can help me.

Mr. Tom Chavangi: We will see how to follow up this issue.

The Presiding Chair (Commissioner Farah): Thank you. I will now give a chance to my fellow commissioners.

Commissioner Dinka: Thank you, Mr. Shali, for your testimony and for taking your time to come very courageously and going through that very bad experience and to tell us the story. We have followed your story carefully and as Mr. Chavangi has said, we will try to help by finding out what had happened. In some areas, you may have gaps of memory but after you were beaten up by the police, you were taken to Lamu General

Hospital and after two weeks, you were transferred to Coast General Hospital, Mombasa. You were there under medication for two years. Do you have any piece of paper that shows you had been to those two hospitals and what did they find out?

(Mr. Shali looked for some documents)

If you can find it, later on, you can give it to our staff but we believe your story but for us to help you, it would help to have some documents. However, do not worry; we will do our best to assist you.

Mr. Mohamed Shali: Thank you.

Commissioner Ojienda: Thank you, Mr. Shali. We have heard for the umpteenth time stories about police brutality and many people have suffered. I sympathize that you went through experience but I want to assure you that the new dispensation has with it police reforms and we will now have a national police service that will respond to the needs of the people and will ensure that it will not inflict force or pain or violate human rights that define that force. So, I want to thank you for your testimony and definitely this will contribute to the recommendations that we will make to the betterment of the administration of justice in this country.

The Presiding Chair (Commissioner Farah): Mr. Shali, thank you for your presentation. I know that 1970 is not yesterday but is it good to see that your memory is clear. When we were in Garbatula, we also heard how the Kenya Police and the Kenya Army did a lot of things to the people there even earlier than you in 1965. We will take up your case and thank you for taking time to come to us to explain all your problems.

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

(Mr. Shali was stood down)

(Mr. Daniel Mwangi Muiruri took the oath)

Mr. Tom Chavangi: Welcome, Mr. Muiruri! Where do you live?

Mr. Daniel Muiruri: In Mpeketoni in the central area. I am a farmer.

Mr. Tom Chavangi: You had recorded a statement with regard to what you experienced in 1998. Could you explain what happened?

Mr. Daniel Muiruri: Let me start from the beginning. From 1990, we had trouble with the Shiftas to the extent that our lives were completely disrupted. They bothered us from 1990 up to 1998. I did my exam in 1993 and that year, the Shiftas were always here and so I did not do my last paper properly. They bothered us till August 1998. They came at about 2.00 a.m., and looted my father's shop. I tried to run and they shot me in this leg. I was taken to Mpeketoni Hospital after the neighbours had come and helped us. Police of

patrol who found us on our way to the hospital took me to Mpeketoni Hospital but I could not get help. So I was taken to Lamu District Hospital where x-rays showed that the bullet had broken my bones and ruptured muscles. It cost a lot of money that my father sold all the livestock to pay for my treatment. When I was in hospital, the Shiftas went back and stole everything that was left.

Mr. Tom Chavangi: How did you know they were Shiftas?

Mr. Daniel Muiruri: They came close to me and they were hidden in kangas and they had guns. They were either Ormas or Somalis.

Mr. Tom Chavangi: Can you differentiate between the Orma and Somali?

Mr. Daniel Muiruri: No! But I thought they were Shiftas. I believe they were because when I was in hospital, some officers came to me and I asked them and told me that from the report they had, it was the Shiftas.

Mr. Tom Chavangi: So what happened to you in 1998?

Mr. Daniel Muiruri: I was sleeping and about 2.00 a.m., I heard dogs barking at my father's house and we heard my brother calling us. When I came out, they had already untied the cattle. When I tried to run away, they shot me from behind. The bullet exited through the front.

Mr. Tom Chavangi: Do you still have the scars? Would you show them?

(Mr. Daniel Muiruri showed off his scars)

Mr. Tom Chavangi: Those are injuries sustained by the witness as a result of the attacks by the so-called *Shiftas*.

Mr. Muiruri, it is fortunate that you are still alive! What would you like to recommend to the Commission?

Mr. Daniel Muiruri: I want to request this Commission to present my information because I have a family to fend for.

Mr. Tom Chavangi: Is that all?

Mr. Daniel Muiruri: If it is possible to present this so that I can get a little compensation to help me feed my family that would be appreciated.

Mr. Tom Chavangi: Thank you, Mr. Muiruri!

The Presiding Chair (Commissioner Farah): Is that the end of the evidence?

Mr. Tom Chavangi: Yes, it is.

The Presiding Chair (Commissioner Farah): Mr. Muiruri, thank you for your presentation. I just have one clarification. These people who attacked you, were they bandits or *Shiftas*?

Mr. Daniel Muiruri: I would not explain that clearly but according to the information that the doctor wrote down -this is a photocopy---

Mr. Tom Chavangi: This is a report from a discharge abstract from Lamu District Hospital.

The Presiding Chair (Commissioner Farah): Thank you! I think the *Shifita* menace had long expired so it was banditry. I will now give a chance to the Commissioners to seek any clarification.

Commissioner Ojienda: Thank you for your testimony. You have related your experience of your attack in 1998. I just want to know whether the Mpeketoni area has sufficient security at the moment.

Mr. Daniel Muiruri: At the moment, there is sufficient security because the bandits no longer come in.

Commissioner Ojienda: Who are your neighbours?

Mr. Daniel Muiruri: They are mixed but a majority is Kikuyus. When you go to Kipini, you have Pokomos and Giriamas.

Commissioner Ojienda: I mean your immediate neighbours but I trust that you live in peace with those communities. Is that the position?

Mr. Daniel Muiruri: Yes!

Commissioner Ojienda: Thank you! One of the things that I must highlight is that as Kenyans we have a need to learn to co-exist with one another so that as a community that came from Central Kenya--- I am happy that you have found a home in Kipini and Mpeketoni and that you live happily with the Pokomo, Giriama and Somali neighbours and I wish that all Kenyans will learn to live together in peace.

The Presiding Chair (Commissioner Farah): Mr. Muiruri, once again, I thank you for coming all the way from Mpeketoni to give us your evidence.

Leader of Evidence, discharge the witness and call in the next one.

(Mr. Daniel Muiruri was stepped down)

Mr. Tom Chavangi: We have three additional witnesses who are not on the list. I have requested them that we shall give each ten minutes.

*(Councillor Hussein Abdalla
Taib took the oath)*

You have come before this Commission with a memorandum on Lamu County Land Crisis. These are issues we have heard before but we want you to be very specific on the crisis that you want to present before this Commission.

Mr. Hussein Abdalla Taib: Thank you for this opportunity. I have a memorandum that I prepared and part of this I managed to share with the Parliamentary Lands Committee and even when the Minister for Lands and his team were around in this area. I wish to start at the page with the map of Lamu that has been in place for a long while. You can see the boundary starting from Witu, Mpeketoni, Central Faza and Kiunga divisions very equally distributed in terms of area. Unfortunately, on page 2, there is another map indicating livelihood zones and divisions in Lamu starting in Witu, Mpeketoni, Hindi, Kiunga, Kizingitini and Faza. Hindi has been expanded in such a way that majority of these people in front of us here are not aware of it. The boundaries have come into our area; the area being occupied by the Bajunis and Bonis squeezing us deeper. Faza Island is a dotted green portion next to the blue one and this is where the majority of the Bajuni community hails from. The blue zone is presumably the Kizingitini Division.

Onto the contents of my memorandum is a short history of how Lamu came to existence. We have been in existence for over 1,000 years. However, through the years, the indigenous communities in Lamu have undergone numerous challenges; neglect and marginalization from the Central Government. Paragraph 3 is about land ownership. We were governed under the British Land Ordinance that was transferred to the GoK in 1963 under the Government Land Act, Cap.280. This vested all the powers on leasing, granting, dispossession of this land to the President. Unfortunately, the Government has refused to recognize our customary land tenure and in the process they had done to us what you have heard from the rest of the guys since yesterday. We have been reduced to squatters in our land of centuries. We were given title deeds late this year under the squatter regularization project and it is very unfair for the land that we have owned for centuries to be referred to as squatter land.

Another problem is the county leadership; ineffective leadership, malpractices and failure to address these issues for years since Independence. The land in Lamu County can be divided into livestock rearing Ormas, mainland forest dwelling Boni, the mainland farming Bajuni, Sanye, Giriama and to some extent Pokomo tribe and the island fishing and Bajuni farmers. The injustice that these communities have undergone was dramatic in 1972 after the establishment of the Lake Kenyatta Settlement Scheme. Uncontrolled expansion of settlement scheme and high profile land grabbing syndicates in collaboration with the Provincial Administration and respective Government Ministries have devastated these communities ever since. The Ormas grazing corridors comprise of a large stretch of land that has existed for centuries and has been used by these

communities for generations. Unfortunately, what we see now on the ground is that a lot of farming has been extended to these areas and the grazing corridors are now being threatened. These corridors have been accommodating the farmers from the rest of the country from as far as Garissa and elsewhere during the drought season. Unfortunately, these have been threatened and soon livestock farmers will have nothing.

The plight of the Boni tribe can be compared to an orphan community and I do not need to emphasize on this because you heard yesterday what they have been going through. But the threat is that the Boni, Lungi and the Lori forests are significant natural resources that have been lying idle for years. These are the same areas that the Bonis and the Bajunis through the years were using for agriculture. With the introduction of the Dondori National Reserve, we were forced to go into the lesser fertile areas and now those less fertile areas are now being threatened by powerful land grabbing syndicates leaving us with nowhere to go.

The mainland Bajuni and Sanye communities represent the first Kenya's IDPs as you have heard since yesterday. This had more to do with future land acquisition programmes rather than security reasons. The Sanye community is an example of a community that has never been mentioned and these are the people who live in Mpeketoni in Mpunguya. With the coming of Lake Kenyatta Settlement Scheme, these guys were forcefully evicted and are now scattered all over the district.

Now we come to the Bajuni Community. This is the community that hails from there. We have Lamu, Manda, Pate, Ndau and Kiwayu slands. As I said earlier, these are all islands that have been in existence for more than 1,000 years as witnessed in Siyu village on the architectural designs and whatever culture they have. These communities are scattered in 20 different villages within the archipelago and the population is about 20,000 to 35,000 people.

For centuries we have had trade with the outside world and we did a lot of good things. But for the last 40 years our lives have been in tatters. The threat is that as earlier stated most of the land in Lamu belongs to the so-called government and for whatever reasons the community and the leaders had no rights whatsoever on their land.

We have lived on this land for years and we never had documents or title deeds to prove our ownership rights and privileges. With Shungwaya going to court as you heard yesterday, this prompted another system of land allocation that was backdating of documents. So, from the time Shungwaya went to court, all the land that had been allocated to the grabbers was backdated to the time before the matter went to court.

Now coming to the port, as you heard yesterday most of the speakers were supporting this; only one, that is Mohammed Bwana from Shungwaya had different views regarding this. My view on this is that so far an environment impact assessment has not been done yet by the Government. We have a lot of reservations regarding the future of these areas. The mangrove swamp, the widespread channels, the deep waters, colonies of corals, varieties of sea weeds and marine life provide a unique environment for building and

shelters of sea species. The area is also very important for fish migratory route along the East Coast of Africa and the effect of the food chain will definitely be disrupted. Through the years the Government had policies of mangrove environment protection and our people have been deprived their rights to plough into the mangrove forest for years. Now with the coming of the port, the issue of mangrove now never seems to be an issue any more. However, this aside, the Government so far has failed as you have heard, to include the main stakeholders in this area in the development of this port. They have taken a position in Nairobi and elsewhere; they have taken whatever land that they feel fit for themselves and their cronies, leaving us behind with nothing.

I am a civic councillor from Lamu County Council. I am not aware of anything that has been going on save for late last year when the Vision 2030 invited us through our mobile phones to converge at the KICC building in Nairobi for some meetings on the Lamu Port in the northern corridor. We had to foot our own bill to go to this meeting.

It is unfortunate---

Mr. Tom Chavangi: Councillor, I would urge you to go to your recommendations. The memo that you have given us is very precise. We have experts who will go through it. I would urge you to go to the recommendations so that we can allow the other witnesses to speak.

Mr. Hussein Abdallah Taib: Thank you. Let us go to the last two pages on my recommendations. Sorry this was initially done for a parliamentary committee. I failed to change this, but we can change to TJRC.

- As per the December, 2009, Parliament adaptation of the new National Land Policy that entails the Commission protection and registration of community land rights and resources and Article 63 of the Kenya Constitution promulgated in August, 2010 which states that community land shall be held by the communities identified on the basis of its authenticity, culture or similar community interest.
- Call upon the reservation of all mainland community lands to safeguard them from physical invasion; the Bajuni Islands, the mainland Bajuni areas and the Orma.

Just to dwell on this, our way of life through the years has been for the Bajuni communities on the islands to go to the mainland for farming activities during the rainy season. This is where the fertile land has always been compared to the harsh climate on the islands. Due to abundance of land, shifting cultivation prevailed. All the communities from the islands had farming blocks on the mainland. For example, the Bajuni Islands from Kililana right opposite Lamu here, Magogoni where the port will be coming, Kwasasi, Ngini, Maguma, Ongoni, Ndununi, Wange, Shebere, Kilimanjaro, Dondo, Kidasini, Sadani, Bumbe, Mwathi and Vipingoni. These are the areas that we the Bajuni communities and I, in particular, have been fighting to have reserved as community land because with the coming of the port, most of the prime areas have been taken away from

us. So, we are fighting for this to be recognized as our land that we will be dwelling on for our future and that of our children.

The mainland Bajuni areas are from Mkokoni that is on the north east of Pate Island, Ashuwei, Sendeni, Mvundeni, Rubu, Mwambore, Kiunga and Shakani. This is the land that our ancestors, the first IDPs were chased away from. This is the area from Mkokoni northwards to Kiunga. The Boni areas is Barigoni, Bovei, Milimani, Basuba, Mangai, Mararani, Sankuri, Marereni and Kiangwe. These are the areas that the Boni have been dwelling on through the years. Unfortunately, so far, no one has ever decided that we have some rights over this.

The vast mainland grazing areas Dide Warede, Mowa and Fanda Nguo, these are the areas for the Ormas. So, we are calling upon the Commission to help us on identification and protection of these lands because most of the land where the port will be coming has already been taken away. The irony of this is that we are opening a corridor for the independence of southern Sudan because the whole world witnessed that they are independent and now they are looking for a safe haven for their oil and what not; that is why they are fighting for the Lamu port.

Amazingly, the same people who will be accommodating these pipelines are having their rights and privileges ignored and abused. This is very unfortunate and unfair. Therefore, we are asking for an environmental impact assessment to be done. We are requesting for identification, revocation and restoration of all our community land that has been illegally acquired or grabbed, for example, the grazing corridors and the Tenewi Island.

Tenewi Island here right opposite Mpeketoni. This was a landing site for the fishermen through the years during turbulent weather and terrible waters. It was the place where the fishermen would camp and dry their fish. Unfortunately, it has been given away by a powerful politician from this area and now some Maasais have been kept there. In terms of fishing, our fishermen do not even have a safe haven. This is the agony we have.

Another recommendation is apprehend and prosecute all those involved in the abuse of office and implicated in illegal land allocation transactions in the county. Compensate all communities and victims of the fraudulent grabbing in the Manda area. You heard about the Manda area. First, it was the PC Mahihu who came and chased away the people on the pretext that the Government wanted to put up a base. This now is a recreational facility for princes. It is a beautiful beach resort. It has been converted and the few people still living there were recently evicted, save for some of the few politicians and the civil society organizations, who challenged this and now the matter is in court.

My parting note is that we have heard a lot from the communities and many more have got a lot of issues. Yesterday, the whole country and the world got word that the Interim Electoral and Boundaries Review Commission (IEBRC) had come and they were sitting on the same table here. We came and presented our position on the future allocation of the boundaries. The unfortunate thing is that yesterday the results were out and Lamu East District, the area that I come from was given only two civic wards. A whole

constituency was given only two civic wards and Lamu West that comprises of the people that have come from elsewhere has been given eight civic wards. My hon. Commissioners I think this is already proof of the neglect and marginalization that we have been crying all along for and now this has actually happened. The community is very annoyed. The issue is: For how long will we sit, watch and wait? I think we will run out of our patience very soon.

You can see that there are a lot of chairs here, but the people that are in here are very few. We need to ask ourselves why. It is because endless committees, commissions, Government delegations through the years have been coming here and sitting on the same arena and, once they go away, they forget everything behind. The people are saying we have had enough, but I say “No”. This is a different approach from the past. We have a lot of faith in you. In case you will let us down, our only alternative is our resolve to go and join hands with the MRCs.

I declare myself in this room here, I am willing and ready any time because I have exhausted all my patience in trying to cool down the masses on one hand and talking to the policy-makers on the other hand. They come and go away and nothing happens.

My last question is, what makes Ouma from Kisumu, Njoroge from Nyeri and somebody else from elsewhere in Nairobi or elsewhere to have the right to be given portions of the area where the port will be built and avoiding Hussein from Faza the right to own part of his share of land? Lamu County Council is one of the poorest in the country. We do not even have a single penny from the port. People have acquired land and backdated their documents. If you go to the Lamu County Council at the finance section you do not see a single rate being paid by these people. Why is it so? For how long have they owned this land? This thing has been here for the last two years. That is when this land grabbing syndicate came about.

You have heard part of this is for sale. These people are only being used here during the cultural festival when the world comes to Lamu to see dances and dhow races. After that they are given calves and a lot of dancing and they go back into poverty. You heard about the Bonis. They do not have a road network. If you travel for a distance of less than 100 kilometres, you can take 24 hours. Two days ago as I was coming for this meeting the road from Mombasa to here takes more than eight hours which is 332 kilometres. We have 1,190 kilometres of half road. It is taking us three hours. The most hurting thing is that you go up to Kibaoni on the junction going to Mpeketoni settlement scheme the road is so wide and clean that if you are going to Tana River by road you go through Mpeketoni for the sake of you just knowing the terrain and see it for yourself. The bus was zooming as if it was an aircraft on the runway. All along the road we are going for less than 10 kilometres an hour. The bus had to just stop. Yesterday from 7.00 a.m in the morning it reached here at 8.30 p.m. in the evening because the whole axle came out. I was just talking to another lady from my home area. What else do we want now? This is too much. This is painful. There is poverty. The people live on less than a dollar per day.

Mr. Tom Chavangi: I think you have in a very explicit and precise way, brought out the issues and in a very emotional way; in a very different way from the rest of the speakers. I believe this Commission has been touched by your presentation. It seems your presentation has been more of a presentation and discussion. You have actually answered some of your questions. I pass you to the Commissioners, probably, to clarify one or two things to them.

The Presiding Chair (Commissioner Farah): Thank you, Mr. Taib. We have heard you. We have seen your memorandum which is well-written. It gives the background. It analyzes the problem and then it gives a series of recommendations. So, we thank you for that. I now ask my fellow Commissioners if they want to seek any clarifications.

Commissioner Ojienda: Thank you very much. You have spoken both as a local and as a leader. One of the things we are doing is to have people speak about the pain that faced this country so that people get justice through telling the truth. That is what will reconcile Kenyans. I know reconciliation is difficult to get if you do not have justice.

We want to be able to assure Kenyans that justice will be done. You have talked about the Mombasa uprising. We know that previously in the Press we read about your movement advocating for cessation. You have highlighted that unless the issues raised by the people in this area are addressed, then they should consider themselves foreigners in this country and that they must form their own republic.

What is the best solution? What would you recommend to ensure that the wishes of this group form part of our recommendations, so that our country Kenya remains united and our people see justice done to all?

Mr. Hussein Abdallah Taib: I have put down here 13 recommendations. If we take them seriously, we may find solutions to our problems. The most hurting thing is the issue of land. Every time you listen to the radio, the talk shows everywhere you go, people are concerned with the issues of land.

The building of the port, for example, I do not see any benefit that the local community will derive from it. My teacher Mwalimu Said said we may end up selling *maharagwe* through this port. That does not make sense to us.

(Mr. Taib broke down and wept)

The Presiding Chair (Commissioner Farah): Let him cool down.

Mr. Hussein Abdallah Taib: If you decide to be firm in this community, nobody will listen to you. I am a leader. I did not come into politics to enrich myself. That was not my agenda. After seeing through the eyes of the local leadership, whoever wants to become a leader, pops up and says “I want to become a leader” and he is actually given an opportunity. After five years, they say they want to throw you out. But your five wasted years is like ten wasted years for your community. If you have wasted five years for your

community, other communities have made major strides in development. So, I decided I want to be part of this. That is how I came into politics. I want to be different from the rest. Thank God I have set a standard.

Now if anyone wants to become a councillor, say, we want a councillor of this or that calibre. We have the right calibre and we thank God for that. The frustrations we encounter are not from here, but from the Central Government. People in Government must change their attitude. Our health facilities in this island are in tatters. They do not have medicines and other medical gear. It is a pity that you cannot be treated for a simple ailment in public hospitals. We normally seek medical attention in the private health facilities. Sometimes we buy drugs from private chemists and pharmaceutical companies. Just imagine a person with a toothache in the remotest part of the island. He will stay awake the whole night in pain and in the morning when he visits any of the Government health facility he will not be treated.

Personally, I have fought to have an ambulance for my people. Even though the nominated MP wrote a couple of letters, I went to the Provincial Director of Medical Health Services. We did everything right. However, when the ambulance came, it was taken to Mpeketoni. It was shown as belonging to Lamu District Hospital, but it was sent to Mpeketoni sub-district hospital. I went to the PDA to inquire, but I was told it was an order from Nairobi that it be taken to Mpeketoni. There is nothing we could do. The hon. Yakub and I struggled a lot to get this ambulance brought to Lamu, but we did not succeed. We were overwhelmed by other communities. The coming of the counties has no meaning to us any more. It has come a bit too late. Now they are the majorities. They have taken the land and now they are craving for political positions. They want to have equal shares with us. Look at the example of the two civic seats. We have been given only two civic seats from six. We have been given two seats. They have been given eight. What does this imply when you go back to the county assembly? How can we represent the indigenous community? I have been fighting for this community land. Mr. Orengo was here twice. Last time he asked me to go to Nairobi. We had serious talk with him, but I know it is all politics. When he goes away he forgets everything.

We want land issues in Lamu addressed. There are many poor people in Lamu. We are now told that the Government wants to build a port here. How will the local community benefit from it? Wherever I go, people ask me to give them land because I am a politician from Lamu. I do not have land to give them. For your information, I was deprived of my salary from the council for a whole year. I personally went to see the Deputy Prime Minister, but he was not there. He was in Ikolomani for the election campaigns. I was deprived of my salary because I did two things. I wrote very strongly-worded letters, one to the county chairman informing him how things were going on in the county, about poor quality of work and the other letter stated that they had given out the Dondori Game Reserve. It is a magnificent reserve. The KWS are now developing this and our tourists have to go to Maasai Mara or Tsavo for site seeing once the port is in place. We have a tourist resort, a game park and a beach. So, they have leased it out for Kshs100, 000 a month. Maj.Gen Farah is aware of that area. He has been living in Mbogoni. He knows about the treasures that we have in this place.

I wrote a letter to the Assistant Director of KWS petitioning this move, but instead of listening to grievances, he deprived me my salary for a whole year. So, these are the challenges that we have.

In short the Central Government has to change. Seriously speaking, this Commission is my hope because I am tired. I have given up. Whenever I get a chance, I always express my sentiments but nothing happens. I have confidence in this Commission. The parliamentary Committee on Lands and Natural Resources was here twice and we told them the same story. We took them there, but we do not know what happened when they went to Parliament. They have never compiled their report. They came with a lot of vigor and power, but once they went back to Nairobi they were quiet until Sheikh Dor, nominated MP followed up these things. I told that committee that politicians are the source of our problems. They are supposed to be our mouthpieces in the Central Government, but they have allocated themselves most of the land you see here. They have sold off the islands. They have done everything and the Government is aware of this. Because of that and the filth in their hands they have no other choice, but to accommodate other “hyenas” to do whatever they want to do in this area. So, that is the problem. We do not have representation in the higher offices. They are all quiet and enjoying their luxuries and the wealth they have accumulated from this leaving these communities here to languish in poverty. You have seen nothing. Lamu is beautiful. You come here and go back home with beautiful memories, but if you go to the island you will find that we do not even have running water. Lamu has no electricity whatsoever. There is no single household with running water. There is nothing and yet we will be hosting the second largest port in Africa.

What is there for the community? All the land has been taken away. The two Principals; both the President and the Prime Minister---

The Presiding Chair (Commissioner Farah): Okay, we have heard you. I think we have heard you more than anybody else. So, I think you had better calm down to give others the opportunity. I think the Commissioners have no more questions for you because it is very clear. It is an honour and a challenge for us when you say we are the last hope. We will approach this with the seriousness it deserves. We appreciate the time you have taken to come and present before us. Obviously, the Lamu people have also issued their memo and you have just added onto it very emotionally. We wanted to give you ten minutes, but you have taken 45 minutes.

Leader of Evidence, could you stand him down and swear in the next witness?

Mr. Tom Chavangi: Presiding Chair we admit these memoranda as annexure.

The Presiding Chair (Commissioner Farah): It is so admitted please.

(Mr. Kalmey Mohammed took the oath)

Mr. Tom Chavangi: Tell us your names again.

Mr. Kalmey Mohammed: My name is Kalmey Mohammed.

Mr. Tom Chavangi: Where do you live?

Mr. Kalmey Mohammed: I live in the area of Koreni.

Mr. Tom Chavangi: You have come before the Commission. What would you like to present?

Mr. Kalmey Mohammed: I thank God for enabling me to live today. I have come before this Commission today to explain that I am a person who lives in Koreni which was previously known as Masanga. I was born in 1949 in Ijara. Before I was born, my parents were living in a place called Masaka which is currently known as Koreni.

When I listened to the leaders, especially the people of Lamu they were talking about the Orma, the Sanyi but there are a few people called Somalis who are minorities in Lamu.

Mr. Tom Chavanga: Where is this Masanga?

Mr. Kalmey Mohammed: Masanga is within Kiunga and Mpeketoni divisions.

Mr. Tom Chavanga: What district does it border?

Mr. Kalmey Mohammed: Masanga is part of Lamu District.

Mr. Tom Chavanga: What district does it border?

Mr. Kalmey Mohammed: We border Tana River and on the other side we border Ijara.

Mr. Tom Chavanga: Continue.

Mr. Kalmey Mohammed: Before I was born my parents were living in Masanga. They had to run away with their animals because at that time there was no medicine. They ran off to Ijara and stayed there for a while. They came back because they are pastoralists and they were looking after their livestock.

According to my parents, they say they came back in 1963 when I was very young. While in Koreni we were attacked by *Shiftas* from Somalia. We have Ormas, the Wasanyi, Swahili, and Somali and there is a group called Korae who live in Mokowe. When the *Shiftas* came our people dispersed. Some went to Witu in Tana River and others ran off to Ijara. Another group stayed in Mokowe. Until now, the Somalis who ran away from Koreni still live in Mokowe. There are some in Ijara. We are the group that went to Ijara. My parents stayed there for a while. We were scared of the *Shiftas*.

In 1974 or 1975 we came back to our area now known as Koreni which previously was known as Masanga. We started our normal lives as pastoralists. We grazed in that area, but after two or three years, poachers came from Somalia. They were poaching elephant tusks. When they came in the area they started attacking our *manyattas*. They would come to the elders and insist on being given tea or something. After leaving, the Kenya Wildlife Service personnel would invade our *manyattas* and burn down houses and beat up people. It led to dispersal of people again like they did in the past.

We moved from the area and went back to Ijara area and lived there. Looking back we wondered what would happen to our homes after we had run away. Every rainy season we would send people to come and graze in Koreni and our youth would come here and graze our animals. We would live together with the people of Koreni, the Orma and the Wasanyi.

There was a lot of land in Mpeketoni area. Now, grazing land has been messed up. So, we officially moved to come and live in Koreni. We stayed for a very long time in Ijara and we came officially back to Koreni. But after a short time in 2000 a tycoon came from Mwingi area and took over that land. He was claiming that he would be coming to do some salt farming on the land. It was a very large piece of land. It is from Melhoi to a place called Koreni which is about ten kilometres along the road. On the other side, it would be about 15 to 17 kilometres. The people of Koreni who are farmers and fishermen used to sell the mangroves as a way of earning a living. One person came and decided to block us. He insisted that nobody was allowed to come in whether an individual or an animal.

I would like to request this Commission to see the piece of land and see where we were evicted. There is still evidence there.

This was the very first town which had IDPs in Kenya in the Coast, and that is why we told them their problems and we showed them the area. The last time it was a Parliamentary Select Committee which came and we explained to them at length; the problem that we have.

The problem of the Shiftas is historical and I do not want to go through it. But this kind of injustice we are suffering now is what I would like to explain to the Commission and to all Kenyans and anybody else who is here. We live about 500 to 600 people and we have a primary school up to Standard Eight and a Mosque, yet the whole area was taken up by one person. If a person passes through that land he is attacked by the General Service Unit (GSU), beaten up and he is not even taken to court. He is detained for a whole day and released in the evening.

Commissioner Ojienda: What is the size of the land that has been grabbed?

Mr. Kalmey Mohammed: I do not know exactly. I would like, if possible, you send somebody to go with me or one of you to come and see how big the land is. It is about 10Km along the road and if you go to the other side---

Commissioner Ojienda: The five hundred people cannot stay in such area.

Mr. Kalmey Mohammed: We live in a very small area with our livestock because it is a ranch.

Commissioner Ojienda: Do you have title deeds for the land?

Mr. Kalmey Mohammed: We have no title deeds. We do not have any document at all! We just used to live there.

We went to the lands office and tried to find out about this tycoon and, these are the documents to that effect. We asked the lands people in Lamu and Kipini about these people who had registered the land in this person's name--- These letters show that this person was never allocated that piece of land. Even up to now there is a letter from NEMA and another one from the surveyors saying that this land has never been allocated. But the person claims that he has a title deed dating back to 1998 which had been back dated. But the letters show that he did not own the piece of land. So, we have experienced this injustice and I will show you that this has been done by the Local Government.

At the moment we have people called KPR who have been put there to guard the area but they are only guarding this piece of land for this person who claims ownership. They have been given a vehicle which they use to go round and any time they see any other vehicle going to this piece of land, they call the police who came and arrest them immediately. This is an injustice we have suffered from and it is an injustice which I do not know whether it will be seen all over the world or it has already been seen because it is like the Shifta problem where there is an emergency.

Commissioner Ojienda: The title deed was issued in 1998.

Mr. Kalmey Mohammed: I was told so and I never saw it.

Commissioner Ojienda: You never saw the document. We want to have all documents so that when we make recommendations we have all the facts and documents. But I want to ask you a few questions, what have you done as a community to get title deeds?

Mr. Kalmey Mohammed: There is nothing we have done as a community because wherever you go the civil servants tell you that this is not possible.

Commissioner Ojienda: Over the years have you taken any steps to secure titles deeds on the land on which you live?

Mr. Kalmey Mohammed: No. This is because all the land was taken by the person. There is only one very small piece of land that was left.

Commissioner Ojienda: Who lived on that land before you?

Mr. Kalmey Mohammed: As I told you, my parents lived there even before I was born and now I am 63 years old. I have lived there for more than ten years.

Commissioner Ojienda: Have you filed a case in court on that matter?

Mr. Kalmey Mohammed: We have never gone to court, but we have been before very many commissions from the Ministry of Lands.

Commissioner Ojienda: Why did you not go to court?

Mr. Kalmey Mohammed: We wanted the Ministry of Lands to handle the matter because they kept telling us to wait so that they could resolve the issue. I took the Minister for lands there on 13th September, last year up to where the fence is. We have told him to look at the problem and he asked to wait for 14 days, but he never managed to get back to us and that was our best expectations. We thought the Ministry would take a step and we did not want to go to court because everybody said once a matter is in court, they cannot interfere. So, we are still waiting for the Minister's action.

Commissioner Ojienda: What development have you undertaken on the land?

Mr. Kalmey Mohammed: No, no! Of the 500 people living on the land, some of them are pastoralist; they have about 3000 cattle and 300 goats. We are people who plough the land seasonally whenever there is rain. But in that area, they harvest mangrove, fish and some people who have been ploughing there have been stopped. So, the only development that has been done on the land is a school which is up to Standard Eight and a mosque.

Commissioner Ojienda: You do not know where the process of issuance of the title deed came from? Was it from the county council or you do not know?

Mr. Kalmey Mohammed: I do not know whether it came from the county council. If I look at this piece of letter here, it shows that it did not come from Lamu County Council. It did not even come from anywhere here in Lamu, or in Mombasa. This is straight from Nairobi. But there is a minute book we have from the DC's office indicating that they sat there with the development committee and it was given to the Chair person, but this was dissolved. I would not know about it, but there is a letter which I can give to the Commission.

Commissioner Ojienda: But that letter would be a clear case of irregular, in fact, illegal issuance of title deed. Therefore, your community has a good case. We will do our bit to investigate the matter and make recommendations that will then be acted upon.

The Minister has power in certain respects, through the Commissioner of Lands and the Registrar of titles deeds to deal with certain title deeds; they can register restrictions. But the court can direct cancellation of title deeds and that is why I said you should have gone

to court because communities have rights under the new dispensation. You need to take advantage of that because the community can claim a right to be recognized and measures can be taken to get orders stopping that person from using that land until the matter is resolved.

From your testimony, you have a very good case.

Thank you.

Mr. Kalmey Mohammed: Mr. Commissioner, if you look at the letter on top where the Lands Commission says that they can walk through the land and they can solve it. But the DC here gives military men orders and tells them to forcefully evict this people and they say that we cannot use the land until it has been resolved. But you cannot do anything beyond the DC's office because as soon as we leave, they take a step against us. So, what we are appealing is that when any commission comes here, they always say that they will look into the matter and as soon as they leave the GSU follows us. That is why I am saying that we are suffering that injustice in the area where we are, because you see the GSU vehicles going through the land throughout. So, we do not know whether if we had guns we could manage to get out of the area. They only come to protect that person's land because he is a tycoon.

So, we are asking this Commission and because that person is now building, though there is a caveat, he has been told not to build, but he has instructed the police to guard him as he is doing development. He is also developing the land and we are not allowed to go in. So, if you could talk to the DC here and tell him--- This problem is just coming from the DC and the OCPD from this area, I do not even think it goes to Mombasa.

Last evening I was about to go but I decided to stay on in the hope that I will speak to the Commission because the people there are very poor and they cannot even speak on their own behalf. The people are very poor because poverty is the spirit. At some point we nearly moved away from the area but now we cannot move out of the area.

As one person said, we have been pushed to the wall and things can be bad and we might have to shed our blood before we are left alone like the people in Watamu who were killed. May be until the Government sheds our blood, it is probably when we can be left. We are willing to shed our blood but before we do that, there is a District Commissioner here; the Provincial Commissioner and Government security personnel and we Somalis are asking what problem do we have? If we have illegal weapons, they can come for them, but we are suffering this injustice because we are Somalis.

Kindly, this is what brought me here. All other commissions have listened to us. Please, listen to us. I am sorry for raising my voice at this point because it is very painful. We have children who are going to school and we have women. Every time we are been bothered by the GSU personnel and we wonder whether we are in Kenya or Somalia. This name of Somalia is the problem that we have but we cannot run away from there because that is where we were born. If there is a problem in Somali all the Somalis are blamed for it. Here in Mpeketoni, we are under the Mpeketoni Division; there is a

committee being lead by Mr. Njoroge Kamau but there is no Somali in the committee. There could be one Swahili woman, a Ms. Fatuma, who will not look to us. So, we are not even considered as Muslims. We have no other way except one day you will read in the papers or hear it from the radio about our deaths.

Commissioner Ojienda: Sorry for what you have shared in your testimony, Mr. Kalmey I think you have touched on a very important point of stigmatization of communities and the manner in which the Somalis have been marginalized in certain areas. I think every Kenyan must be treated with respect as all of us are equal and communities should not be stigmatized because of the descent or because of the association with the neighbouring and friendly country.

I think we will make special recommendations to that end so that the Koran community can get what belongs to it.

Thank you.

The Presiding Chair (Commissioner Farah): Thank you very much for your presentation. I think my fellow commissioner have told you everything. Leader of evidence, could have the other witness?

(Mr. Idarus Sharif Alwy took the Oath)

Mr. Tom Chavangi: Welcome to the Commission. You requested for a brief moment to speak to the Commission. The Commission has received a statement from you. Could you tell the Commission what you feel you must tell them?

Mr. Idarus Sharif Alwy: My name is Idarus Sharif Alwy. I am a religious teacher and activists who has been involved in a lot of issues concerning my community, both joyful and unfortunate. This commission has been put in place by our Government to address issues affecting the communities and to bring about reconciliation amongst Kenyans. Also, the Commission should look into issues that are of injustices since Kenya got its Independence. I thought it would be important to address issues that I have come across by mixing with people and what I believe are threats to my community.

The first one, when this Commission came under the leadership of Hon. Kiplagat, I remember we were in the same forum and I was among those who were selected to speak to him and I welcomed him. Today, I take this opportunity to welcome you as well and by saying the same thing; welcome to the very first town that had IDPS in Kenya. I am requesting this Commission to be part of this instrument that we believe has been put in place to help us out as well. Some of you are really few and we believe that---

Commissioner Ojienda ... *(Inaudible)*

Mr. Idarus Sharif Alwy: It is a secret of the way God created us and it is a blessing in disguise.

Commissioner Ojienda ... (Inaudible)

Mr. Idarus Sharif Alwy: Except when it is used negatively, it becomes a problem and the problem is not tribalism but it is the way tribalism is used. People of Lamu have had various ethnic groups living together and we have made progress in all aspects of life.

When Kenya gained Independence that is when the funeral of the people of Lamu started.

Commissioner Ojienda ... (Inaudible)

Mr. Idarus Sharif Alwy: The names may be different, we started with the shiftas. Many residents of this area were not expected to be shiftas. "Shiftas" was a word that was coined to try and advance certain government agenda.

There is something we discussed and that is the Indemnity Act which was brought by the Government to protect those who were involved in that injustice. Indeed, those were shiftas and those who brought them were bandits who came in to this place.

Why did the Government need a law to protect them? A law should be put in place that shows that they are not usual people, they were not ordinary people, they were to be protected and they were people highly placed in the Government. The Government of Kenya after Independence thought about the displacement and demolition of homes and these were villages belonging to the Bajunis and also affecting the other people who were in the inland areas of Ngulungi, Mpeketoni, the Wasanye, Bonis, Oromo and other people.

These communities were evicted and the most unfortunate thing is that, if you follow the history of the Shifta, there was an excuse used for lack of evidence. There are cases of people who were assaulted and all kinds of cases; people had to run away from these areas. Around that same time, other people who were being resettled into these areas happened to use the Shifta excuse so that other people could be evicted, but it did not lead to these people being evicted as well. So, there was the issue of removing other communities and replacing them by others. So, some faced insecurity; farming was disrupted and the villages were attacked in the name of Shifta. Because this was the heart of farming of this area--- These people were doing traditional farming and there was no Government assistance, but it was feeding and enabling us to sell our crops out. We were exporting some of these crops and farming was killed when other people were brought in and organizations were put in place.

All kinds of NGOs, both local and international contributed to improvement of farming and we were being told that the Bajunis and the original inhabitants of these places were neither farmers nor workers. These other people who seemed to come in from other places were seen to be diligent and the ones who were feeding us with the vegetables and tomatoes, whenever we lacked enough. They were brought from Mombasa and other areas. Whereas the original inhabitants of these places were able to plant paddy, rice and

millet, that was feeding people in this place, there was enough left for export. So, their tactics disrupted our peace and economy.

I do not want to repeat the issue of land and the demography of this place. All that had been planned by the Government from Independence and we do not know what crime we had committed to the Government of Kenya, we as Kenyans. We do not know what our crime was, whether it is our colour, names, religion, culture and whatever else it is that this Government--- There is no history from the time it gained Independence and even before, that among the Bajunis, Asanye or the people of Lamu, there were people who have a plot against the Government. There is no proof that we ever tried to overthrow the Government, or assassinate any leader and there is no history that we tried to go against the Government. But this happened to us. They attacked our economy, our peace and our demography and we were left to melt.

Hon. Commissioners, I would like to tell you one thing. At the moment we are under the Museums. There is another Museum that is down as you go towards the sea. Even before it was made a Museum--- Inside that Museum there is a display of Swahili groom and bride. The way that the groom was dressed and treated up with sample of the foods that they had to eat--- After some years, a person called a Swahili and a Bajuni belief that there will be just a display of them in a Museum to show that this is how the Bajunis and Swahilis used to dress. It goes on at the moment because there is a plot and the Government had a big hand it to make sure that this community comes out of recognition in this area.

For instance, there is a lake there called Lake Kenyatta. How did it get to be called Lake Kenyatta in this area? How did the name Kenyatta find its way in this area? If we go back into our history and our culture, the lake was called the Mkunguya Lake. But now it has become Lake Kenyatta. There are names that have been brought in from central and their names have been brought in without any discrimination. We live as communities and we accept each other. We live in harmony; you protect my culture and I protect yours. You protect my identity and the constitution protects all these. Why is there this plot to even change the names of places that hold our history and our origin in this place? All this is the work of the Government administration to take us into such issues.

The councillor mentioned something that I would like to touch on now. The emotions that we have among the indigenous people are left with political administration; our land and peace is gone and our economy was killed in terms of land. It was killed when Moi came into power. We were told that we could get into our biggest resources; the harvesting of the mangrove trees and now the port is coming to clear the mangrove forests here.

At some point it was environmental protection, but now we have a port that is being put here which is their interest rather than our interest. At the moment, any forest that is coming out of the Mpektoni, from the water catchment area--- If you follow the data on the rainfall patterns here, before the area could be farmed and before that forest could be destroyed, we are seeing a very large rainfall pattern here. Whenever a Bajuni goes to cut a mangrove tree, from the traditional ways of environmental protection, he is stopped

and. Now the mangrove forests have been cleared completely because all the people from Dao went even as far as Tanzania. Some of them had big dhows which they used to engage in business of selling the mangrove poles. But now we see that what we were stopped from doing is being done by other people as if we have no value at all.

Our people talk about political power and authority which we do not have. We are waiting for registration of the population of this town. At some point you find that the indigenous people are not there and that is how the authority comes in.

In the new constitution, nearly every tribe has their own county. What county do the Bajunis have if they are going to be represented by a Governor who is not one of them and the senator who is not going to be one of them, if Members of Parliament are not going to be there in all the leadership?

I am going to make my recommendations very briefly because I know we have run out of time. I have only three recommendations.

My first recommendation is in a form of a question. How can we have reconciliation when injustice is being visited upon the people? It is important, first of all, that they should see the need of sitting at the table with the people and even those who have come in. We are willing to sit at around table with them and plan how we are going to live in harmony. But we want to see the need for the truth. We cannot sit together, when I see that you want to snatch from me the little that I am left with--- How can I see you planning projects to bring a port and I am not in any way involved or I am not in any way allocated any of that? Let us know that the Government wants such things.

Secondly, Commissioners, you will send recommendations with a political will to bring about reconciliation because eventually we want to know if we have the political will to try and correct some of the issues that we have had because we will be told that this is a law. For instance, we have heard that people have lived in the village, are ignorant and have lived in the ancestral land and they do not know the process of acquiring title deeds. They cannot travel from here to Nairobi to make follow ups for the title deed and, a tycoon comes from another place and within one week he gets it. We are telling this person to seek redress because we know very well that in Kenyan the courts through which any person can get any justice, the weak persons who cannot even feed themselves cannot afford to pay a lawyer to go to Nairobi to file a case? When will this person ever get any justice in the Government?

We have poor people who have no means and they want this land taken back to them; the same way that President Kibaki came from Nairobi to bring title deeds to people in Mpeketoni. There are other people who want President Kibaki to come from Nairobi to know that there is somebody in Didi wa Ride who has cut firewood and walks several kilometres to sell it for Kshs50 at Witu and goes back home to take food to his children. How will this person get a fee to send a lawyer to Nairobi to get him a title deed?

This is why I am talking about the political will to return to the weak citizens their rights wherever they are found. Besides, do not blame the common mwananchi on how they think of other alternatives, as has been said before.

Thirdly, I do not want another person to be denied his/her right because we live in a democratic country where everybody has a right to bring up his/her views. It is important that when you want to talk about the historical of injustices in any area and, especially here in Lamu, we have to talk about the indigenous people from those areas who suffered the injustices. We cannot have somebody who has come in from another place complaining of the injustices suffered. So, it is important to know the indigenous people who have suffered more injustice. I believe if this happens we will reach everybody. But if it goes on to a round table and only rules and procedures are followed, we are propagating a very dangerous environment. As a religious leader, I believe it is not a very good thing. The emotions that I get from the people are not very good and our town has been known to live in peace and we have lived with many ethnic communities without problems.

This is what I wanted to express and what my feelings are.

The Presiding Chair (Commissioner Farah): Thank you very much, Mr. Idarus Sharif Alwy for that eloquent presentation. I think because of your background of being a teacher, you have given the Commission a very good lecture. We wish that your lecture would have been reduced into a memorandum.

But, I would also like to rest your fears that there are a lot of other people who have presented before you and, everything that you have said is already covered in whatever they have presented to us. But you have clarified in a very clear and classy way some of the pertinent issues that are really troubling the people of this region and thank you for that.

Rest assured one of the biggest challenges of our Commission---

Here we are dealing with land matters. I am not singling out anybody. However, the issue of people taking indigenous names to other areas is not pertinent here alone; it is all over Rift Valley also. One of the issues we are dealing with which brought about the violence of 2007/2008 was the issue of land. Even though we fought ourselves because of results of elections, the underlying cause was land. The election issue was just the striking of the match. But the fuel that was poured was centred on land. We will make our recommendations to the National Land Commission when it will be formed. We also have the Kenya National Cohesion and Integration Commission which is represented here by Commissioner Yasin who comes from this area. They will also take our recommendations. They will follow up its implementation with the Government. So, there is a light at the end of the tunnel. How bright that light becomes, will be seen as we go on. Already, there are challenges facing our next elections. It has something to do with what happened to the last election.

I know that you have brought about how we can advance reconciliation and sit on one table. In your own words, you said “when you are being robbed of the little that you have”---. Those are great words. We have heard it and it is recorded. Therefore, I urge you to leave it to us. We will do our best. We will be different from the other commissions because our recommendations will be mandatory for its implementation.

Thank you very much. Leader of evidence, you may stand down, Idarus Sharif Alwy, so that we can commence the closing ceremony.

Mr. Tom Chavangi: Thank you, Presiding Chair. I pray that you admit the two memos from the Boni Community. We also have another memorandum from the Lamu Public Forum.

The Presiding Chair (Commissioner Farah): They are so admitted.

Mr. Tom Chavangi: Thank you very much. We have come to the end of our business today. Presiding Chair, you can take over.

The Presiding Chair (Commissioner Farah): Thank you very much. My dear people of Lamu whom I am very attached to, because I have worked in the Navy for a long time. I was the first Captain of a Kenya Navy ship that took water to Faza in 1978. So, I know this area. I know its problems. I know the people and how good they are. I nearly cried when the councillor said, they are only being used during Maulidi and the other ceremony, and then we dance for them, and they go away, only for them to come back and take away your land.

We share that with you. But also there are good things that will come, for example, the port will be constructed here. It will create job opportunities for you people. It will also generate wealth for the local people.

We are now coming to the end of our hearing in Lamu because everything which has a beginning has an end. That is how God has ordained. Since yesterday we have heard 16 people who have presented documents, memoranda and they have also spoken.

The memorandums are with us. We shall read them deeply and we shall follow their recommendations. Your presentations are on record. Every single thing you have said has been taped and it has been recorded on video. We will read them.

As you know Cllr. Hussein Abdalla Taib broke down. I can assure you, the Commissioners as they review all these proceedings are bound to break down. Therefore, I can quickly read all the 16 names for your memory. We heard from yesterday: Hussein Said El-Maaway, Hirsi Sheikh Dholuo, Ali Gubo, Dossa Dizak Kururi, Mohamed Mohamed Lali, Mohamed Bwana Sheikh, Mohamed Abdikadir, Athman Ali Kamau, Noor Bashola Hajilo, Bakari Ali Mohamed, Simon Njagi Kareke, Mohamed Shali, Daniel Mohamed Muiruri, Cllr. Hussein Abdalla Dayib, Kalmey Mohamed and Aydrus Sharif Alwy. Those are the 16 we heard since yesterday.

We have now reached the end of our hearings. We will leave tomorrow. We still have other parallel hearings where our fellow female Commissioners are meeting Lamu women because as you know women have certain things they want to say which they cannot say in front of men. So, that is the end of our hearing. I now welcome Mufti who will give Vote of thanks and pray for us.

Thank you very much.

(Closing Prayers)

The Commission adjourned at 1.00 p.m.