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ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION HELD ON THURSDAY 19TH JANUARY, 2012 AT THE TONONOKA SOCIAL HALL, MOMBASA

Public Hearing

PRESENT

Ahmed Sheikh Farah - The Presiding Chair, Kenya
Tecla Namachanja - The Acting Chair, Kenya
Berhanu Dinka - Commissioner, Ethiopia
Getrude Chawatama - Commissioner, Zambia
Margaret Wambui Shava - Commissioner, Kenya
Tom Ojienda - Commissioner, Kenya

(The Commission commenced at 10.15 a.m.)

The Presiding Chair (Commissioner Farah): Good morning. On behalf of the Commissioners of the Truth, Justice and Reconciliation Commission (TJRC) it is my great honour to welcome you all to your public hearings here in Mombasa. We are happy with the reception that we received and appreciate the positive attitude towards the Commission by the people of the Coast Province. This is a good development. People have turned out in their numbers to attend our hearings. It is clear that the people here have taken ownership of the process. We shall hold hearings here in Mombasa for two days. The Commissioners also held hearings in Lamu, Hola and Kilifi. At the conclusion of our sittings in Mombasa here, we shall proceed to Kwale and Wundanyi. To date we have recorded close to 5,451 statements in the coastal region alone. We have also received 347 memoranda on a broad range of issues. An analysis of the statements shows that 25 per cent relate to violations related to land; 19 per cent relate to persecutions and 10.5 per cent relate to serious injury. We also have statements on extra-judicial killings, torture, persecutions, sexual violations, grand corruption, prolonged detentions, abductions, and economic crimes, administration of justice, education, and health and employment issues. The Commission has selected window cases from amongst these violations which we shall hear today and the days to follow. The witnesses selected will speak as representatives of the various violations to the issues which I have highlighted above. The Clerk of the hearing shall invite the selected witnesses and the leader of evidence shall guide them in their testimonies after they have been sworn in. In addition to public hearings tomorrow, we shall hold women’s only forum as we have done in other regions that we have been to. We reiterate that we should respect each witness that will testify before the Commission. At that time the witnesses are presenting their evidence, let us maintain silence and switch off our mobile phones. While in the hall when mobile phones ring, they interfere with the process because evidence is being recorded in tapes. The individual hearings have been structured to provide a non-retributive platform for victims of gross violations of human rights. At the conclusion of our hearings at the Coast Province here, the Commission shall also hold regional hearings in Nairobi. We shall also hold institutional hearings in Nairobi. In August, 2011 we secured a six months

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extension. We are therefore scheduled to submit our final report in May, 2012. It is our intention to furnish this country with a report that will promote justice, national healing, unity and reconciliation. Photographs may be taken but please do not use flash photography. Do not take photographs of the witnesses as they give their evidence. Thank you very much for being very attentive and patience.

Leader of Evidence, proceed, please. But before that, I wish to introduce the panel.

(The Presiding Chair (Commissioner Farah) introduced himself and other TJRC Commissioners)

Mr. Tom Chavangi: Thank you very much, Presiding Chair and all Commissioners.

The Presiding Chair (Commissioner Farah): Before you proceed, in a parked hall like this one is bound to make a mistake. I am very elated to introduce one Commissioner from the National Cohesion and Integration Commission. He is a doctor from Lamu and he is called Dr. Yasin. Could you please stand up?

(Dr. Yasin stood up)

Finally, I forgot to introduce myself. My name is Ahmed Sheikh Farah, who considers himself as one of the people of the Coast Province. When I was young, I attended a school in Shimo la Tewa from where I attended the Navy. I have been in the Navy for 35 years. Thank you.

Mr. Tom Chavangi: Before I call my first witness, I have an opinion leader here, Sheikh Khalifa. He is the organizing secretary of the Imams and Preachers in Kenya. He will speak for about ten minutes.

Sheikh Khalifa: Bismillahi Rahman Rahim---

The Presiding Chair (Commissioner Farah): Before we start, Leader of Evidence, can we all be on the same page? Some Commissioners are not hearing what is happening. Set up the machines so that we can hear.

Sheikh Khalifa: I would like to thank the Almighty God and to take this opportunity on this historic day. We are here not to remember the bad things. It is a day that will compel our hearts and eyes to be able to persevere. Let me begin with the historical injustices that have been witnessed by the County of Mombasa. Historically, Mombasa, Lamu, Malindi and so on are the first towns in Kenya. So, civilization here started in the first century. All the early scholars and traders came to Mombasa. They found people here of the Swahili origin who were already wearing clothes and living in self-contained houses. People were already living in good houses, keeping fish and making their own clothes. There was also trade being practised. Unfortunately, the suffering in Mombasa started a long time ago.
The torture that we got in Mombasa County started a long time ago. These people were jealous because of the business that Mombasa had. We were attacked by the Portuguese. Unfortunately we were fighting a war against people who wanted a share of our business. The Portuguese attacked the local people and killed them. For 200 years they slaughtered people like goats. They said that if you killed a Muslim you would go straight to Heaven. Now we are told that the terrorists are Muslims. When we were being killed nobody kept proper history of how the Portuguese killed the people here up to Lamu. The head of somebody was preserved with salt and taken to Portugal to show that they had killed a goat or whatever it was.

Later, there were Arab and British soldiers. Eventually, we were declared a protectorate because we already had progressed. Every place had its leaders and religious schools. When Kenyatta’s government started, history was re-written. Eventually the Kenyan Shilling was written in Arabic, that is, *shilingi*. Later, Kenyatta decided to remove that. He was given this area through an agreement. There were five things that he had to fulfill. One of them was land which had to be protected and recognized. When the Government took over, in order to finish people here, they started using force. Land was taken from the people of Tangana up to the Ganjoni Post Office. Even their cemeteries are still there up to now to show that this was their origin.

There were people who were called the Kilindinis. Their land was from Nakumatt all the way up to Mama Ngina Drive. Even their cemeteries were there, but the land was taken away from them. There are also farms in Changamwe. I have friends whom I work with whose land has been taken away by force by Ministers in GEMA. They have forcefully taken 500 acres. About 200 acres were taken away from Hijab Mosque. The other people were forced to sell their land at Kshs1 million per acre. This was meant to make us look like we are not the ones who own this place.

In Kisauni, a couple of people were forced to leave their land. They are being called absentee landlords, yet they are there. This is property that belongs to people. They also wanted to finish us in terms of education as well. One of the schools where most of the Ministers have gone is Shimo La Tewa. This school belongs to the people of Mombasa. Mombasa Polytechnic used to be Muslim Institute of Mombasa. It was the first college for the Muslims in Kenya even before people in Nairobi knew how to wear clothes. It was built by money coming from Muslims all over East Africa. There are schools like Hamisi, Mbaraki, Serani and others which they started taking away from us. Before independence we had very many professors from Mombasa area, but deliberately they tried to finish us. We did not have a chance to go to the university. You had to change your names and look for a different grandfather so that you can be seen as a true African. This has happened and that is why today we are very few, yet we were the first people to know how to read and write.

The unfortunate thing is that the council of churches was put on the boards of the schools that were taken away, and the Muslims were marginalized. Again, an agreement that Jomo Kenyatta signed said the administration in this area should be by Muslims in all categories, from sub-chiefs, chiefs, District Officers (D.Os), District Commissioners
(D.Cs) and Provincial Commissioners (P.Cs), but this never happened. So, it is like we are not citizens of this area.

Finally, even if you mention that you are a Kilindini or Mtangana, you are told: “We do not know that.” This is just meant to finish us so that we are not known in this area. Kilindini belongs to us and there are sufficient documents showing that people here were paid Kshs. 250 and 150 so that the Aborigines from here do not pay taxes and rates. All these have been ignored yet the evidence is there.

At the moment it is a problem for us to get the national identity cards, yet this is our country. This shows openly that Muslims have been deliberately marginalized and denied their rights. Even today there are people who say that they would better go back to colonization than have this kind of independence that makes us not feel like we are anything. Our play fields, toilets and road reserves have been taken.

Personally, Moi’s Government tortured me. In 1982 when there was an attempted coup he did not want many parties. The first persons in Mombasa to be arrested in Mwembe Tayari were my friends and I. For five years every time Moi came to Mombasa I had to be locked up and no charges were brought up. Today, somebody has to hold my hand. I could read and write but now I cannot. Nobody can speak for my rights. How many people here had their land taken away? Who will talk on our behalf? How many women are taken to State House and made prostitutes? People fear to reveal what happened to them. That is why some of us would better go back to colonialism so that we can feel like we are Kenyans. Even when Commissions are formed— How many times did people complain that there were too many Muslims in the Independent Electoral and Boundaries Commission (IEBC)? This is an injustice that is still going on. That is why even in this Commission you will see a Muslim as a white fly. If you go to Mama Ngina, out of 140 children there are only three Muslims. Why is that so? We are being punished and tortured. Who will save us from this kind of dehumanization?

If this Commission will not speak against this dehumanization that we go through, you will go into history and be judged by God. Even the ICC cannot come up with a fair judgment because it has got its own corruption, but God’s case has no corruption.

Mr. Tom Chavangi: Thank you very much, Sheikh Khalifa. Commissioners, would you want to ask a few clarifications from the speaker?

The Presiding Chair (Commissioner Farah): Thank you very much, Sheikh Khalifa. Before I hand over to the Commissioners to ask any questions or clarifications, I would ask the public not to clap because this is not a public or political rally. This is a very serious meeting where witnesses are giving their evidence which will be very emotional. If you agree with them, do so in your heart. If you disagree with them, do not grumble. Commissioner Tom Ojienda!

Commissioner Ojienda: Thank you very much for your testimony and giving us the historical perspective of this region in details. You have touched on issues of
discrimination and marginalization. I have been looking at a lot of history of this region. Definitely, the issues that you raised will form part of our report. I want you to just briefly tell us whether what you have spoken about this morning touched on the problems that have been raised by the Mombasa Republican Council and what you think is the best way that the issues raised by the council can be dealt with by the Government. We are here to make recommendations to put this country together. I just want to hear your views on the issues that I have raised.

Sheikh Khalifa: On the issue concerning Mombasa Republican, these are issues raised by the coastal people. There was an agreement and I have a copy. It is something that could be resolved very easily. One is to make the people from this area to feel like they are among the Kenyan citizens. They deserve to get chances, first, in administration. For instance, at least they should be 60 per cent in all Government departments.

Also some land was taken away by Ministers some of whom are still alive and are known. It is the responsibility of the Government to buy back this land and give it back to them. If they have been developed they should be given compensation. In terms of education, there should be opportunities to join institutions of higher education. They should be given priority in these institutions. This will make them feel like Kenyans and there will be peace in this area where we live.

Commissioner Ojienda: Secondly, you have raised the land question and various incidents of grabbed land by public officials. You have also referred to instances where owners of land are branded as absentee landlords. Most of the land that was taken away is developed. What is your proposal for a lasting solution to land that was taken away and that is developed?

Thirdly, you know that under the Land Titles Ordinance which was the law that governed the ten-mile coastal strip, the question of grabbing of land occurred within the small time frame that was given for residents to lay claims. Subsequently, many other people come into the region and got land that was branded as trust land, because of the bad or weak laws that we had. I just want to assure you that under the new Constitution and the framework of the National Land Commission which will be formed, there are many changes now. The President no longer enjoys power to give out land. It is the Commission that will have that power. People from this region will also have the opportunity to deal with historical injustices. But where there are claims of violations, and you have referred to them, all of them will be taken to the National Land Commission. Claims will be made for all incidents since independence. So, I think to an extent, the coastal people ought to take advantage of the provision of law to address some of these historical injustices.

I just want you to give a short response to the best practical solution on land that is developed and what process should be put in place - I am sure that it is the residents who claim ownership.
Sheikh Khalifa: According to your view, Commissioner, on the issue of developed land, the only way of ensuring that people are no longer sad about it, is for them to be compensated at the current market value.

Commissioner Ojienda: Thank you.

Commissioner Shava: Thank you, Sheikh. You have spoken with a lot of pain and anger about issues that touch on exclusion and discrimination. It is quite saddening that these are the same sentiments that we have heard as we have gone around the country. The coast region will have the last say before Nairobi. So, I can say with authority that these are the same issues that we have been hearing. We have heard so many times people asking: “Are we really Kenyans?” This happened when we started in North Eastern. People have also told us that in Kitui, Mt. Elgon, Narok, Murang’a and Busia. We have heard that from people living with disabilities and those with special needs. There are very many different groups of Kenyans who are asking themselves: “Are we really Kenyans?” So, there is a sense in which the Government is failing to deliver services to Kenyans. Some of these services include courts. When you hear that people have to use Kshs500 to travel for a court hearing which is then postponed and this goes on for years that means that they do not get justice, because they cannot afford it.

On matters of education, we have heard the same things. We have heard about the distribution of schools and quality of education offered in those schools. The facilities in those schools are unequal. We have also heard about the issue of national identity cards, which under the new Constitution is a right. We have heard this in border areas of North Eastern, Busia and Bungoma. This is a very serious issue because it leads to unemployment among the youth. It leads to loss of job and educational opportunities because people are unable to be who they are. So, I want to assure you that we take those issues very seriously.

I would just like to say that I am very happy that the recommendations that you have made to this Commission speak to those issues. Thank you very much for your presentation.

Commission Dinka: Sheikh Khalifa, thank you very much for your testimony. You have spoken very eloquently and presented the case of the people affected by bad policies for a number of years in this region. As my colleague has just said, this is exactly the same story that we have heard throughout this country; from the North-East, West, Nyanza and Coast. Everywhere that we went people talked about oppression, marginalization, land grabbing by the powerful and politically connected. When you answered Commissioner Ojienda’s question, I was very happy to listen to you because your recommendation would create the kind of tenure that the people of the coast and other places would like to see, that is, where there is injustice or where the powerful cannot come and dispossess the powerless and voiceless. At the beginning when I started hearing this story all over, I was really scared for the unity of this country. But now I see that it applies universally throughout the country. The oppression is not targeting one region or group of people. It could be the basis of a very strong and united Kenya. This is because people should cross
over the border and hold hands with each other in their determination to create a new Kenya. They should work together as Kenyans, so that every single person living in this country would feel that he or she is a Kenyan.

What you said is extremely important. Your people do not feel that they are Kenyans because they have been oppressed and marginalized for such a long time. What they want is to feel that they are Kenyans. That in the final analysis is what will create the most united people in this country. We have heard what you have said and the Commission will give its findings regarding these issues and make the appropriate recommendations which you will hear from our report.

Commissioner Chawatama: Sheikh Khalifa, I would like to thank you so much for your testimony. Like Commissioner Dinka, I am also a non-Kenyan. As we travelled throughout your country, I was really worried because everywhere we went people said to us that they did not feel like Kenyans. I then wondered who a Kenyan was. The more I heard from different people in different regions, like Commissioner Dinka, I was comforted. I thought that there was a basis for reconciliation right there. I also thought that we would have a very difficult task of bringing people to that place where they would finally say that they were Kenyans. In your opening remarks, you said that this was a historical day. Indeed, I agree with you because as we have travelled through this land and having heard from different people, I soon got the impression that there are many Kenyans who do not know the violations that other Kenyans have gone through. I saw the Commission as a platform for the many voices of Kenyans to begin to understand that they are not alone in this boat and that, maybe by sharing their experiences they will identify with one another, thus strengthening the foundation for truth, justice and reconciliation.

You also said that during Kenyatta’s time history was re-written. My understanding is that by being part of this Commission we are re-writing history. By hearing from people such as you, we will come to that place where the truth will be told. I have enjoyed listening to you. Thank you for your passion. I am so sorry for some of the experiences that you have gone through. To be picked up and not charged and not knowing why you are being picked up and for how long is, indeed, very painful. As a person involved in justice it does not sit well with me. I wonder if at any one time when you were picked up and not charged you thought of suing the State, so that they are forced to reveal to you the reasons you were being detained.

Sheikh Khalifa: Thank you very much for the opinion of the Commissioner. We tried to seek redress in court but as you know, during the era of Moi it was very scary. The advocate withdrew from the case. I tried looking for documents but could not get anything. So, I have not been able to press charges.

Commissioner Chawatama: Do you have any prayer or recommendation that you would like to make just based on this alone because of all the pain and suffering that you went through?
Sheikh Khalifa: As a human being I deserve to have my rights respected like all other Kenyans who were tortured by the Nyayo Government. They were paid some compensation although it was not much. I believe that I should be like all other humans and given the rights that I deserve. If you have a way of helping me to bring up such action for me to demand for my rights, I will appreciate.

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

The Presiding Chair (Commissioner Farah): Thank you very much, Sheikh Khalifa. I want to thank you for your presentation. The land issue has been exhausted by Commissioner Shava and Commissioner Ojienda. On the other issues by my fellow Commissioners, the consolation that we have for the future is that we will have a county government with a Governor instead of a Provincial Commissioner (PC). The Governor will be from the local area and charged with the responsibility of ensuring that the people of this province hold office. There will also be senators. So, looking into the future there will be change but ours is the past. Ours are the historical injustices that have been done to the people of Kenya. We have taken note of your good opening address and I thank you for that.

Leader of Evidence, I think you can stand down the first witness and call in the next one.

Sheikh Khalifa: I would like to pass a vote of thanks. I would have liked to continue being with you, but I have a meeting that has already started and they were waiting for me. I really thank you for your patience and also contribution. I do believe that justice will be served. I would like to ask for permission that I go for the other meeting, in the interest of the public.

Thank you very much.

Mr. Tom Chavangi: Thank you very much, Presiding Chair, Commissioners. My next witness is Mombasa No.4, Mr. Stambuli A. Nassir, a member of the Mombasa Council of Elders. He is coming to speak on issues of land grabbing, displacements, lack of education, social amenities, discrimination and marginalization.

Thank you very much.

(Mr. Stambuli Abdullahi Nassir took the oath)

Mr. Tom Chavangi: Mr. Stambuli, for the benefit of this Commission, please, repeat your full names?

Mr. Stambuli Abdullahi Nassir: My names are Stambuli Abdullahi Nassir.

Mr. Tom Chavangi: Mr. Stambuli, you have given a statement and a memo to this Commission with regard to the issues affecting the local residents of this coastal area, issues to do with residence, land and others. Please, be free and explain to us these issues? Do not go through reading the whole memoranda because we already have it. So, just briefly tell us what is happening.

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Mr. Stambuli Abdullahi Nassir: First of all, I want to ask the Almighty God to protect me from all the machinations of the devil. I would also like to take this opportunity, in the name of God, the most merciful to thank him for giving us the health and the opportunity to meet. I would like to thank the Commissioners for giving me this opportunity and the entire department of the Truth, Justice and Reconciliation. Regarding what I have been told, this Commission has a mandate that begins from 1963 up to 2008, and for me to be able to bring up these issues, I would like – because I have a lot of documents here, but I will try to be very fast – to mention some of those documents. One of them is the agreement of 5th of October, 1963. The second one is another agreement of the 8th of October, 1963. These are agreements that were done between the then Prime Minister who is the late President Jomo Kenyatta together with Zanzibari Prime Minister, who was known as Mohammed Shamte. In order to understand these agreements and to make it easier for the Commission to understand, I have documents that I would like to present to this Commission because it is important that you have copies, because these documents start from far. It is important for the Commission to understand this issue deeply. In the Kenya National Archives, they do not have these and if they are to be found, they have to be declassified in England and here. I am trying to make it easier because it is my parent – I am his first born – who was involved in these. I do hope that the Commission has gone to very many places and you have heard people talking. I would like you to look at this issue keenly in order to understand about these two agreements which have two different meanings. It is important that we know that we have to begin with the history of how the rights of the people of this area were violated. I am saying this to the Commission and you will bear with me because the Sultan himself, through the evidence that exists, had no right to sign any agreement with the whites because he had also had this area leased out to him. This is the agreement of 1832, which is in Arabic and I have the translation which I will present to you. There is another agreement of 1835 and 1837. It is obvious that the residents of this area were led by their leader whose name is Daud but the people know him by the name of Sheikh Shirazi – he is buried in the Alidina Visram School compound. He was the last rightful ruler of this area. The Sultan leased this area and he had to pay every month sufficient riyals for the salary of Sheikh Mvita, which was 175, if I am not wrong; and 250 Riyals and the people here would share with the people who lived around there. I am giving, again a copy of further evidence and translations of this agreement; we do not have time to read through them, but I do believe that with your experience, you will read and you may get in touch with me.

I sit here, respected Commissioners, as the interim Chairman of the organization that is a society or community organization for the Swahilis, and these Swahilis are three communities who are the Tangana, the Changamwe and the Kilindinis. I would not want to repeat what Sheikh Khalifa has already said because I have this in soft copy and I can discuss with you to see how we can share this on some of the existing clans and the related communities so that you can know the clans. Also, these people were ruled by Sheikh Mshirazi and I have given you some of the agreements and as this has been said before, they have a long history. Because of these agreements, the ruler or the Sultan, when he wanted to give the authority to the whites to rule over this area on 14th of
December, 1894, he signed an agreement with the whites for them to have authority to administer this area. I am giving evidence which is a confidential document which has been declassified. This, the Sultan gave to the white man the authority to administer over this on his behalf, to collect taxes on his behalf but not anything else. But when they got here, the injustices already began and the people did not know where to go. There is a report on one of the tribes of Mombasa – I am talking about the island – which was moved from where the Nakumatt Likoni is and it was taken to Kuze, in Old Town, and I am one of them. My ancestors were the ones who were moved and the Light House or what we call Mama Ngina Drive is a burial site for our parents. Today, people enjoy themselves there.

Behind Nakumatt, our biggest symbol is a tower and a small Mosque which even has the date that it was constructed, I am not too sure anybody really knows, but just like we and our own people, the Tanganas, the tower was a naval base and it was removed. They come all the way to Ganjoni Post Office where they have their burial ground, and the whole of that area is called Tangana. Just like the Changamwe’s, they also have their own tower. So, the three tribes are the ones who owned this island and we leased it out to the Sultan to be paying us. We have our customs and culture, which has now been broken because of the historical injustices.

In order not to waste time, here with me is also a memorandum which was written by my parent to the Sultan and I would like to submit it as evidence. I also have a memorandum that the Sultan wrote to Sir James Robertson in 1961 and I give it as evidence. And here, one among the people who administered this place, who we call the Tamims, who is Sheikh Ali bin Mohammad bin Yunis, and his children are still alive, wrote this letter to Sir James Robertson and I would like to offer it as evidence. Also, to move faster, looking at the London Constitutional Conference, it is important for the Commission to understand that in London, there were two meetings going on concurrently. There was the Kenya Constitutional Conference and there was the Kenya Coastal Strip Conference, which were carried out concurrently. The letters of correspondence between them and the delegates, this is my proof; receipts that show the planes they boarded and the hotels where they stayed are here. How the meeting was arranged and how they corresponded; the administrative arrangements; here is my evidence. A draft of the seating plan, as they sat and discussed, is here. Another draft of the seating plan is also here, which I offer as evidence. How did these people get to sign the agreement of the 5th of October? The Speech of the then Sultan, which was read by his legal advisor known as Dingle Foot, the Sultan’s speech on a colonial letter head office is here and I give it as evidence. The view of the two elders who wanted this area to be separate from Kenya, one of them is Omar Salim Basadik, who is still alive, and my father, who was Sheikh Abdillahi Nassir, who is still alive. They have been disregarded by both sides; the Government and anyone else that is laying claim on the island. They look at these old men as being abnormal, but I believe that they are people who are very normal. If the Commission can look for them and speak with them face to face, they will tell you and you will listen, as you say in English, from the “horse’s mouth.”
The statement, as they had put themselves in a group as the Mwambao United Front (MUF), the opening statement is here and these are the demands that they laid. And, finally, to make it brief, the end of the meeting that had three sittings, this is the draft report that had been promised to them, that we will meet in Nairobi and discuss further with regard to the rights that you want protected, which are in the agreement of the 5th October, 1963. This is the draft report of the Lancaster House with regard to the Coastal Strip Conference and I give this as evidence. This, as I told you, is the judgment of how we were moved from behind Nakumatt Likoni and taken to Kuze, which is in Old Town area. I also offer this as evidence; that is in 1914/1913.

Some of these elders were said to have sold the coast and they were forced to move away. At that time, these two old men in this town could greet and nobody would respond to them because they were seen as being the traitors who had sold their rights. One of them became an editor and after some time, the General Manager of Oxford University Press in Nairobi. The other one went to Riyadh and he was a media broadcaster, but I thank God that he has kept them alive and they are here in Mombasa, and they are normal mentally. When it came to signing of the agreement, they had agreed that this area would be part of Kenya. Those two men told them – and you will see that in the evidence that I have presented – “we have been sent to get independence, but you do not want to give us. So, we cannot sign this agreement” and that is why this agreement was signed by Shamte and Jomo Kenyatta. But the evidence that they refused to sign is here and I have actually highlighted the fact that against their names, it is written that they refused to sign, both of them.

Now, to explain this so that I can finish my presentation, the coastal area had eight representatives. I will give that evidence, although it is not on hard copy. I will get in touch with you to find out how I can email you a soft copy so that you have all the papers because I know that you do not have documents on the Lancaster House Conference, the Kenya Constitutional Conference and the Kenyan Coastal Strip Conference. Everybody kept their copies; Kenyatta kept his copies, Moi kept his copies, Odinga kept his own copies, Muliro kept his own copies and we say that they were all sitting on the table. The representatives of the coastal area were one white man by the name of Plishy, an Indian by the name of Anjarrayall and another one by the name of Pandya. Chokwe, Alamudy, Ahmad Jeneby from the Lamu Islands, Sheikh Abdillahi Nassir and Omar SalimBasadikut. For it to be known that these eight were representative, six among them were KADDU and KANU. So, whenever there was any view they wanted, they voted for one Kenya.

They were praised a lot that they fought for the independence of the coastal people. However, these people were not representatives of the coastal strip; they were representing part of the Kenyan Colony. For instance, late Ronald Ngala was not a representative of the coastal strip; he was a representative of the colonial area. Mr. Robert Matano was not a representative of the coastal area; he was a representative of the colonial area. There is sufficient evidence and anybody who wants more information can come to me and I will explain to him. I will give the evidence because some of these are still confidential documents.

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Honourable Commissioners, the Accord of 1963 had five conditions. First of all, I would like you to look at some of the letters between Kenyatta and Shamte. These letters were contrary to the demands of the locals. In those letters, Kenyatta requested to be given this area. Those conditions were imposed by Sir James Robertson. He came to seek the views of the local area residents in order to advise the Sultan and the Queen on the way forward. If they wanted to unite these places, there had to be some agreement. This is history in brief.

In terms of economic injustice, there is a rule that every area, whether the company is an individual one or if it is a Government department, a big majority of the employees should be from that particular area. This worries me because it is used in Kenya, except at the coast region; not Mombasa. There is nowhere in Kenya where you can go and find that the locals are overwhelmed by people from outside in any company. But at the coast, there are very few locals, but very many people from other areas. I do not say this out of hatred, but as people who fear God, even the non-coastal people can attest to this.

Today, our fishermen cannot go to the sea. They cannot access the fish landing sites because tycoons have build perimeter walls. For many years, people have been mining cement here. They have made a lot of money from the port. They are people who wanted this port privatized, but the Government has refuted that claim. There is evidence in 1997 they had started privatizing the port. So, if you tell me in 2012 that you will not accept it, what do I think about you? Are you really representing my views? So, port is very important to the people of coast.

We have nowhere to keep our cereals. We have nowhere to keep our livestock and our boreholes for drinking water. So, this does not belong to us at all, yet it is said that we will get our freedom of religion, and our own buildings and institutions, we will take them there. Today, because the Chief Kadhi is under the Judicial Service Commission, we do not know how these things are done. Nobody is consulted. This was made in 1903. Today, the Mwijabu Mosque is a very small Mosque, but it is the best Mosque in Kenya. There is a lot of property from Mombasa Sports Club up to the CMC; left and right is the property of the Mwijabu Mosque. It has 306 acres; 286 have been taken to build Moi International Airport because of compulsory land acquisition law of in 1969. How many issues have escaped us and nobody is saying anything?

I have given you historical evidence because your mandate does not allow you to look at issues before 1963. However, if we were to go beyond that, we have 200 years of torture under the Portuguese. We have also 200 years of torture under the Sultan. This is where many people who are in administration cannot differentiate. We have accepted that this Swahili is simply an inter-marriage between an Arab and a Mijikenda. As I sit here, I can prove to you that it is not true. You say English language is a language of the wise people. I have studied well Islamic religion. When Islam came in from Persia, it found me and Mr. Ibn Batuta here. The old man Muyeye married Mbusi and Masese when we were born in Ndigori and Ribe area and others were born in Jibana, Giriama and Chonyi, you had not come here. And even as you were fighting the Galla’s, that is when we came down here. How come I am seen as a stranger? If I say I am a Kilindini, I am told you are

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a Bajuni; talk about Swahili Shirazi. Yet you, who is talking about me, you have not been in Kenya for over 500 years; how could you determine what my tribe is? Is this fair? Is this justice?

Today, you give me a code number when I am looking for an Identity Card (ID). My code number is Kilindini/Swahili; the 12 sub tribes of the Swahili and the nine of the Mijikenda. The 12 sub tribes of the Swahili are the Bajuni, Katwa, Shaka, Pate, Faza, Kilifi, Mtwapa, Mvita, Jomvu, Changamwe, Tangana and the Kilindini. How come today we are foreigners in our own land? If you try to look for a national ID, it is a problem; if you look for land, it is impossible and you are called an absentee landlord because your grandfather died and your father never renewed--- When we come to ask for payment, we are absentee landlords because you are called Mohammed Nassir; your name looks like that of an Arab. It is Islam and the 5th entry of the agreement, freehold titles that were there before independence which will be recognized and will be registered. There are problems there and my brother says no, this is where my grandfather was buried. That is just in brief because I am late and I do not want to take a lot of your time. But if we are required at any one time, I will come before you even if it is in Nairobi. We will arrange and I will come and talk to you. If you want me to talk to the old men, they will come to talk to you, but you will have to come and see them and talk to them and, God willing, this Commission should be able to bring about the change with regard to the issues in this area at the coast.

I would like to say one thing; everything that I said is important and from the deepest of my heart, I would like to ask this Commission that, what you have heard in all areas are not lies. Maybe they did not have the evidence, but I have given you sufficient evidence. If you want more, I can tell you word by word what Kenyatta said. I have all the minutes of their meetings.

With that, briefly, if I may have made a mistake in my talking – I am not an angel; I am not a prophet and I am prone to error, please, forgive me. If I have said anything that you find beneficial, take it. Anything that I said that you may think that nonsense, disregard it. We want to reach the aim of our seating today.

Thank you very much.

Mr. Tom Chavangi: Stambuli, I will ask you two questions only and then I will give the Commissioners the opportunity to also ask you questions.

There are some issues that you have mentioned with regard to the leaders who were there before, late Ronald Ngala and Robert Matano. You said that they were representing the colonial areas and Nassir and the others were representing the coastal areas. What is the difference between these two areas?

Mr. Stambuli Abdullahi Nassir: Thank you very much, my brother. The difference which was there is that within the protectorate, the white man could not do what he wanted to do without consulting the natives. In the colony, he could do anything he wanted without consulting anyone; he could arrest anyone from Nairobi, tie one leg onto a car, tie the other leg onto another car or a horse and tear him in the middle. He could
tell him to carry a candle and aim at him, shoot him and laugh as he falls. Here, he had to use his wisdom and go through the Sultan to talk to the locals. He did not have direct authority over these people. Although even the Sultan, as you will see in the translation of the agreements--- There were three Arab agreements. He was leasing this and any time he would bring anybody here. If he said that this person should go out, it would happen that way. This is what we are asking the Kenyan Government; that if there are issues to do with the administration here, let us be involved or, at least, consult us. Are you happy if Mr. Ojienda comes there? We do not get this although we know that we were protected people, but the white people sold us without our permission.

Mr. Tom Chavangi: Thank you, Mr. Stambuli. There is this small Mosque you have talked about, what is it called?

Mr. Stambuli Abdullahi Nassir: It is the Mwijabu Mosque.

Mr. Tom Chavangi: And you have said that it had land of up to 306 acres and that part of the land was taken by the Moi International Airport. As you look at this airport, does it have any benefit to the coastal people?

Mr. Stambuli Abdullahi Nassir: I do not see any benefit accruing from it apart from bringing in the tourists, because most of the workers are from outside. Secondly, the revenue generated is taken by Government. How does this airport benefit people of Changamwe, Jomvu and Magongo? The people of Changamwe do not benefit although they are among the three tribes of this Island.

Mr. Tom Chavangi: So, in your view, the airport does not have any benefit?

Mr. Stambuli Abdullahi Nassir: Yes, it has the benefit of bringing the tourists so that they can come here and walk half naked. We do not see the benefit because our children are not employed and our mothers do not benefit.

Mr. Tom Chavangi: You mentioned the issue of the Mijikenda and the Swahilis. You said the Swahilis have about 12 sub tribes and the nine clans of the Mijikenda. You have also said that some are your aunties, uncles, some your wives and your brothers; how do you live with them as a community?

Mr. Stambuli Abdullahi Nassir: To be honest, that is a very good question, especially for the benefit of the Commissioners. We live very well, apart from a few politicians who like misusing us. It did not start yesterday. It started in the 19th Century. There was a man called Ngonyowa Mwavita. He brought conflict between the Swahilis and the Mijikendas. This was propagated by the late R.G. Ngala, Maitha, Jembe Mwakalu and even now you will see that even the Commissioners do not move or walk around. You will tell me if I am telling a lie. You could be seated somewhere and you hear people referring to you as Mshihiri or Mnyika. These are derogatory terms; if you call somebody Mshihiri, you do not respect him. If I call you Mnyika, you will not like it. It is not just the Mijikenda and the Swahili; we have the Boni, Pokomo, Wasanye and they do not get
a chance to speak for themselves. Who will speak on their behalf? We have the disabled. They have suffered. Why do we not have special buses for them or ramps? Why do we not have areas where they can pass? These are areas where the coastal people have suffered for a very long time. It is unfortunate that even you as Commissioners, you see the people that we sent to you as being the cream of the society. If the person who was sent as their representative is this foolish, then those who sent him must be even more foolish. This is our problem.

So, it is important that my brother has raised this and I hope that my answers will satisfy both areas.

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

The Presiding Chair (Commissioner Farah): Thank you very much for your good presentation, Mr. Stambuli. I will now hand you over to the Commissioners for any questions or clarifications. I will start with Prof. Ojienda.

Commissioner Dinka: Thank you very much, Presiding Chair. Mr. Stambuli, thank you very much for your testimony. You have given us a lot of background history and also important documents that we will very, very carefully study. However, I have one question to ask you. There are people like you who are referring to past injustices and would like to be corrected. There are others that are, perhaps, angry and make some extreme demands. What do you think, given the Kenyatta/Shamte agreement, should be done to reconcile these extreme demands with moderate solutions, taking those agreements into account and reasonable proposals and suggestions like what you, yourself, has made and before you, Sheikh Khalifa has made?

Mr. Stambuli Abdullahi Nassir: Thank you very much, Commissioner. The issue you have raised is weighty. At the moment, coastal people want their rights addressed.

The enthusiasm you see in the Coast Province is as a result of this accord being disregarded. We need to be told why the accord was disregarded and secondly apologize for not implementing it. They need to improve on the services they render to the Coastal people. The problem in Kenya is that a few people on the top are the ones who are messing up the people down here. People from many different communities live together. Have you ever seen them complaining? However, it is easy for politicians to make these people fight by airing tribal sentiments. These people sit in hotels by the beach taking beer and laughing and saying, “Look, he has been hit.” That is Kenyan politics.

They do not take their children to the schools to which we take ours; they do not eat the food we eat, and they do not sleep on the beds we sleep on. It is a matter of them controlling our minds. You know when somebody takes control of your mind; the rest of the body is useless. They have taken control of our thoughts.

Commissioner Dinka: You have answered more than two-thirds of my question. My last question is: Given the new dispensation that Kenya now is in, do you expect that the central Government will respond speedily to the demands of the people?
Mr. Stambuli Abdullahi Nassir: On paper yes, but in reality, at the grassroots this might not happen. I do not see any change in the short-term. It will force the people of Coast Province to be put in the oven and baked afresh. It will take a long time for the Coast Province to go back to where it was, unless we get better leaders than the ones who are there and they ensure that justice here is served. The Government should bring in sincere people who will protect us against the sharks that are here. Only a small clique will continue owning resources while the rest of us languish in poverty. If the Coast is open, Kenya will be open.

Commissioner Chawatama: Thank you for your testimony. I am a lover of history and I appreciate what you have shared with us. Thank you too for the documents that you have presented. They will strengthen your case, as we would say in court. When you mix with the people, what are they saying about the kind of leader they are looking forward to in this new dispensation? What are the people of Mombasa saying on the type of leaders they are looking for?

Mr. Stambuli Abdullahi Nassir: The people of Mombasa have various views. However, these views can be summarized in the words, “We are tired”. Being tired does not solve any problem. Those who are angered say that they want secession. I want you to listen to me carefully because I do not want you to get me wrong. There is no single person who wants change who has talked about his or her policies on education or the economy. They are just angered. Anybody who is seething in anger is always given water to calm down. That is the practice even in all religions. So, the people of Mombasa are really angry. They do not want anything else. They believe that everybody has been against them. They do not realize that our representatives are the biggest problem and not the person we want to secede from. What land in Coast Province has not been taken by somebody or a representative that they did not know? If you are my representative and my property is being stolen and yet you do not know, that is wrong. If it is being stolen and you are colluding with the thief then that is the worst. What is better, bad or worse? Where were you when a person was occupying your land for, say, more than ten years? This is the problem in Mombasa. We are acting emotionally. We are putting all the dirt and the cream in our hut. Kenya is being blamed for ignoring us. The bomb is just ticking and you do not know when it will explode.

Commissioner Chawatama: What do you hear from the people of Mombasa with regard to access to justice? How are the courts operating in this area? How are the police handling citizens who go to them with complaints?

Mr. Stambuli Abdullahi. Nassir: Your question is good. I would not like to blindly respond to it. We cannot say that all magistrates and judges are bad. The same applies to the police. The dehumanization we have gone through makes us react emotionally instead of approaching issues soberly. There are corrupt judges, yes, but there are those who work straight. I do not like to generalize. I would like to look at each case on its own merit.
Commissioner Shava: Thank you for your presentation. I studied history in school and I am aware of the history behind the ten mile coastal strip. I have no questions for you. We will take into account what you have told us.

Commissioner Ojienda: Mr. Stambuli, I want to thank you for your testimony. I want to reiterate what has been said by my colleagues on the implications of the Constitution of Kenya 2010 and devolution. To a large extent, the people of Coast Province will gain from this Constitution. You have the opportunity to redress some of the wrongs. This will depend on the kind of Governor and legislative structure and the people you will have at the Coast Province. You will have an opportunity to redress a lot of the historical injustices on land through the National Land Commission. You will have an opportunity to claim community land back. You will have a platform from which to seek cancellation of titles that were irregularly and illegally issued.

Under Article 62 of the Constitution, you will have an opportunity to live together as Kenyans because any Kenyan can live anywhere in this country. I have looked at the Shamte and Kenyatta agreement about the ten mile coastal strip and the assurances that were given to the coastal people on the nature of governance and the recognition of the Muslim faith within the Government structure. You have a singular opportunity to define the kind of leadership that you want. If we embrace devolution properly we will involve every person from every community. Each community will have a place in the governance structure in the coast. It is my prayer that the people understand what this Constitution has to offer.

You have given us an opportunity to re-write the history of the Coast Province through your memorandum, which is detailed. I must confess that a number of things which you have written were unknown to me. I want to thank you for that because one of the functions of this Commission is to give a true historical account to the people of this country. We will compile this in our report.

The Presiding Chair (Commissioner Farah): Mine is also to join my fellow Commissioners in thanking you for your great presentation. Leader of Evidence, you may stand down the witness now.

Mr. Tom Chavangi: Presiding Chair, there are 19 documents that have been presented before the Commission. Could they be admitted as exhibits?

The Presiding Chair (Commissioner Farah): Admitted as prayed.

Mr. Tom Chavangi: Our next witness is Farida Rashid. She will speak on women issues.

(Ms. Farida Rashid took the oath)

Mr. Tom Chavangi: What are your names?
Ms. Farida Rashid: My names are Farida Rashid. I am a representative of the Kenya Muslim Women Alliance. I am the Chairlady.

Mr. Tom Chavangi: You gave the Commission a statement on the challenges facing women and girls in Mombasa. You also have an issue that happened to you personally. Please, tell the Commission your issues.

Ms. Farida Rashid: First of all, I am very grateful to the Commissioners who are here today and my fellow Kenyans. A lot has been said. I was to speak about education, but that has already been handled by Mr. Sheikh Khalifa. There are many issues that affect us women.

I have come here today to join all the women, because our problems are the same. Women are intimidated whenever they want to vie for political seats. We have no right to get into leadership positions, yet a woman is like the lamp of the house. Behind every successful man there is a woman. We are not given freedom to speak about ourselves. We are oppressed and intimidated. We are raped. A woman faces a lot of problems.

I volunteered to help drug addicts and my fellow women. We demonstrate as groups to condemn those who sell drugs to our youth. We have been called names, but we have not given up. About three months ago we were coming from a meeting that we had been invited to by the Prime Minister. Our vehicle was attacked and acid was thrown at us. God is great. The acid spilled on the dashboard of the vehicle. Some of the acid splashed on to my eyelids. My eyes started swelling. I washed my face with the mineral water that I had. I was feeling a burning sensation. It is only God who helped us. The youth started shouting that they wanted to rape us. I managed to get away. I went to Nyali Police Station, but I was told I could not record my statement there. I was referred to the Dog Section in Nyali. We went there and found the OCPD. He could not listen to us. He told me to wait for the DCIO. When he came they had a closed-door meeting. He later called me and I told him that I wanted my rights.

The next day I went to hospital for treatment. I later went to the PPO and then the PCIO who called the police station. I was now allowed to record my statement and filled in the P3 Form. Up to date, I do not know what happened about the case. Nothing has been revealed to us.

In Coast Province, the problem of drug addiction is rampant. Why can the drug dealers not be arrested? It is the woman who is suffering when children get affected by these drugs. I want to know whether this Commission can deliver to us our rights. How do we get our bundle of rights when we are still being oppressed and intimidated? Today, I am not proud to be a Kenyan. We know the problems that we are faced with.

Thank you.

Mr. Tom Chavangi: I am very sorry for your tribulations. I have one question. How are the women groups trying to fight the problems of marginalization and oppression?
Ms. Farida Rashid: We are really trying. We do our things in public. Every day we speak and address these issues, but nothing has come out of it. We are still being oppressed. Most of the women suffering are those in the rural areas.

Mr. Tom Chavangi: Do these groups go to the grassroots to visit the women there?

Ms. Farida Rashid: We have representatives at the grassroots. We start our advocacy from the grassroots and go up to town.

Mr. Tom Chavangi: What time was the acid splashed on you?

Ms. Farida Rashid: It was about 4.30 p.m. at Sai Rock.

Mr. Tom Chavangi: Can you identify the people who did this act?

Ms. Farida Rashid: Yes. They are children I know. I recorded a statement, but nothing has been done up to date. I tried to make a follow up, but I was told that the matter had been taken to Nairobi. I do not know what is behind the curtains. The acid burnt my buibui and the beads I was wearing.

Mr. Tom Chavangi: Thank you. I will now hand you over to the Commissioners.

Commissioner Ojienda: Thank you Mama Rashid for your testimony. I empathize with you. I want to encourage you. You have an opportunity at the level of county and Senate to represent women. The opportunity offered by the Constitution will definitely improve the lot of women in this region. You did not give details of the problem of inheritance. What problems do women face in this region on the question of inheritance?

Ms. Farida Rashid: Most of the women do not understand the provisions in the Constitution. Women at the grassroots need civic education, so that they can be aware of the good things offered in the Constitution. They only heard about “Yes” and “No” campaigns.

If we had enough funds, we would reach the women in the grassroots to sensitize them. Women suffer because they do not understand their rights. When husbands die, women suffer a lot. Their property is taken by their in-laws. They are unable to defend themselves.

If we had enough funds we would have reached them at the grassroots and sensitized them. Women suffer because they do not understand their rights. When their spouses die their in-laws and families of their husbands attack them and take ownership of the property; women are oppressed without anybody to defend their rights. At least we have gone a step ahead. We have groups like FIDA which defend our rights, but many women still do not understand their rights.
**Commissioner Ojienda:** I want to ask you a very straightforward question. What will you recommend as the best way of improving girl child literacy in the Coast Province? This is because you have set out the problem of illiteracy of the girl child in this area.

**Ms. Farida Rashid:** I had spoken about the girl child education. If you educate one girl it is like you have educated the whole community, but there is as problem that we undergo. Many of the women do not have the capacity to educate their girl children. They cannot take them to private schools. They cannot afford that. So, they take their girls to the Government schools; as it was explained, the level of education is very low in such schools. Pupils are many in one classroom. They do not get sufficient education and when they go back home the girl child is the one who does the household chores. That is why you find that the girl child does not get sufficient education.

Also the boy child back home is the one who is loved and encouraged to go to school, but the girl child suffers doing the household chores. In the evening the girl child is not strong enough and wants to sleep. That is why a lot of school drop outs are girls. That is why they suffer and get into prostitution, drug addiction and very many vices. In previous years children were educated equally. A child who learnt in 1962 and 1963 went up to Standard Seven but now the education system is very difficult for our children. It is a must that as a community we come together, educate our children and see how we can manage to cater for their lives.

**Commissioner Shava:** Thank you very much, Mama Farida Rashid. You were brief. As you say, we have your memorandum and we can see the issues that you raised. You represent Coast women; as you said, you also represent all women since you are a senior official of Maendeleo ya Wanawake and also of Kenya Women Political Caucus. So, when you speak, you do so for a large group. I would like to say that I am very happy to see that there are very women in this hall participating in the hearings, and you might have something to do with that large quorum. I just want to ask you one question. When was the date of this incident?

**Ms. Farida Rashid:** It was last year, October 25th.

**Commissioner Shava:** Thank you. We want to know because we have been hearing the same thing from other women in this region, that the root cause of the many problems for women and girls in this region is lack of adequate education. Can you tell us the impact of the free primary education and of the limited free secondary education that the Government is offering now? Has it in any way improved the situation?

**Ms. Farida Rashid:** For sure, I do not see if it has really assisted because one teacher is teaching 100 pupils. Will he or she really cater for the pupils? There should be a different way to help these children. Leaders do not take their children to public schools. They go to private schools and they have tuition classes. With the current inflation, parents cannot manage to take their children for tuition or to private schools. If you want to take your child for tuition in Government schools, you are told to pay. If the mother does not have money to pay, how will that child continue with her education?
**Commissioner Shava:** You also say in your recommendations that the police and other law enforcement agencies should be trained on how to handle violations against women in a professional manner. In your experience, are gender based desks specifically for women there in police stations and do they work well? This is because you said that you have put in place women friendly policies but they have not been implemented?

**Ms. Farida Rashid:** For sure, it is a very good question and I expected it; Women really fought hard so that we could have women desks. We started with FIDA. For sure they were there for a short while and then they vanished. They are no longer there. You will find that men desks are there. If a woman has been raped or something has been done to her, she feels ashamed to say what has been done to her; if there is a policewoman then she will be free to speak. As I had said earlier on, our issues are the same no matter the kind of woman you are. All of our problems are the same. So, the gender desks should be brought back since they are not there anymore.

**Commissioner Shava:** That is sad news, indeed. Thank you for bringing that to the attention of the commission. Thank you for your time, presentation and memorandum.

**Commissioner Dinka:** Thank you Madam Farida Rashid for your testimony. I am very sorry and I empathise with you in your pain and suffering. God was with you. You had problems that could have been very serious; I hope that those who tried to commit that kind of action should be brought to book.

I have two questions for you. One, whereas the Government at the regional, national and county level is doing its best to fulfill its mandate and responsibility, there are very many things that your group can do, for example introducing women of the Coast to the right of inheritance. Is your group giving any kind of civic education like bringing to their knowledge some of the salient points of the law concerning their rights, especially the right to education, inheritance and the law governing gender based violence? Secondly, is your group also networking with other women groups at the Coast like in Lamu, Kilifi and other places?

**Ms. Farida Rashid:** For sure, we do join people from other regions like Lamu, Kilifi and Nairobi. We bring together women from the whole of Kenya. Last year we came together during the International Women’s Day and launched that day officially. We have women representatives from every area, and we also educate each other. We also try to sensitise each other, but everything has its own limitation. You cannot reach those who are far since you have to look for funds. So, we make efforts to make sure that women understand their rights.

**Commissioner Dinka:** Thank you and I hope donors see this kind of great cause and will try to assist. My last question is also along similar lines. As you know the elections are coming in 2012 or early 2013. I think one of the things that are key in assisting in the resolution of problems faced by women could be organizing women along political lines. For instance, instead of women going and casting votes the way the husband or brother
wants, they can select the kind of leader they want, who can solve their problems, whether at the county level or national level. We need a strategy of identifying such kind of politicians. So, are you also thinking along these lines?

Ms. Farida Rashid: For sure, we have such plans. The women have come out in large numbers, but there are very few who want to vie for the governor or senator seats; for the women representatives, they are all there and we want to join with other women organizations, so that we can be trained on how to fight and succeed in politics.

Commissioner Dinka: Thank you very much. I have no further questions but I wish you every success in your efforts.

Commissioner Chawatama: Thank you for coming to the Commission this morning and thank you for your testimony. We have talked to a number of women in Kenya and their challenges are many. One of the issues that I bring up from time to time is on family governments that are the father, mother and their children and the role of parents in such a set-up. What we have heard is that most homes are run by single parents, that is by women whose husbands have left them to fend for themselves and to also look after their children; the number of these children could vary from one to six and the fathers have either neglected them or they do not want to pay maintenance for these children. One question was asked by Commissioner Ojienda and it was what your recommendations would be to improve the girl child literacy. In your response you said, in part, that women do not have the capacity to educate children. Another question was asked by Commissioner Shava; it was also related to education and you again said if a mother does not have any money, how then does she pay for the education of their children? In response to both questions, your answer was on either the capacity of the woman or the mother failing to pay. I am wondering whether these children have fathers and what these fathers are doing to respond to these two questions in this way.

Ms. Farida Rashid: Thank you very much Commissioner. I would like to say that all of us should listen to me. A woman gets married and the husband knows that she is the one who will raise his children. When many men see that a woman has given birth to children, they abdicate the responsibility of looking after the children. He goes outside to look for other mistresses and other wives. As a mother you cannot ignore the child. When the baby is small and is crying, you will find the father telling the mother to take away the child since he wants to sleep well and go to work the following day. That is a problem; employment opportunities also for women are very few. Also, when you get a job you find that the salary is very small for you to take care of your children. You are told to leave your child at the matrimonial home and come alone to work, but you cannot throw away the child. That is why the women are really suffering. On the education of the girl child, a woman can manage but she struggles, because of the stress from lack of money and how the man treats her; many things go wrong in the family.

Commissioner Chawatama: I saw a number of women smiling and it made me think that they identified what I have found on the ground; indeed, the family image is very important; from the family government people can run for political positions and become
Ministers and even presidents. So, if the family unit is not raising healthy children, and if the fathers, as the heads of families do not exert their leadership, maybe that is what has contributed to other vices that women have complained about and continue to lament over; examples of such vices are drug taking, prostitution and other things. I am so grateful that you have been able to answer this question frankly and in a room full of men and women. Sometimes when we discuss these women issues, our partners may not fully understand the pain and suffering that we go through, and how we feel as women. Thank you very much. I have no further questions for you.

The Presiding Chair (Commissioner Farah): Thank you very much, Farida, for your very good presentation. The issue of women has been raised with us in the same way as the issue of the disabled all over Kenya. In the pastoralist areas, it is the woman who breaks the home and builds it again as they shift from one place to another. She is the one who prepares the food, milks the animals and feeds the children, while the mzee sits in the shade of a tree. In the Coast Province and in places like Kilifi we find that the men sit under a mnazi tree the whole day drinking their stuff while the women till the land. When she sells all the produce, she is the one who brings the money to her man and then he is the one who decides how it is allocated. In the coast also fishermen wake up very early in the morning and take their boats to the deep sea, fish and when they come back at 5 or 6 o'clock in the evening, they sell their fish and bring the money to the women. In a way, we have noted that. I am very happy for you because you have covered everybody and when it comes to girls and education, we have known where priority was not being given. Even when young girls graduate from university, they are not given employment opportunities as fast as their male counterparts. We have taken note of all that and we shall make appropriate recommendations. Tomorrow, there will be the women forum. Come along with your fellow women and you will talk more. You know that the woman is the foundation of a home and when she breaks the whole home then that is bad. Thank you very much for your presentation.

Leader of Evidence, can we have the next witness? Stand down Farida, please.

Mr. Tom Chavangi: Presiding Chair and fellow commissioners, I propose that I bring in witness number 3, Charity Chahasi and witness number 12, Patrick Makalo. They will all speak on behalf of people living with disabilities. I have reminded them that these are issues that will be tackled in Nairobi next month in thematic hearings. So, they should go directly to the recommendations which will form a big part of the report.

The Presiding Chair (Commissioner Farah): Thank you very much, Leader of Evidence. I think all commissioners agree with you. You are right. In every county we have been going we have heard evidence of people living with disabilities; in Nairobi we are going to have thematic hearings from people living with disabilities. So, let them come to the recommendations straight instead of going through their memoranda. Proceed, please.

(Ms. Charity Chahasi took the oath)
Mr. Tom Chavangi: Thank you very much Charity Chahasi. You presented a statement which had an attachment of a memorandum before this Commission on issues affecting people living with disabilities. You are a member of one of the organizations called Tunaweza Women with Disability. Kindly, proceed to present your statement. More interesting should be the recommendations. Bring out the recommendations very strongly and that will inform the Commission when making recommendations to the Government for the purpose of assisting people living with disabilities.

Ms. Charity Chahasi: Okay. My recommendations are about people living with disabilities. One is about discrimination. We have been discriminated in employment. Most of us people with disabilities are educated but the problem is that we cannot get jobs because of our disabilities. The second problem is about infrastructure. You will find that our roads are not good. They are built in such a way that a wheelchair or a tricycle cannot use them. On the highway there are no signposts that have been erected to show that a person with disability is passing. So, there is a problem for us while crossing the road.

Another problem is about transport. Our public transport is not disability friendly, in that we cannot board a matatu well; also the drivers and the conductors of the matatus do not like carrying people with disabilities in their vehicles. I have an experience myself where a public vehicle just passed me and I was stopping it; the crew said that I would cause delay. They used bad language by saying that I was crippled. Another problem is about our health sector; we have hospitals where there is a problem with the sign language interpreter. It is a problem for the disabled to express themselves. So, we need sign language interpreters in the hospitals.

Another problem is that some hospitals have stairs, and you cannot use them to go up. I have a wheelchair and it is hard for me to go up the stairs. Also the beds in our hospitals are so high. If it is possible we should have adjustable beds in the hospitals. Another issue is about our Administration Police. In the police force we do not have a sign language interpreter and also most of them do not really know how to talk to people with disabilities. They still use words like “crippled” and “bubus” for the deaf. So, it is a problem. Also handling the people with disabilities is problematic when they board vehicles. From a Bombolulu workshop disabled people were taken to Shimo La Tewa prison where their crutches and wheelchairs were taken.

Another issue is about education. A child with disabilities faces problems in schools. Some special schools and institutions for the disabled violate the rights of the children with disabilities. We have the mentally challenged where there is no proper curriculum in place for their learning. You find that they do not know what they learn; they are just left like that. After learning, there is nothing that they can do. We need the Government to look into the curriculum of the mentally challenged; also the Government should take stern measures to streamline special schools and institutions.

We also have a problem with families. In our families, people think that you are a problem to them when you have a disability.
Most people with disabilities in our communities are beggars on the streets because they cannot access jobs.

Another issue is about affirmative action for women with disabilities. Most of these women are vulnerable because most of them are single mothers. They do not have jobs and so, it is a problem and we need the Government to take affirmative action. In politics, people with disabilities have been discriminated against. So, we need the Government to take action so that people with disabilities can be leaders.

Mr. Tom Chavangi: Thank you for your precise presentation. I will now welcome Mzee Patrick to present on people with disabilities in Mombasa, especially Bombolulu.

Mr. Patrick Makalo: I am grateful that this Commission has come to hear issues concerning disabled people. I will start with the history of Bombolulu Workshop. In the 1960s and 1970s, Mrs. Bridgewater in conjunction with the Methodist Church decided to start Port Ritz School for the Handicapped around 1969. They saw that the disabled children also needed to be empowered after education to be self-reliant. They sat down with Holland Rollway and decided to open a workshop in conjunction with the Methodist Church at Mazeras. They were taught and started earning Kshs5 a week until they were paid Kshs250. This workshop continued until they attained what was needed. The workshop was being managed by Holland and they made profits and decided to share it. However, the disabled who were there recommended that the profit be used to buy a piece of land. Mr. Holland bought a farm at Kisauni, 12x12 hectares for Kshs40,000 in 1974. The workshop was in Mazeras but once they got land, they came to Bombolulu and carried on with their work. As the management changed, they started using money meant for the employees for their own benefit. In 1986, there was a strike and the management that was there was removed; they then held an election of the people they wanted to lead them.

Mr. Tom Chavangi: Let me guide you! We know the history of Bombolulu but what is affecting the disabled is the issues of land, the court, police and the strikes. What is it that is affecting you so that this Commission can give the recommendation to the Government so that you can get assistance?

Mr. Patrick Makalo: My recommendation is that, as the disabled, let us be given equal rights because we are being taken for granted. We were being used to generate wealth but we are not involved in any decision making. The person who is involved in generating the money takes it and makes a decision on how he spends it. We are recommending that this Commission should give us the right to take ownership of what comes out of our disability. I should not be discriminated against when it comes to job opportunities or other things. We should be paid according to what we do.

Mr. Tom Chavangi: Thank you very much Ms. Chahasi and Mr. Makalo. I would like to inform you that the issues of the disabled have been heard. I will now give the Commissioners a chance to ask questions.
Commissioner Chawatama: Thank you very much for your presentation Ms. Chahasi. There are some things that you have brought to light that I have not heard and my ignorance even shocked me but I am also grateful for the memorandum that you have presented and in which you have highlighted different instances thus making the challenges of persons living with disabilities real.

Thank you Mr. Makalo for your presentation as well. I observed that the issue of land went to the court. Is that correct? Is the matter still in court or has it been fully settled?

Mr. Patrick Makalo: It is still pending in court because it was a criminal case as they were charged with invading the land without permission and yet, they had bought it. So how could it be that they are not the owners of the land? The land has been taken by APDK and changed the title deed.

Commissioner Chawatama: So, what has become of the workshop?

Mr. Patrick Makalo: It is there but it is being run by the APDK and not by the Coast Workshop for the Physically Handicapped.

Commissioner Chawatama: Do you have a lawyer representing you?

Mr. Patrick Makalo: We took the case to the court, tried all our best to get justice but we faced a lot of obstacles. It is as if we do not have a right to own any parcel of land in this country.

Commissioner Chawatama: I fully understand! Thank you for your time.

Commissioner Shava: I would like to thank Ms. Chahasi and Mr. Makalo for coming and making their presentations. I like the way Ms. Chahasi presented her issues; I find it so bizarre that a hospital which is a place that treats people with all sorts of ailments, full of wheelchairs and stretchers is wheelchair unfriendly. Thank you for bringing these issues to the fore and the treatment from the Kenya Police to take away a crutch and I hope that the police would do better. But there is a lot of work to be done there.

Mr. Makalo, thank you for your presentation; I am Kenyan, I know Bombolulu but I did not know the origin. What you have said in the documents has shed some light because there was a group of people living with disability in Mazeras working with the Methodist Church but later, bought the plot in Kisauni; which means that the plot belongs to them. However, when one of the trustees was unwell, the APDK went to make him sign papers that he did not understand. The effect of those documents was to transfer the plot of land to the APDK thereby disenfranchising the Bombolulu people and removing them from their own plot. Is that the correct history?

Mr. Patrick Makalo: That is what happened! We tried to follow the APDK and told them there was someone who was helping us to run the workshop and asked them to assist us with management. But, unfortunately, they were too greedy and we were
dismissed from work, they used the police and we were taken home. They decided to follow our trustee and cheated him telling him that the people who started the workshop were dead. So Moris Mwenda had no option but to agree with what was said. He signed to give away all the land; he did not know that we were still alive. Thereafter, they went to a lawyer and changed the statements but Bombolulu was still under APDK. We would like this Commission to help us get back our land from the APDK or take ownership and run our workshop without worrying.

**Commissioner Shava:** I agree with your sentiments! Clearly, this was a very fraudulent transaction and, perhaps, what you can help us with; which I do not see in our files is the list of the original members, those who contributed and the current members. Thank you both for coming today and shedding light on some of these issues.

**Mr. Patrick Makalo:** I forgot the list that you are talking about but I have given it out so that you can see the people who started that workshop.

**Commissioner Ojienda:** I just want to thank Ms. Chahasi and Mr. Makalo for the presentation. Ms. Chahasi, you speak so well; you are so clear and have made intelligent recommendations. Your recommendations will be the recommendations of this Commission on the issues you have spoken about.

I also want to thank Mr. Makalo. The solution for the problems that you have lies in the new dispensation because those people got the title deed fraudulently. Then it cannot be a proper title deed and it can be challenged. We will also make that recommendation. Thank you all!

**The Presiding Chair** (Commissioner Farah): Thank you Ms. Chahasi and Mr. Makalo for having come forward. As I told you earlier, every county we have gone to, we have given opportunity to people living with disabilities. There will be a thematic hearing in Nairobi. You will know it through the newspapers.

Leader of Evidence, you may stand them down and bring in the next witness.

**Mr. Tom Chavangi:** I have some documents presented by Mr. Makalo; may they be admitted as exhibits.

**The Presiding Chair** (Commissioner Farah): Admitted as prayed!

**Mr. Tom Chavangi:** The witness has mentioned to me the name of the advocate and so he is ready to share the same later in the day. For the day, I have my last witness who is coming to present on children for the morning session. He is an advocate of the High Court of Kenya and so, he is going to be very brief.

*(The Presiding Chair consulted)*

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**Tononoka Social Hall, Mombasa**

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The Presiding Chair (Commissioner Farah): We have consulted and it is already past 1.30 p.m. Can we do one and the other two in the afternoon?

Mr. Tom Chavangi: So, do we break for lunch now?

The Presiding Chair (Commissioner Farah): That is the majority feeling! Let us break for lunch and resume at 3.00 p.m. and handle three cases.

(The Commission adjourned temporarily at 1.40 p.m.)

(The Commission Resumed)

The Presiding Chair (Commissioner Farah): Please, be seated.

Mr. Tom Chavangi: Presiding Chair, the gentleman who has just spoken wants to speak, but he does not want to follow protocol. He is not in our course list. He does not want to produce any documents for us to peruse. However, he wants to use force to speak; that is not acceptable. We have protocol that we need to follow before we admit a witness who is not in the course list to speak.

The Presiding Chair (Commissioner Farah): Thank you very much, Leader of Evidence. We have heard what you have said. Nobody is allowed to speak unless he comes into the programme. We have a programme that we are following. So, if there is anybody else, he will see our legal department then they will look into his case.

Leader of Evidence, shall we continue with our programme, please?

Mr. Tom Chavangi: The following witness is No.2, James Oduor Obara. He is going to present on issues affecting children in this county.

(Mr. James Oduor Obara took the Oath)

Mr. Tom Chavangi: Before presenting your memo, kindly, state your name again.

Mr. James Oduor Obara: My name is James Oduor Obara. I am an advocate.

Mr. Tom Chavangi: What makes you present on behalf of children?

Mr. James Oduor Obara: I have been involved in children matters for the last 15 years.

Mr. Tom Chavangi: Kindly go ahead and present your memorandum.

Mr. James Oduor Obara: I have been asked to speak on behalf of children in Coast Province and particularly pick on issues affecting children and the challenges they undergo. I have a short presentation which I have circulated. I will just give a summary of the points that I have.
Early marriage is a major problem within the Coast Province. There are many cases where girls who are 12 to 13 years old are married. There are cases where girls younger than that have been betrothed to marriage. Child prostitution and child sex tourism is also prevalent at the Coast. A lot of children, especially girls are engaged in this practice. In many instances, you will find that these girls are brought from regions outside the Coast and many of them are promised jobs as house helps, but on arrival at the Coast they are used as sex objects.

There is also an acute lack of educational facilities in some counties of the Coast. In 2010, I had an opportunity to visit one of these. Young children start school at about the age of 10 years. This is because they have to walk for pretty long distances to school. I was at a place where the nearest school was about one and a half hours walk from where these children were staying and one has to pass through a forest. Therefore, mothers have to wake up with the children in the morning, walk with them to school - it is about two hours walk - and have to stay in school over the morning session, so that they can go back with the children at lunch time. The same applies to medical facilities. I will again use the example of the same place where the nearest hospital was about the same distance from the schools.

Tourism has had its positive and negative effects on the upbringing of children. Many children drop out of school. Part of the reason is that they see that those who had dropped out of school earlier than them a few years down the line are in relationships with foreigners and all of a sudden they are driving vehicles and living a good life. Therefore, the younger ones would like to attain such a standard of life. They do not see then the need for education. Tourism is in a way, also associated with child sex tourism. There is a problem of land and evictions within the Coast. Whenever families are evicted, the greatest sufferers are the children. This is because most of the evictions are haphazard and are done without considering the welfare of these children. This leads to homelessness and in some cases children have been injured in the evictions.

Probably, the biggest cause of issues affecting the children is poverty. A great part of the Coast is very poor. I think a few years ago, Ganze Constituency in the Coast featured as the poorest constituency in the country. There are places like Kinango, far flung and off.

**Commissioner Ojienda:** Mr. Obara, I just want to interject a bit. The issues affecting children in the Coast are common ground. I want you to help us with our report. Make recommendations. What do we need to do?

**Mr. James Oduor Obara:** My next point is actually to suggest the way forward. In my view, we need to sensitize the public through barazas. Personally, I feel that politicians from the Coast should stand up and talk about these issues.

I also recommend that there needs to be greater monitoring of the hotels and private villas. This is where the issue of child prostitution is practised. To deal with the issue of education, I recommend that we need to build more schools, staff them and equip them.
The same should be done about hospitals. The issue of evictions should be humane. The Government has attempted to deal with issues regarding children and we have a Children’s Department in each county. More often than not, this department is understaffed. Therefore, I propose that we get more staff in the Children’s Department. We also encourage the voluntary children officers by, perhaps, paying them a stipend. I know it is a problem. I have talked with some of them and they complain about how they are doing their work. It would help especially the girl child, and those who get pregnant that we have institutions that are geared to rehabilitating them and encouraging them to further their education. Within the Coast I know of only three such institutions. There is Waa Primary School. There is one at Kikambala and another in Kilifi. But in every other place if a girl gets pregnant that is the end of her education.

There would be a problem regarding the issue of children in conflict with the law who have to face the court. I know that there are children’s courts that have been set up. But a court remains a court and children are facing every kind of charge without legal representation. I would propose that it be mandatory that every child in conflict with the law gets legal representation and beginning from the point of arrest. The general thinking is that the Government could do more and support the NGOs and the charitable children institutions to facilitate and enhance the work these institutions are doing. In this regard, maybe the Government would consider tax exemptions and subsidies on water and electricity bills as opposed to what appears to be the case now where the Government is a supervisor. That is all.

Mr. Tom Chavangi: There are some points that I need you to clarify. This organization that you represent is called CLEAR. What does that stand for?

Mr. James Oduor Obara: That stands for Christian Legal Education Aid and Research.

Mr. Tom Chavangi: You have said that you have been in the children’s sector for about 15 years. Has your organization by any chance proposed reforms towards legal aid for children because legal aid is provided for in the Children’s Act under Section 77 and Section 186 of the Children’s Act? It is also provided for under the Constitution of Kenya 2010.

Mr. James Oduor Obara: We have given proposals. As an organization we are involved a lot in matters involving children. We have been drawing up papers. On a small scale, we are giving legal representation.

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

The Presiding Chair (Commissioner Farah): Thank you, Mr. Obara, for your good presentation. I will allow Commissioners to comment.

Commissioner Ojienda: Thank you Mr. Obara for your precise presentation. I was hoping that your memorandum would be more detailed than this. I am sure you will
present a more detailed memorandum that will help with a number of issues as we do our report. You have made very good recommendations.

One of the issues that we should, probably, think about is why the Government cannot fund civil societies or NGOs that help towards important issues such as children; and not just by giving subsidies, but by funding in the same manner as they fund political parties under the new Act. I want you to comment on that. Secondly, you have said that the Government should build, equip and staff schools. How do you get girls to go to those schools if they get married at the age of 12 years? Maybe you should think about dealing with the problem of early marriages. This is because whatever you do, there are no people to attend school then you cannot improve education.

Mr. James Oduor Obara: I have got your views. I am grateful. I know my presentation is short, but I had very short notice. I can get a more detailed account.

Commissioner Shava: Thank you very much for your presentation. I have appreciated the concise manner in which you have documented your presentation. It seems to me that your intention was to come and speak to the points that you have made in your memorandum. What you have said in the memorandum echoes a lot of the things that have been said, but what you have said also adds value by corroborating what others have said before you.

A case in point is where you have talked about slack parenting. The speaker who came immediately before you, although she was speaking to the issues that women are facing, in response to a question from Commissioner Chawatama, she also said there is the problem of absentee fathers. These are fathers who are not participating in the upbringing of their children. What exactly do you mean when you talk about slack parenting?

Mr. James Oduor Obara: I have heard comments from parents and adults talking about children of today as being difficult children. My reaction has always been that the children remain the same now and before. The problem is in parenting in that both the father and the mother may be working too hard elsewhere and get home in the evening. They have no time to spend with their children or to do homework.

We also had discussions with some parents, this was in Kilifi, where some primary school children had boyfriends and girlfriends and a meeting was called to try and solve this issue. They were told to keep off that relationship and concentrate on their studies. They went on with this relationship. At one stage, the parents said: “If you cannot leave her, why do you not marry her?” That is what I mean when I talk about parents being slack. There is no proper attention paid to the children by their parents. I think parents are giving up on children.

Commissioner Shava: Thank you. That is rather startling, but an important example. I have also enjoyed looking at your recommendations. I just want to ask you a few questions about how you see those recommendations being implemented. When you say that hotels and all the private houses that have been turned into salons should be monitored maybe you could speak a bit more about this? We have heard about these
villas further up on the Coast towards Kilifi which are supposed to be private holiday homes. But I am not sure I understand what you mean by salons. How do you propose that they should be monitored?

Mr. James Oduor Obara: I know there is an agreement with the hotels - I just cannot remember what it called - where hotels have undertaken to ensure that their premises are not used for sexual--- There is a code of conduct within the hotels. What I doubt is how it is monitored because these things are still happening in the hotels and in the villas.

When I use the word “salon” this involves a case that occurred several years ago where there was a young girl who was brought all the way from Nakuru and she was underage. Somehow they got her an identity card. She was a minor. They opened up premises somewhere in Nyali, a kind of a beauty salon. But it really turned out that this was not really doing any of the things that were advertised. We got involved, but we could not get the people. I think they got word, because when we went there with the police the place was vacant.

Commissioner Shava: So, are you saying it was a brothel?

Mr. James Oduor Obara: Yes, I would call it that, but they find some nice sounding words to call them.

Commissioner Shava: This is a recommendation I have not seen anywhere else. It gives an interesting context to the problem, where you say that the Government should depart from the supervisory attitude it has adopted and towards the issues whereby ---What you are saying is that the Government seems to have fallen into allowing others to do that work of looking after these vulnerable children. The Government is only coming in to regulate, perhaps, in collecting taxes and that sort of thing. Is that what you mean?

Mr. James Oduor Obara: More than that. You get a bit of tax exemption, but what I mean is that all the CCIs that I know in the Coast or those that we are involved with are not Government owned. There is a code of regulation about how these CCIs are supposed to manage, how the children are to be fed, clothed and every care given to them. The thinking is good because I agree we need to regulate the mothers being misused. We ought to be supportive. My feeling is that even as you lay the standard, you should also support the establishments.

Commissioner Shava: Do you think that they should have more children’s homes? The support should be in which form?

Mr. James Oduor Obara: Children’s homes are also not the way forward. For those existing ones because I know they are all mostly built by private funding where everything else works out. We recommend that the Government puts up such institutions. But the best would be to encourage parents or guardians to stay with the children or their relatives who have departed and give some money towards the upkeep of the children.

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Commissioner Shava: Finally, I am interested to see that you as a member of the Law Society of Kenya recommended that each minor who is in conflict with the law should have legal representation right from the point of arrest, that is, the police station to the court process and after the determination of the process. What recommendation would you make to the Law Society of Kenya?

Mr. James Oduor Obara: To lobby the Government. For proper briefs it is mandatory that each accused person must have representation. This should be extended to the children.

Commissioner Shava: Thank you, Mr. Obara, for the presentation and the discussion we have had.

Commissioner Dinka: Thank you, Mr. Obara, for your testimony and for representing the interests of children in such an able and articulate manner. I have one single question. As you know, there are international conventions on children’s welfare and also there are national laws in Kenya governing the welfare of children. Do you think the way they are today, including the way they have been included in the new Constitution, is sufficient as far as laws are concerned, or do you think there are some gaps that should be legislated?

How are the existing laws implemented, particularly at the regional and county level?

Mr. James Oduor Obara: I think the laws we have are sufficient. I just want to borrow from Mr. Stambuli who said that they are on paper. They must be given life. In my view, it is not enough to have a chapter in the Constitution about children and read it and say we have a Constitution that covers the rights of the children. So, we need to have a more proactive approach.

Commissioner Dinka: Since this is the case, as you know, Kenya is a developing country and it has limitations on financial resources. If you are asked to prioritize the needs of children and the laws that should be fully implemented as of now, what would your priorities be?

Mr. James Oduor Obara: Health and education.

Commissioner Dinka: Thank you. I have no further questions.

Commissioner Chawatama: Thank you very much for your presentation. One of my passions is children. I served as a chairperson for the Children’s Justice Forum in my country because we were not happy with the way children were treated in the criminal justice system. We looked at ways and means of improving the system, so that children are not stigmatized and we have been successful in this. We will share with you, not here but a little bit later, on what we did as a nation.

When you talk about the children’s court what was the thinking behind the establishment of such a court?
Mr. James Oduor Obara: It was to give a friendly atmosphere to children in court and to draw them apart from matters involving adults.

Commissioner Chawatama: Are you aware whether or not the adjudicators were also trained to handle the issue of children and whether the police and social welfare were also trained?

Mr. James Oduor Obara: There is training for the magistrates and police. So, the effort is there.

Commissioner Chawatama: What about children who then enter the criminal justice system? Do you know whether or not there are special cells for children or are they put together in cells with adults?

Mr. James Oduor Obara: It is a bit of both. There is only one remand home in Mombasa at Likoni. It is not big enough. So, at times, we have found children at the main prison in Shimo la Tewa.

Commissioner Chawatama: Is there a diversion programme for children who are found to have committed minor offences? Are they diverted from the usual criminal system and other methods applied such as counseling, a bit of community service and the like?

Mr. James Oduor Obara: The practice is to avoid to a great extent committing them. I would say counseling is non-existent. As I said, that would best be done by the Children’s Department, but it is grossly understaffed. I had said that counseling is non-existent because, as I said, that should be done by the children’s department; but it is grossly understaffed.

Commissioner Chawatama: That was the case in our place, as it were. We thought the children’s department would deal with that, but we then found that all the stakeholders had to get involved and headed by the courts. So, the courts are the ones which sign these diversion orders to divert them from that system and then set a programme. Of course the child is treated according to the nature of the offence and, whether or not he is a second or third offender. But we do not have an opportunity to share what you do here and may be in Mombasa. Similar programmes could be used as it is done in Zambia and South Africa because already there is interest on what you are doing.

Thank you very much for what you are doing. Please, continue.

The Presiding Chair (Commissioner Farah): Thank you very much, Mr Obara. Indeed, like women and the disabled people, in every county that we have been to, we have got presentations. But your presentation and memorandum has added value to those other presentations and we are grateful for that. There are no more questions for you.

Thank you very much.

Leader of evidence, could you stand down the witness and bring in the next witness?
**Mr. Tom Chavangi**: Presiding Chair and fellow Commissioners, with your permission, I would wish to admit a memo from a member of this congregation; an ex-diplomat called Mr. Said Shalo. He wants to present a memo on issues of land within the coastal region. I would just mention his name. This is the gentleman.

*(*Mr. Mohammed Said Shalo took the Oath*)

Thank you very much, Mr. Said Shalo. We shall not allow you to speak because you just presented a memorandum and we have not gone through it. The Commissioners have not gone through it. But we are thankful that you have presented it before this Commission. Probably, you can just have a word for the Commissioners for two minutes.

Thank you.

**Mr. Mohammed Said Shalo**: Hon. Presiding Chair and Commissioners who are here, I thank you for receiving me. I am here so that I can show how the operation in the Old Town of the Swahili people was and how people are suffering especially on land economics. That is my aim.

If you read the memorandum which I have presented, you will see what we are talking about. There is a memorandum which I wrote and sent to the top leaders which is confidential. I would like it to remain confidential because all of---

**Mr. Tom Chavangi**: Sorry! I am very sure that in your hands there is a document which has very sensitive issues. You should have it on record and you will know how to measure that truth, so that you will know how to highlight it in future days.

Thank you very much.

**Mr. Mohammed Said Shalo**: Thank you, Presiding Chair. Can I now present my memorandum?

The Presiding Chair (Commissioner Farah): Permission granted.

**Mr. Tom Chavangi**: Thank you very much, Commissioners. Can I present the next witness?

**Commissioner Shava**: Through the Chair, if we can please, have the full names of this witness who has presented a memorandum.

**Mr. Mohammed Said Shalo**: My name is Mohammed Said Shalo. I am a resident of the Old Town. I was also a diplomat in Scandinavia for two terms; that is about seven years. I also worked for the Government at high ranks until I became the personal attaché to the late Dr. Josephat Karanja, who was the Vice-President then. So, that is my contribution.

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**Tononoka Social Hall, Mombasa**

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Mr. Tom Chavangi: Thank you very much, Said Shalo.

Commissioner Ojienda: When were you an ambassador?

Mr. Mohammed Said Shalo: From 1974 to 1977. I came back home on leave and when I was taken back there for another term of four years up to 1981. When President Kenyatta died, I was in Europe.

Mr. Tom Chavangi: Thank you Presiding Chair. I beg to step down the witness.

The Presiding Chair (Commissioner Farah): Yes, you may. Would you want us to admit the memorandum?

Mr. Tom Chavangi: Yes. I had requested for that.

The Presiding Chair (Commissioner Farah): Okay. Admitted as prayed!

Mr. Tom Chavangi: Most obliged!

Presiding Chair, I have two witnesses. Witness Nos.5 and 13. When you see Kayabombo, it is related to Likoni Clashes. That is why I decided to hear from these witnesses together. However, we have a challenge today. Previously, this witness was called Balala during the Islamic Party of Kenya, but he has now warned me never to call him Balala, but Ocampo. I have another Ocampo here, so I do not know who will be Ocampo I and Ocampo II. I seek your direction on that, Commissioners.

The Presiding Chair (Commissioner Farah): Thank you very much, Leader of Evidence. I think that is a good job for the day. Let us call him by the name which is written, witness No.5

Mr. Tom Chavangi: Most obliged.

(Messrs. Khalid Salim Ahmed and Cosmas Mbithi Kyule Ngunu took the Oath)

Mr. Tom Chavangi: Thank you very much, Messrs. Khalid and Cosmas. Mr. Khalid, for the purposes of our records, could you tell the commissioners your names again?

Mr. Khalid Salim Ahmed: My name is Khalid Salim Ahmed.

Mr. Tom Chavangi: Mr. Khalid, I would like to ask you to add Ocampo to your name.

What do you do for a living now?
Mr. Khalid Salim Ahmed: All protocol observed; commissioner, ladies and gentlemen who are attending this hearing; I would like to introduce my information by giving an example before I give my evidence in detail.

I was an activist in 1991, what they referred to as the second republic or the second liberation. The second liberation came after the first one from the colonialist in 1963.

Here in Mombasa, as it was in the whole of Kenya, activism for change was at its climax. The fighting for the needs of all the citizens of Kenya as it was known; there was a lot of corruption, political murders and torture. Everything was happening as if Kenya is not independent.

As God would want from the hearts of our people, six days together with those--- I did not hesitate to join those who were before me; one of them being Hon. the late Jaramogi Odinga Odinga, Messrs. Masinde Muliro, Martin Shikuku, Kenneth Matiba, Nthenge and many others.

We met here in Mombasa and decided to join hands because the coastal region of Mombasa was the heart line or strength of neo-colonialism and it was the stronghold of Mombasa.

I did not hesitate joining them. What they did for us was that because all these people came from Nairobi and upcountry areas; We were given the responsibility of making our own commission to see how we are going to bring about change.

While in the commission, we saw that if we formed a coastal political party, it would create a problem because we will not be representing the needs of all Kenyans.

Secondly, if we formed a political party and the late Jaramogi Oginga Odinga was one of those who had insisted that we should have one political party; that is, the Forum for the Restoration of Democracy (FORD Original). We thought of forming a lobby group in order to try and break up the KANU neo-colonialism. It was my idea, among the ten of us who were there to say that we should form a religious activism. When I was asked why, I told them that the strength of KANU at the Coast was among the Muslims.

Secondly, all rich people; the tycoons at the Coast were in KANU. Thirdly, the strength of corruption of KANU comes from Mombasa. All the days in the world and the way the Bible and the Koran says; there are only two tribes and there is no a third one. Whatever it was that you may have called yourself, you were to be one of the two tribes. You were either good or evil. You were either rich or poor. There is no third tribe. When we look at the time of KANU or even now, there are people who do evil and it is not because of their tribes, but when they are faced with problems, they run to their tribe.

The problem with Kenya, before I give the two examples, is that this is a commission from the list of about 40 commissions in the last six or seven years. They have been very many. One of the Commissions that has been here and that was very popular was the
Akiwumi Commission. It sat at length and it was given information as none. They were dwelling about the Likoni clashes.

We formed a party called Independent Party of Kenya (IPK) and this party did not come except that it was a wake-up call. The Muslims in Kenya are from every tribe from Mumias to Malindi from Msambweni to Wajir, from Mandera to Voi, from Nairobi to Murang’a.

They are everywhere in Kenya. You will find that we live together with Muslims and our brothers, the Christians, without a problem. The problem that comes up is not religion. It is not even scenes of politics, but it is the bestiality of human beings themselves. For us to get to the level that we had reached where there are no murders and conflicts, there was only one cause. The cause is lack of putting into use the education that we have.

Kenyans are very well educated and I would always want to congratulate even those who have not gone to school that they are very intelligent. The problem that we have is the implementation and the administration of our Government policies. Let me give an example of somebody who has knowledge of politics and his name is Titus. He is a sociologist and a historian. In his book of wisdom, he says: “Never the state or a country is most corrupt, they will always make it pride.”

Any country where corruption has reached its apex, there are very many laws. Kenya does not cry for commissions with all due respect to you, because I believe I have no ill-motive against you. I would like the Government for every good reason to step up and put in--- But Kenya has no need for very many laws and it has no need for very many commissions because all the commissions that have been before you have not achieved anything.

In the Akiwumi Commission, very many names were mentioned and now some of them are Ministers and others are still Provincial Commissioners and some of them are still District Commissioners. Very many of them are still senior parastatal heads and, these are the people who kill other people’s spirit. I would like to mention this briefly.

In 1992, there was a PC here known as Mbwagwanawa and he was a very rich man. He was sober, humble and very good. He did not involve himself in any killings. But during the 1997 elections, there was somebody known as Francis Sirma. Francis Sirma was a nephew to the retired President Daniel Toroitich arap Moi. He is the one who started off the Likoni Clashes.

The PC’s office was the headquarters for planning and implementing and murders. I went there more than once and I saw very many people. I heard and very many people explained to me among those who had planned and brought money were Nicholas Biwott, Musa Sirma who is a brother to Francis Sirma and there was Moi’s son, Gideon, who was very young by that time. There was Sharif Nassir. The other one was a TSS and also a senior officer from the Special Branch, called Shukri Baramadi, who at the moment is the Chairman of Kenya Ports Authority. The other one was Rashid Saajad
who was a Nominated Member of Parliament and now he is now a businessman in Mombasa.

The Presiding Chair (Commissioner Farah): According to our Act, and rules of operation, it is not good to mention people’s names until they are informed in advance. So, if you could whisper to the speaker without mentioning names and I give chance to Commissioner Shava to add on what I have said.

Commissioner Shava: Thank you very much, Presiding Chair. Leader of evidence, I am not sure whether the names that have been mentioned have been mentioned in other commissions. The witness has mentioned the Akiwumi Report. If those names have been recorded and are in the public domain with regard to these issues, then we can consider and they can be mentioned here. If that is not the case, then, of course, as you are well aware, rules of procedure of this Commission dictates that a person to be mentioned needs to be informed in order that he can also be given an opportunity to give his/her side of the story. So, perhaps, you could confirm from the witness and then approach and advise us.

Mr. Khalid Salim Ahmed: Thank you very much. God bless you. I will repeat again the people that I mentioned before. They personally attended the Akiwumi Commission at the Mombasa Town Hall; not only once, but twice.

The retired President Daniel arap Moi refused to accept the summons. He did not attend and did not send a lawyer but he had been adversely mentioned.

Mr. Francis Sirma was the PC at that time was there also. Mr. Rashid Saajad was there at the Akiwumi Commission and I was there personally; Shukri Baramadi and all these other people. I am not suspecting them, but I know that they planned the murders in Likoni. This was the beginning of the deaths that happened in 1992 and 2007. It was usual for KANU to kill people because of a seat.

In Molo, they just wanted a seat from Njenga Mungai, and in this place they wanted a seat from Alfonso Mwavumo. That was the reason why they brought about all the murders. They were trying to make sure that they kill people.

The effects of Kaya Bombo and the Likoni clashes are felt until today. What is called the NFC is one of the results of the Kaya Bombo clashes. The trusted the NFC because they got a lot of money and the perpetrators of the Kaya Bombo clashes are the ones who were the benefactors of the NFC. It is not a political party and they were not fighting for Kenyans. They just wanted to bring about discomfort so that people forget the clashes so that they are not taken to court. My advice to this Commission is that I respect the rule of law and I would like to succeed. Please, make sure that these people I have mentioned appears before court. Any country that does not bring its citizens before justice is a country that has problems. In Kenya, we have political and economic problems. Today, a country like America may have problems because no American Minister is taken to court. The American economy has one foot in the world and one foot in the grave; the same.
thing with Britain and France. You may have sufficient energy with countries in the East that have seen coup d’état over the last three months. It would reach a point when these weak people will pour into the streets and they will think they have been incited. When sugar goes to Kshs500 and somebody does not have that money to buy it, and if somebody else passes in a car that is worth Kshs30 million and someone else does not have Kshs30, that will make people go to the streets. When somebody is taken to The Hague and they say that this man comes from our tribe and he should not be taken to The Hague. This is because we have a doctrine of impunity and corruption. This has been institutionalized because it is a Government institution and anybody who wants to get to that level must be a politician. So, if our Government does not uphold the rule of law, I have no influence. For example, I do not say anything because I hate anybody or have personal interest.

My passport was withdrawn and my citizenship got cancelled. I was told never to come back to Kenya. I tried to fly in twice and I was told to go back to Germany. I lived in Germany for about five years. After that, I took the Government of Kenya to court in Germany and they wanted me to be compensated or get paid but I told them that I was not interested in money. I just wanted my passport.

The same Government that gave me a letter declaring that I was not a Kenyan citizen came to their embassy and gave me a passport; the same passport I was given in 1974, when I left school. I was given an apology letter and a passport to show that I was a Kenyan citizen. I have not gone to any commission to report. I am not saying this here because I want attention or because I want people to listen, I just want to be an example or a role model to the people. Until today, the Immigration Department is a dirtiest institution in the country. People can come from India, Sudan and Tanzania and buy a Kenyan passport for Kshs100,000 in half hour but a Kenyan cannot get a passport in 100 days!

When the same Government took away my passport and my citizenship and apologized to me, I did not go to any commission. I did not stand for any political seat because I knew this was a legal issue. I fought it legally and I am happy I have been given a letter by the Attorney-General who has brought me to the Chief Justice, Dr. Willy Mutunga, who brought me to Director of Public Prosecution (DPP), Keriako Tobiko, to get my compensation. I have been paid and I am on the virtue of receiving money from the Government after eighteen years of patience. These are legal issues, but as a country, if you want to have a good government and with good citizens... If you want to live well, you must make sure that everybody can be taken to court, whether it is the President of Kenya, the Prime Minister, the Minister or any tycoon.

This is a letter that I was given, after I had written to Mr. Sunkuli. I also have a letter to the Attorney-General that I will be paid what is due to me. After that passport was given to me, I got five more passports and I am not a citizen just for political reasons. I do not complain about the dehumanization. What I knew to be wrong was the impunity. I have been tortured but I am still patient. I still love Kenya and I want the best for Kenya. My problem is not for the Government to pay me but what we fought for in 1992. Matiba,
Jaramogi Oginga Odinga, Masinde Muliro, Shikuku and very many others, some of them who have died; there were very many university students some of whom have since died.

We have not reached a level of KANU “A”, which was Moi’s KANU and Kibaki’s Government is just KANU “B”. It is like removing a rooster and putting there a chick because still there is corruption and the torture is still going on and the citizens are still crying as there are still killings. These are the problems that we have.

The 2007 clashes were caused by the fact that in 1992, nobody went to court and about 300,000 people were killed in Molo. There were 12,000 Kikuyus, 5,000 Luos, and about 8,000 Luhyas who were killed in Molo. Nobody was taken to court and that is why when we came to 2007, this was just the growth of 1992 and 1997. But if anybody is taken to court, nobody will try that again. People are mentioned in Parliament and are said to be selling drugs and bhang, but they do not even want to resign. How do we get justice? We are not afraid! They tell you: “I do not care. My conscience is clear.”

In any country, even if we have 100 commissions, it is a waste of time if people are not prosecuted and jailed. Being jailed is not an embarrassment neither is it the end of life. I have been jailed for treason in Manyani. This is my file number and the original file is in Mombasa Court. The original one is at the Attorney-General’s office at the moment. They have also accepted to pay me because I won the case. So, being prosecuted is not an embarrassment. I also have a case where I was jailed for three years for sedation. I have the number here and if it is relevant, I will pass it over to you. That is my treason case. My letter of my citizenship was cancelled and it is there. The problem is that I did not come to the Commission to complain about the injustice of the Government, but I have gone to the Attorney-General and the Government has accepted it is going to pay me. The problem is that there is still corruption in the Immigration Department. Kenyans and especially the people of the Coast Province do not get identification cards or passports unless they bribe. A foreigner can still come in and buy a passport. These are the problems that we are facing.

Mr. Tom Chavangi: Thank you very much, Khalid Ahmed. It seems you have told the Commission what is happening, the impunity and people not being brought to court; senior people doing things and not being prosecuted. Could we give a chance to Cosmas to talk about the Likoni Clashes as well?

Mr. Cosmas Mbithi Ngunuu: Thank you very much. I am very grateful for this opportunity.

Mr. Tom Chavangi: Please, tell us your names again.

Mr. Cosmas Mbithi Ngunuu: My name is Cosmas Mbithi Kyule Ngunuu. I am very happy, first, to get this chance to be here before this Commission. I feel like my eyes have been opened because I was in the dark. Getting to this point is not so easy. I thank this Commission for listening to me from the beginning and also giving me a chance to come here.

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First, I would like to talk about the issue of 1992. We had a problem of the unrest and after that, nobody tried to help to us. Later on in 1997, it was worse and we suffered a lot more injuries. We saw people suffering while the police would be joining the people and they watched as the citizens were set on fire. They had petrol, kerosene and tyres burning people’s houses.

Mr. Tom Chavangi: Mr. Cosmas how did the Likoni Clashes of 1997 start?

Mr. Cosmas Mbithi Ngunuu: I saw as it came because I was at my place doing my work. I was working at that time and I was surprised to see fire and smoke billowing. People had all kinds of crude weapons, whips and clubs, and other people had guns. While I was doing my work at a place where I had opened a small business to look for means of sustenance… It was a big kiosk where I was selling accessories and SIM cards. I saw people running in all directions. When I tried to go back to try and save my property, I got a whip and people were being beaten and the policemen were helpless as people were being killed. There is nothing I rescued. I just crawled on my stomach the same way you could see somebody moving as if he is small Child. I moved slowly until I was rescued by others and I left.

Secondly, when I was moving from here, I saw smoke and the houses had already been set on fire. There was nobody who had opened their business at time because everybody had ran away looking for a place to eat and hide. So, I asked myself what kind of Government we had when people were being killed, other people had whips and clubs and people were being killed. Some people were carrying whips the type that watchmen carry. They were beating people while the police who had guns could not arrest them. At that moment, the Government was not protecting them. We were worried about that situation. So, I did not understand and I saw there was a lot corruption everywhere. So, I went on with my treatment, God helped me, I got some energy and started my work again.

By bad luck or good, because God teaches people—- We are told in Philippians Chapter Four that you should be grateful for everything whether good or bad. You do not say thank you today because you are satisfied.

So, I did not understand. Corruption was everywhere. I went on with my treatment. God helped me. I got some energy and resumed my work. According to the Book of Philippians chapter 4, we are told to be grateful to God for everything whether good or bad. We are also called upon to be thankful and not to condemn God because He provide for us. Our strength and weaknesses lies with him. So, we should always praise his name. On 16th March, 2000, I had family problems. I was arrested and jailed. I was accused of two cases. One of the cases was dismissed. However, I was jailed because of the family issues. I was taken to Kwale Prison. The jail term was 12 years. I was moved from Kwale Prison by a senior police officer called Kiathe. We drove in his car to Shimo La Tewa. We arrived there and I was booked as prisoner no.470 LS, Cosmas Chile Ngunuu. I was hurt while I was in jail by a prison warder. I also fell sick and I was taken to hospital. At
the hospital, I was diagnosed to suffer from tuberculosis. So, I used to be taken to the Coast General Hospital for treatment. At Shimo La Tewa, there is a small prison dispensary. What we normally get from there is first aid services. It is not well equipped. So, I used to be treated at the Coast General Hospital.

Let me tell this Commission that in prison, there are strict rules to be followed by all prisoners. For example, before you are taken to hospital, you need to book an appointment with the senior prison warden who will assess you. So, one day, when I went to hospital, I was not treated because there were no drugs. I complained bitterly why they had to take me to hospital and I was not treated. However, the warden did not take it kindly, but promised to buy me medicine when we get back to prison. At that time, anybody who had TB had to have---

**The Presiding Chair** (Commissioner Farah): With all due respect, we have everything here in his presentation. We have even seen his suit and summons. We have all the documents here. As Khalid, he should just summarize the recommendations.

**Mr. Cosmas Mbithi Ngunuu:** I would like to expound briefly on certain issues before I table more documents.

So, I would like to give some documents. As I said, I did not get treatment that day. Mr. Moody Awori had visited prison and ordered all sick prisoners be taken to hospital. So, I took P3 form from Bamburi Police Station after I was released. However, when I went to the hospital, they could not trace my file or any document. Somebody called Peddi from the Muslim for Human Rights organization was there. When I complained, I was put in the cell but he came and got me released.

I went to the advocate who told me what to do. I did not have energy. We went to Kituo Cha Sheria which is a public law institute. They really tried to help me. With their assistance, my file was found and the P3 form was filled. However, it was misplaced by the OCS of Bamburi. I would like to table a copy of a letter they wrote to me saying they had misplaced my P3 form. They requested me to fill me another one. I would like also to give you this document from the Shimo La Tewa, which shows that I was assaulted by one of the prison warders. This is a letter that I had written in prison giving consent to sell my farm through advocate Mwangolo in order to get treatment. I was allowed by the prison authorities to be taken to him. After sometime, there was trial and ruling given by the Judge Sagon who ordered my case to be reviewed. However, to date, it has never been determined.

As I said earlier, there is a lot of corruption in prison. I urge our Government to help prisoners in jail because they are suffering. Nobody respects their basic human rights. Many prisoners die in prison before they complete their jail terms. They die as a result of being neglected by prison authorities. Before a prisoner is taken to hospital, he must prove that he is very sick. If you do not have money to buy your medicine, then you can easily die.
Living conditions in jail are pathetic. There are no proper beddings. The little which are there are dirt and bedbugs infested. They keep on reminding you that your father or mother is not there to take care of you. If you die, they do not care. In case, you have any medical history, you recorded it with the authorities. The human rights people are not allowed to visit us in prison.

Mr. Tom Chavangi: Mr. Mbithi, let us go to your recommendations.

Mr. Cosmas Mbithi Ngunuu: My recommendation is that we take care of our brothers and sisters who are jail because they are suffering. Who will take care of sick people in jail? There are young and elderly prisoners in our prisons. They need to be treated as normal human beings.

Mr. Tom Chavangi: Thank you very much. Have you finished your recommendations?

Mr. Cosmas Mbithi Ngunuu: I would like also to see action taken against those who assaulted me while I was in jail. What they did to me was very wrong. In fact, it amounted to criminal offence against an innocent Kenyan. The P3 forms should be made available to prisoners who are assaulted while in custody of prison authorities. Had it not been for Mr. Moody Awori, I would have not been issued with a P3 form.

Mr. Tom Chavangi: A minute. Wait for me to guide you. You are repeating what you have already said. We just need your recommendations.

Mr. Cosmas Mbithi Ngunuu: There is a clip in the KBC that shows the kind of torture in our jails. That clip is 07. I would like my case to be reviewed. I have talked with human rights groups and they are ready to hire a lawyer for me. I was hurt by prison warders. They tortured me and you can see today I walk with the aid of crutches. I sincerely thank the donor who gave them to me. As you can see, I am weak to use them. I think I will be comfortable using a wheel chair. I normally get medicine from well-wishers. I also thank the chief and the DO who have allowed me to collect money from the public for my medication. It is my hope that this Commission will see to it that I get justice which I have been denied for many years.

Mr. Tom Chavangi: Thank you very much, Mr. Mbithi.

The Presiding Chair (Commissioner Farah): Khalid Salim Ahmed Ocampo, we thank you very much. We called you Ocampo as requested. We thank you very much for your eloquent presentation. It was very clear. It had a lot of evidence attached to it. You are a good witness.

Mr. Cosmas Kyulle Ngunuu, thank you very much for your presentation also. Do not be so moved by the things that happened to you in prison. They also happened to Khalid Balala who was imprisoned also like you. This Commission had some statement takers. I can see one of them is sitting over there. He went to prisons and took statement from...
even currently existing prisoners about the life in prison. We have a lot of their statements, both those who have been released and the inmates who are in there right now. We are aware and we have a lot of evidence of the problem and violations of their rights that are taking place as we are sitting here. So, be rest assured that even though you have pleaded, we have the records. We will know what to recommend when we do our final report.

Let me now give the commissioners a chance to ask clarifications, if there is any.

Commissioner Dinka: Thank you, Presiding Chair. I would like to take this opportunity to thank Mr. Khalid Salim Ahmed and Mr. Mbithi Ngunuu for their testimonies. They are passionate and very articulate. They have given us information on what had happened during the Likoni Clashes. They have also talked about the Kaya Bombo militia.

I have two questions; one is for Mr. Khalid and the other for both of them. Mr. Khalid, was your political party ever registered, or given licence to operate?

Secondly, when you were deported and stripped of your citizenship, was it through some kind of a court procedure, or was it completely administrative? Why did hey deport you to Germany?

The third question is for both of you. We have heard about the Likoni clashes and Kaya Bombo militia which was working for one of the tribes. But you mentioned that actually this thing was clan and funded by state agents, agents of the Republic of Kenya. Why would a Government or a state want to inflict that kind of damage upon itself and its own people? Be very brief. As you can see, I am not a Kenyan. So, I can really understand what went on at that time.

Mr. Khalid Salim Ahmed: I was not in England. I was in Germany. I was on an educational trip. At that time, a politician would be issued with a three months visa to travel abroad. That is how they took advantage of me. After the expiry of the visa, they confiscated my passport.

In one of the letters that I gave to Mr. Sunkuli who was the Minister for Internal Security then, I complained to him that it was only during election time that they would arrest me. The recent case took me six years, but I was proved innocent by courts. The sedition case took two-and-half years. My presence in Germany was for five years. They have tried to destroy my entire livelihood. I thank God for everything because today, I am here telling my story of torture.

Commissioner Dinka: Excuse me. My understanding is that you were not deported, but your passport expired.

Mr. Khalid Salim Ahmed: With regard to the Likoni Clashes, they happened because there was need to remove a Member of Parliament who was in the opposition. It was never because of tribal clashes.
Commissioner Dinka: Is it correct to say that your passport expired while you were abroad?

Commissioner Shava: Sorry, through the Chair, could those people sitting near the witness assist him? The Commissioner is asking very pertinent questions, but you are not assisting the witness to answer them.

Commissioner Dinka: Thank you, Commissioner. Mr. Khalid, we have now understood about your deportation. Actually, there was no deportation. It was your travel document that expired. What about the stripping of citizenship, when was it stripped?

Mr. Khalid Salim Ahmed: It is upon the Kenyan Embassy to either allow you, or not to allow you. This did not happen to me alone. It also happened to Messrs. Koigi Wamwere, Raila Odinga, Gitobu Imanyara and many others. Jaramogi Oginga Odinga was kept in Egypt for 15 years during the colonial era and the Kenyatta era. This happened all over the world. It is to keep us away from the ground. Today, I do not have a penny with me.

Commissioner Dinka: My question is very simple. Stripping of citizenship is a process. Was there such a process followed? Are you actually saying your inability to come back because of the expiry of the travel document was tantamount to stripping your citizenship?

Mr. Khalid Salim Ahmed: It was not a process, but a statement by the President. However, they did not intend to keep me away from Kenya. After the elections, they allowed me back. I have given you the letter. I have another letter here of apology. My problem is because they have violated the law not because I need money or I want to revenge.

Commissioner Dinka: No, we have heard that before. I just want to be very clear. This Commission is TJRC. We want to go into the root of the problem and then try to reconcile the community and unite the people of Kenya---

The Presiding Chair (Commissioner Farah): What channel is Mr.Khalid on? Is he on English channel or Swahili channel? If he is on the Swahili channel, revert to the English channel, so that the commissioner can have it a direct. He is going through translation and yet he is speaking in English Language. Are you hearing the questions? Please, answer the questions then.

Commissioner Dinka: My question was on your inability to come back. Let us address the issue of citizenship now. You said that in your deportation, you had been stripped of citizenship. So, my question is, citizenship is an issue of legal process, political process, and it is a very serious matter. But from your statement, there was no process to strip you of your citizenship. But you assumed that your inability to come back to Kenya was because of the expiry of your travel document. You also said that the refusal by the Kenyan Embassy to revalidate it was tantamount to stripping your citizenship. Is that the case?
Mr. Khalid Salim Ahmed: Not at all, gentleman. Thank you very much, Mr. Commissioner.

First of all, they did not renew my passport. That was the first thing. The second thing is that they got a written statement from the ambassador at the behest of President Daniel Arap Moi handed to me by the Minister for Foreign Affairs, Mr. Musyoka, that I was not a Kenyan and I was not allowed to be back. I declared a persona non-grata by this Government. I have a written document from the Office of the President which is signed by then the Minister for Foreign Affairs, Mr. Kalonzo Musyoka. It said in uncertain terms that I am not a citizen of Kenya. It is the same people who came back to apologize with a written statement that I have given the Commission.

Commissioner Dinka: Thank you very much. I do understand that.

Mr. Khalid Salim Ahmed: It was officially done by the Office of the President.

Commissioner Dinka: Now my second question is about tribal clashes. So far, we have heard about the Likoni clashes, Kaya Bombo militia, and so on, but we heard it as inter-tribal clashes over land. The Kaya Bombo, on the other hand, has fighting on behalf of one tribe. But today, you indicated that this was actually planned, executed and financed by state agents. Without mentioning names, why would a Government inflict that kind of terrible thing on its own people and also on itself? We all know the cardinal duty of a Government is to protect its citizens.

Mr. Khalid Salim Ahmed: Thank you very much, Mr. Commissioner. Tyranny and impunity have no eyes. For your information, the people who implemented the attack on the police station, the people who went house to house to kill the Kikuyu, Luos and Kambas were not Kenyans. They were Banyamulenga from the Rwanda. They were 500 of them. They were living next to my house in Bombululu Estate. I used to go for morning prayers everyday. I used to talk to them. These are the people I knew.

The same people were picked by tourist cars from Bombululu to Likoni to exercise. They could not speak pure Kiswahili. I asked a few of them where they had come from and they told me they were from Rwanda. They were carrying guns openly. They were being protected by agents from the Special Branch Unit. They were the people who attacked the police station and Navy Base. After unleashing terror to many people in Coast Province, they were taken to Eldoret where they slaughtered people who were buried in the same grave. They killed many people in this country. There were girls who were burnt to death in Kyanguli School. This was done by KANU agents. The ultimate price for elections was blood.

Commissioner Dinka: Thank you very much, Mr. Khalid.

Mr. Khalid Salim Ahmed: I have pictures of those people who committed the crime against Kenyans. They were the same Rwandese.
Commissioner Dinka: Unless Mr. Mbithi has anything to add to this, I have no further questions.

The Presiding Chair (Commissioner Farah): Thank you, Commissioner.

Commissioner Shava: I would like to thank both witnesses; Khalid Salim Ahmed and Mr. Cosmas Kyulle Ngunuu. I think your stories tie in very well together, because they converge at the point where the Kaya Bombo clashes happened. That is when the first witness experiences all sorts of tribulations with regard to the status of his citizenship and his livelihood.

The second witness started experiencing problems with regard to his livelihood and his health. These problems persist today. I do not have any questions. However, I would like to thank the second witness, Mr. Ngunuu, for speaking to the issues of prisoners. Prisoners are human beings whether they are convicted or in remand. As the witness correctly said, he will remain on a wheel chair for the rest of his life because of the injury he sustained while in jail. It is correct to request that those people be brought to justice. We hope that you would be able to provide to our legal team with further details. For example, who was the prison commandant when these events took place? This information may assist us when we follow up your case.

I am very sorry for what has happened to you. It is the height of injustice. We would also like to let you know that we have taken statements in various prisons around Kenya. We are aware of the plight of prisoners. We thank you for adding your own personal experience which has enriched the testimony of those others. I would like to assure you that we will take your statement with all the seriousness it deserves.

Mr. Khalid, I was a young law student when you were beginning to experience the strong arm of the state, if I can put it that way. So, I have followed your case. I also wrote pieces which involved the events that you talked about. Who, in your view, were the perpetrators? I worked in the Great Lakes region. I think it is important you speak about these things. It is important also that we reassure you that despite the fact that many commissions have come and gone, this Commission is empowered to analyze and adopt in whole or in part the proceedings of other commissions and their findings and recommendations. So, we do not have to re-invent the wheel in certain areas. This will include the Akiwumi Commission.

Just to reaffirm that what you have said is really a sad truth, I feel actually very sad and heavy at the moment because I remember that time. What you have just narrated to us is really a fraction. But the thing that has really struck me is when you said that the fact that that was allowed to happen in 1992 and perpetrators went unpunished. This is what had led us to 2007. Each time that we do this, we refine and improve our capacity for destruction. So, that is the sad reality of how we live. That is one of the reasons why this Commission is there. We want to assure you that this Commission does not work in fear.
We have heard and understood everything that you have said, and we would be making the appropriate recommendation on this matter. We thank you for coming here today.

Commissioner Ojienda: Thank you very much, both Khalid Ocampo alias Balala and Mr. Ngunuu. You are so intelligent and you still speak so well as you did many years ago. Your speech is delivered with the same passion as it was done at that time. I am glad to hear you after many years. I share the pain that you went through. You are one of the few people that I know in this country that were declared stateless when you were out of the country. That was a clear picture of pain and gross violation and denial of your citizenship. We would make appropriate recommendations. I am glad that we have learnt from your speech and experience, and no Kenyan should go through what you went through.

Mr. Ngunuu, you are a walking picture of pain and sorrow. You have walked through the hard times. You have seen it all. I hope that your case finally sees the light of the day. You have spoken for prisoners and that would help us in compiling our report but you need help. Your problem is as a result of poverty. You are very poor; the poorest person I have met today. We would do what we would as a Commission to improve your state. Thank you.

Mr. Cosmas Mbithi Ngunuu: God bless you because I am also tired moving from one place to another looking for a donor. I have problems with my wheelchair. At the moment, I cannot foot my medication. I have sold my land and livestock. I am left with nothing. This body of mine would have preserved, if I had some form of compensation. I have sold everything I had.

So, I would like to ask this Commission, so that God may open ways so that I get some help so that I can fend for my family and get treatment.

The Presiding Chair (Commissioner Farah): Thank you both of you and as I had earlier said, I have heard you and your presentation was very clear. However, I have nothing else to add. My fellow commissioners have said it all. Leader of Evidence, you may now stand down the two witnesses and call in the next witness.

Commissioner Shava: Before the witness leaves, we would like to tell Mr. Ngunuu that we do have partnerships with certain organizations and that this Commission undertakes to provide you immediately with a wheelchair. We hope this will help in your life.

Ms. Emily Kimani: Commissioners, our next witness is witness code 6 as per the course list and as it is evident from your files, there is no write up on this witness. By the time he was reached, the advanced team had not prepared the same but today, he has the write up and the documents in support of the same. So he wishes to proceed and give his testimony.

Commissioner Chawatama: Through the Chair, I personally do not understand why we do not have a write up. The assumption is that we got a statement from this witness and
that a write up should have been prepared from that statement in order to assist us to follow his testimony.

**Ms. Emily Kimani:** He was preparing the same and furnishing us with further documents in support of what he was to say, so they were not furnished to the legal unit. We beg that we proceed despite the anomaly which we highly apologize.

**Commissioner Chawatama:** Since it was my objection, I have no problems. Your explanation is reasonable enough.

**Commissioner Ojienda:** Counsel, is there is a statement recorded? Did the witness record a statement?

**The Presiding Chair (Commissioner Farah):** Proceed, please.

*(Mr. Ali Rubea took the oath)*

**Ms. Emily Kimani:** How are you this afternoon? Before we continue, kindly tell us your full names for record purposes.

**Mr. Ali Rubea:** My name is Ali Amani Rubea.

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

**Mr. Ali Rubea:** I work in Ganze as an area manager for MOWASCO.

**Ms. Emily Kimani:** You are here this afternoon for purposes of giving a testimony about employment issues. Is that correct?

**Mr. Ali Rubea:** Yes.

**Ms. Emily Kimani:** I now invite you to give us recommendations to the issues you raised.

**Mr. Ali Rubea:** I have come here to talk about the problems that we have undergone as workers from the Coast. I recoded a statement to show evidence that there is discrimination against the people from the Coast in places where we work. I have given letters that explain and give names of 59 people from the Coast who worked from 1996 to 2008 as casuals and according to the law, anyone who works for six months should be employed permanently. These people have worked for 10 to 15 years up to 2008 when the Coalition Government took over and that is when problems started. Some of the leaders whom I have mentioned in my statement came to Mombasa and retrenched some people and all of them are from the coastal area. There are Digos, Mijikenda, Swahili, Kilindinis and they were told that there is a shortage of money. One of the Ministers was involved in declaring these people redundant after working for a long time. What surprised us most is that other people were brought in to replace the ones who had been declared redundant. 
and these people did not even understand the area. Some people who had only heard of Mombasa by name were employed. I have written their names and the jobs that they were given did not require any special skills.

One of the reasons for the formation of this Commission is for people to reconcile. We have had problems on how people should reconcile so that there can be peace, truth, national cohesion, respect, healing and reconciliation. How would it be possible to have healing and reconciliation if the wound has become an unhealing wound? There can only be healing if people accept that they have done wrong. As I speak to you, our youth have no jobs but people are being brought in and they are employed and given three years contracts and their medical expenses are paid while our people are only given three months contracts. How can there be reconciliation? I would like you to know this as a Commission and all those things that you have heard including the Mombasa Republican Council (MRC) which is a by-product of the injustices against the coastal people. I do not agree with Khalid who says that it has been brought about by poor people but the injustice has been too much. The people who visit injustice upon others should ask for forgiveness and confess. That is the only way we can reconcile and live as brothers. We saw the best example when Prof. Tom Ojienda was the chairman of the Anti-Corruption Commission. One of the reasons we have suffered as people of Mombasa is because of corruption. We do not want corruption and I have explained that in detail in the report that I have given you; the way we have been battered. I have been accused of touching a child’s breasts when she came to pay bills.

These people do not listen when we speak and I even wonder why I should make any recommendations. We have tried to talk to all those concerned and we have even written a letter to the Prime Minister in regard to this kind of marginalization. Honorable Kibaki has his own Ministers and when they go wrong, he tries to protect them. When this report leaves here, it will go to them and we are expected to forgive the same people. Have they accepted that they made a mistake? I would like to suggest that the youth who were sacked from Mombasa area should be reinstated after investigations are done because some of these youths do not have any employment and they are just moving around aimlessly. Some of them have children and there is one who has three children at university. It is said that people from the Coast do not go to school.

These people have planted a seed of discord. I would like this to be investigated thoroughly so that those who suffered injustice to have their rights restored. We have suffered a lot of injustice and when I advocated against this, I was transferred to Ganze. Ganze is the poorest area in this county and I was given a technical job yet I am not a technical person. This was done to frustrate me and they even stopped my medical facility to make me resign in frustration because I was a coastal person who wanted to educated and sensitize other people. It is only one boss who talked for me and my salary was even changed. We have suffered a lot of injustice and we are very bitter. Those who have visited this injustice upon us are not ready. When Dr. Lumumba and Prof. Ojienda commission went to Parliament, the commission was disbanded. They are not ready and if they will not be ready, we have had enough. Mombasa is like Southern Sudan and Northern Sudan. In Mombasa, the majority of the people are Muslims and they have
suffered a lot of injustice. I have given the document showing the injustice that I suffered together with my colleagues who are here with me. I would like this Commission to take this seriously because we have been isolated and marginalized and we are tired. There is injustice in all departments like the Kenya Ports Authority and in the army. I had a brother who trained in America as a ranger together with others and when they came back, he is the only one who was not promoted. He was a paratrooper and he trained together with General Ali but he was not employed. Such people are easy prey for MRC because they know how to use everything. We have to accept the mistakes we have done and the people who have committed these mistakes should not continue. It is not that we cannot do it; it is just that we respect the law but we can arm ourselves.

With those few remarks, I would like this Commission to investigate all the documents I have given explaining all the details. I even have a letter from the Public Law Institute showing that they had been unfair to me but they do not listen because they have the power. The President and the Prime Minister should know what is happening because they have the NSIS and they must know the problems of its citizens.

**Ms. Emily Kimani:** I have some questions to ask you from what you have told us. With you here is a list of 59 names, which institutions were these people working for?

**Mr. Ali Rubea:** They were working at Mombasa Water and Sewerage. Some were meter readers, others were plumbers and others were technicians.

**Ms. Emily Kimani:** Were all these people terminated from duty at the same time or was it at different years?

**Mr. Ali Rubea:** They were notified in a notice in the *Daily Nation* of September 2008 with effect from 1st October.

**Ms. Emily Kimani:** Was any reason given to these employees as to why they were terminated from duty?

**Mr. Ali Rubea:** They were told that there was an economic recession within the department and there was no money but even after being told that there was no money, the same people who said there was no money started bringing their own people who did not understand the town.

**Ms. Emily Kimani:** Were they given any benefits after termination?

**Mr. Ali Rubea:** They were given a little yet some had worked for 15 years and some were quite old and when you want a new job, people look at your age and they had been working there for 10 to 15 years.

**Ms. Emily Kimani:** With you are several documents which I would wish to ask if you will submit to form part of the Commission’s records.
Mr. Ali Rubea: Yes.

Ms. Emily Kimani: Chair, I pray that the various documents that this witness has adduced, newspapers captions and some correspondences from different institutions, that the same be admitted to form part of the Commission’s records.

The Presiding Chair (Commissioner Farah): Admitted as prayed.

Ms. Emily Kimani: I have no further questions for this witness.

The Presiding Chair (Commissioner Farah): Thank you for your good presentation. I will now give the Commissioners an opportunity to ask you questions.

Commissioner Ojienda: Thank you very much for your testimony. I have not seen the memorandum but the issues you raised are serious issues and you have spoken for the coastal people. The 59 people who were terminated from employment have recourse in law and as we make our recommendation, I think it is ok that those people seek other avenues to get back their jobs. Otherwise we will look at the names and we will make appropriate recommendations. Thank you.

Commissioner Shava: Mr. Ali Amani Rubea, thank you for your testimony here today. You have spoken very well and even though we have not had the benefit of reading your memorandum we want to assure you we will read it. You have made a very good presentation which has made us understand how the issues are. Some of those issues have been raised in other areas that we have gone through in the Coast and you are affirming that some of those issues also prevail. I just like to say that I very much appreciated what you said about the process of reconciliation. That reconciliation requires that the wound must be healed and that you cannot reconcile before somebody acknowledges that they have done wrong to you and that person must ask for forgiveness. That is also our interpretation of how it is that this nation is going to become reconciled. You have pointed out that in your view the MRC is a manifestation of people’s feeling that there has been an injustice and you have also pointed out that the injustice is continuing. There is a lot of work ahead of us as a country and we must address things that have happened in the past and which are continuing to happen now so that we can put an end to these things so that we can learn to live together in peace. You also made a very good statement when you said that we should uproot the seed of hatred instead of putting and I would like to agree with you on that. Thank you very much.

Commissioner Dinka: I just would like to thank Mr. Ali Rubea for his testimony and for raising this important issue affecting his community. Unfortunately, none of us had received his statement or memo but we will definitely read it and study it very carefully. I would just suggest one thing. I know that you are very angry, you have been frustrated and you have been given a lot of run around but it is always good to be careful with what one is saying. Statements actually lead to actions and in your statement, you said continuously that these people do not understand and these people do this. I think that you should correct that and refer to the department and if it is an individual, you refer to
his name but do not refer them to these people. There is no collective criminality. Crime and maladministration is decided upon by a group of people and they are individuals, either Ministers or directors but it cannot be these people. I just want to say that. Thank you very much and we will study your memo.

**Commissioner Chawatama:** Thank you for your testimony. I wish that we had your memo so that we would have had a better understanding of how this retrenchment of the 59 came about. It would be very helpful if you were able to get us samples if you have not supplied them already of the letters that were written to these people when they sent them home and also the formula used to arrive at the dues that were paid. I know it might be difficult and we will probably try to do this but if you were in a position to get maybe even a few letters of appointment for people who were brought in thereafter. This is important because it will help us and come to a conclusion that this was a sham retrenchment exercise. If you have not already done so, please, help us with as many documents as you can. On the issue of your transfer, are you still employed?

**Mr. Ali Rubea:** Yes I am still employed but I am in difficult circumstances because in the legal letter I got from Kituo Cha Sheria, I am not supposed to be transferred from one company to another according to the Water Act of 2002. Every company is semi-autonomous and it is in the letter written by Kituo Cha Sheria so that in itself was an injustice due to impunity.

**Commissioner Chawatama:** When the company decided to change some of terms and conditions of your employment such as the medical and the salary, were you informed? Did you have a discussion with your employer on this?

**Mr. Ali Rubea:** I was not informed. When I was transferred, my salary was stopped the same day. I was transferred on a Wednesday and by Friday; my wife was not feeling well. So I went to take a sick sheet and I was told to go and take it from the new station. The appointment letter that I have is for Mombasa Company and the company I was transferred to is a very small company whose terms are different. This is a plot that we, as coastal people, have been facing.

**Commissioner Chawatama:** Did you make any attempt to write to your employer asking them possibly if you could move with your old salary and terms and conditions of service?

**Mr. Ali Rubea:** I have written letters and I have given copies but they do not listen. It is like playing a guitar to a goat. They do not understand or appreciate anybody who goes through an injustice. They do not listen whether the judge is a monkey and the accused is an ape. Where will you get justice? They do not hear and they do not see. They are not good people but we just live with them.

**Commissioner Chawatama:** It is good to see that you at least attempted to smile and joke, so I believe that you have a good sense of humour and that will keep you going. From what you have told us, I recognize some injustices that the 59 have suffered and I
also recognize the injustices that you have suffered. What took place in your case was to frustrate you and possibly constructive dismissal. Thank you very much for coming. In the case of your employment, what is the one recommendation that you would like us to make as it relates to your treatment? I apologize if you have already told us but just in a sentence or two.

**Mr. Ali Rubea:** The recommendation is in the letter that was written by the Kituo Cha Sheria. The people who wrote it are lawyers and they explained that this was illegal and that I should be given my rights. The letter is here and you have a copy of it.

**Commissioner Chawatama:** I will look at it now. Thank you very much.

**The Presiding Chair** (Commissioner Farah): In addition to what my fellow commissioners have said, this Commission is all about finding historical injustices that were committed from 1963 to 2008. At the same time, the same Commission is charged with the responsibility of finding ways of healing, unity and reconciliation. In support of my fellow Commissioner Dinka, you were told that your presentation should calm down. I know that you are suffering inside but in your head, you must hold that because after we go, Commissioner’s Yasim commission will come and try to reconcile you and you cannot reconcile with that *hamaki*.

Leader of evidence, you may stand down the witness and approach the bench. We have come to the end of today’s proceedings. We have heard Sheikh Khalifa, Farida Rashid, James Oduor Obara, Charity Chahasi, Ahmed Nassir, Khalid Salim Ahmed alias Ocampo, Ali Amani Rubea, Patrick Lukalo, Cosmos Mbithi and Kyule Nguluu. We are very pleased to hear all those who made presentations to us. We also thank you all for having been very patient and good listeners. We have more witnesses to hear tomorrow. I will now hand over the reign to the master of ceremony who will invite the person to end the session for us with prayers.

*(Closing prayers)*

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