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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION HELD ON TUESDAY, 24<sup>TH</sup>  
JANUARY, 2012 AT THE WUNDANYI COUNTY COUNCIL HALL**

**(Public Hearing)**

**PRESENT**

Margaret Wambui Shava	-	The Presiding Chair, Kenya
Getrude Chawatama	-	Commissioner
Patrick Njue	-	Leader of Evidence

*(The Commission commenced at 3.40 p.m.)*

*(Opening Prayers)*

**The Presiding Chair** (Commissioner Shava): Ladies and gentlemen, good afternoon. We thank you for your patience in waiting for this hearing to start this morning and also this afternoon. Today, we have the women's forum. I am listening to issues that particularly affect women. This afternoon and tomorrow, we will be hearing as we are having now, a public hearing which will be open to all.

*(The Presiding Chair Introduced  
herself and other Members of the panel)*

Tomorrow, we will be joined by our fellow Commissioners. We will be dividing ourselves into two panels to ensure that we attend to all the matters that maybe raised before us here in Wundanyi. Wundanyi is a very special place. We started our hearing in April in the North Eastern region of this country. We have been all around the country in Western, Mt. Elgon, Rift Valley, Central, Coast, Lower Eastern and now we are finishing at the Coast Province with Wundanyi.

After these hearings, we will be proceeding to Nairobi. We will have public hearings for the Nairobi region. Later on, we will have hearing on thematic and institutional matters. After which we will be having various activities, including giving opportunities to persons who have been adversely mentioned to give their side of the story.

Conscious that time is moving; I would like to introduce a few ground rules. We ask that you respect the witnesses who are giving their testimony by maintaining silence. A lot of the things people say in these kinds of hearing are very difficult for them to remember. You may agree with what they are saying and which may reflect your own experience. You may also strongly disagree with their views. However, in either event, we ask that you maintain silence and allow the witness to testify.

We thank the various media houses for attending and we welcome you. While we allow photography, we ask all persons, not to use flash photography while the witness is talking. We ask also that if you are taking picture, you remain in one place. Let us avoid a lot of movements because they may disrupt the proceedings.

I will now give all of us a moment to switch off our mobile phones. Do not put them on silence mode, but switch them off because even as you are attending to your SMS, you might be moving around. Your movement may also disrupt the proceedings.

We want to use the time that we have in the best way possible. We would also like to proceed as smoothly as possible. So, we ask you to co-operate in these matters. The way in which you should proceed is that the witness would be called out, sworn in and lead in evidence by a leader of evidence. I think those are preliminaries matters. Leader of evidence, are there any counsel present here?

**Mr. Patrick Njue:** There is none I have been informed of, Presiding Chair.

**The Presiding Chair** (Commissioner Shava): There being no counsel present, let us proceed, leader of evidence.

**Mr. Patrick Njue:** I thank you, Presiding Chair. Our first witness is Witness No.13 on our course list. His memorandum is on historical issues and various violations that affect the people of Wundanyi.

*(Mr. Mwanjala Mwaluma took the oath)*

**Mr. Patrick Njue:** Good afternoon, Sir. Please, for the record, once again, tell us your names, where you come from and what you do for a living?

**Mr. Mwanjala Mwaluma:** I think I would use Kiswahili. My name is Mwanjala Mwaluma, born in Mwatate, Singila area.

We have faced lots of suffering for many years while working in sisal farms. The owners of these farms have been mistreating us for a long time. Most of us were born in Singila Majengo area. We stayed there for so many years. Afterwards, it was taken away by the Taita Estates in February. A bulldozer was brought in and destroyed our crops. They even destroyed graves where we had buried our beloved ones. We sought help from politicians, but with little success.

We ran to the Provincial Administration for some help, but they also did not help. We were told that Taita Estate farms had title deed that covered Singila Majengo area. Many residents of Singila Majengo have died because immediately they were evicted and their rights violated. They developed some health complications. Many of them suffered heart attack because they could not believe that they would be evicted from their farms. We are very poor and we cannot fend for our families. We have continued to live as squatters in those sisal plantations. We have no place to plant food crops. We cannot even rear

livestock or chicken. Our children do not have a playground. Every time they play on those sisal farms, they are beaten. In fact, we do not have peace.

My prayer to this Commission is we should send people to come and sincerely see what we are going through. It appears as if we are not in this country. We continue to suffer. Our grandparents' graves were destroyed and sisal planted in that region. It is painful to see that those graves were not respected. We stay in our country as if we are refugees. We have never been issued with title deeds. Until now, we have not seen the title deeds for that place. Nothing has been brought to show us that Singila is under the sisal estate.

The same things happened in 1998. I was taken to court when my mother's house was about to be destroyed. I would like to show this picture as evidence. Since 1998, when I was taken to court, that house was destroyed. I could not continue with its construction. I was accused of inciting people to build their houses which had been destroyed. No one has been allowed to do anything in that region. That house was destroyed and we were forced to flee. We now stay in a place that is far away from our home. This is violation of our basic human rights. I have gone through a lot of persecution together with my family for a long time. I have not been able to take care of my family. My father died before he was issued with a title deed. He was also working in the sisal farm. Workers in those farms are not respected and they are mistreated day in, day out. When we moved to Matunge, we formed a trade union to fight for our land.

As I said, I was taken to court. However, Judge Serгон dismissed the case and ordered that I be compensated for the loss of my house. But as I speak before this Commission, nothing has happened. They went back to court and the case was again revived. I am not able to go to Mombasa to follow the proceedings. I still have the court order, but we are unable to trace the case file. We were accused of now disrespecting people's property. Just imagine even those people who died were also accused. Does it mean that they were supposed to come from their graves and listen to their cases? This case has never been finalized. This picture here shows the farms. The sisal was planted in those farms. We cannot do anything. What perturbs me most is that there is a road that we use. I have been using this road since 1952. It is a public road. However, this road has now been closed. We cannot access it. Our children have to use a long way to go to school or even visit Mwateta.

We have been suffering, and our children are also suffering like us. For how long will we continue to suffer in our motherland? Some times the owners of these farms unleash dogs on our goats. We have a lot of livestock. We have recorded statements with police, but nobody wants to compensate us. They claim that it is their land. They kill our livestock if they trespass on their land. So, they can do anything they want with their land. These are some of the pictures showing our children have no place to play.

This letter also shows the persecutions that I went through. It shows how my life has been destroyed. Personally, I have been trying to pursue justice for last 23 years, but without much success. Every time I go to court, my case is postponed and it has never been concluded. I would like to know whether the title deeds bear British Crown or Kenyan

Government seal. Even if they claim to own that chunk of land, they do not have a title deed to all of it. I did my own investigation and found out that what is registered as their land is much smaller than what they claim is theirs. It shows the East Sisal Farm in East is 33,000 acres. We are asking this Commission to follow up this issue and establish the truth about these sisal farms. We have suffered for so many years and yet, we say ours is an independent country.

**Mr. Patrick Njue:** I thank you, Mr. Mwaluma, for that presentation. There is a copy of a memorandum that you have given me prior to your coming to make a presentation. I want you to confirm for the record whether this is the memorandum you submitted to us.

**Mr. Mwanjala Mwaluma:** This is our memorandum that we have written. It has even the court orders attached to it. We expect Mombasa law court will unearth the truth about these farms.

**Mr. Patrick Njue:** You would like this memorandum to be formally presented to the Commission.

**Mr. Mwanjala Mwaluma:** Yes.

**Mr. Patrick Njue:** Presiding Chair, I request that the said documents and memorandum be formally admitted into the records of the Commission.

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

**Mr. Patrick Njue:** Mr. Mwaluma, when you talk of the Taita and Sisal estate that you have developed this dispute over a year, is it a private or a public company?

**Mr. Mwanjala Mwaluma:** According to the owners, they say the farms are theirs. Therefore, they are private farms. However, there are no documents to show that they own those farms.

**Mr. Patrick Njue:** Lastly, when you talk of Singila Majengo which is the community that you come from, how many households are represented?

**Mr. Mwanjala Mwaluma:** We do have more than 2000 families in that region. That means for each and every house, we have more than 10 people and approximately 500 households.

**Mr. Patrick Njue:** Thank you for your presentations. I have no further questions to ask you. Our commissioners may now ask you questions.

**Commissioner Chawatama:** Thank you very much for your testimony. I have a few questions to ask. My first question, how long in terms of years, have your people occupied the land that you are referring to?

**Mr. Mwanjala:** We have stayed there for a very long time since we were born.

**Commissioner Chawatama:** I was not there when you were born. Approximately, how long have you been in that area?

**Mr. Mwanjala Mwaluma:** I am not sure, but we have stayed on that area for many years. I am among the latest generation.

**Commissioner Chawatama:** How old are you?

**Mr. Mwanjala Mwaluma:** I am 37 years.

**Commissioner Chawatama:** You and your grandfather were born on this land?

**Mr. Mwanjala Mwaluma:** Yes.

**Commissioner Chawatama:** Secondly, in terms of size, what is the acreage of the land that you are referring to?

**Mr. Mwanjala Mwaluma:** I cannot exactly give the size, but it is a big farm.

**Commissioner Chawatama:** When the bulldozers were brought and your crops were destroyed, were you given any notice?

**Mr. Mwanjala Mwaluma:** We were not given any notice.

**Commissioner Chawatama:** So, what happened? One day you were all just carrying on with your business and the next thing you saw was these bulldozers. Could you tell us what happened on that particular day?

**Mr. Mwanjala Mwaluma:** It was in February, 1991. When we woke up, we just saw more than six bulldozers. When we asked why the bulldozers were brought in, we were told they were there deliberately to prove to us that those who claim ownership of these farms are very powerful people. That is why we sought assistance from other quarters although we did not succeed.

**Commissioner Chawatama:** Could you recall to whom you sought the assistance?

**Mr. Mwanjala Mwaluma:** We went to the District Commissioner to complain about our plight. However, he was not aware that we were to be evicted.

**Commissioner Chawatama:** Do you know whether or not the people who came to evict you were accompanied by police or other officials?

**Mr. Mwanjala Mwaluma:** They were not accompanied by police officers except security officer guards.

**Commissioner Chawatama:** You have also mentioned the fact that you went to court and that there was an order that was given by the court, which order seems to have been ignored. Is that the position?

**Mr. Mwanjala Mwaluma:** No, what happened was that they went to court claiming that they wanted an order to evict us from that place, so that we could farms at another different place.

**Commissioner Chawatama:** Could you share with us the challenges that your people face while working in the sisal farms?

**Mr. Mwanjala Mwaluma:** One of the challenges we face is mistreatment by the owners of those sisal farms. Most of us stay in Majengo Estate which lacks water and other basic necessities. We normally get our water from the sisal estate. Sometimes we are denied water.

**The Presiding Chair** (Commissioner Shava): Yes, Commissioner Chawatama!

**Commissioner Chawatama:** Thank you, Presiding Chair for indulging me. I have no more questions.

**The Presiding Chair** (Commissioner Shava): Thank you, Mr. Mwaluma, for your testimony. We had not had the benefit of seeing the documents which you have just presented and admitted as the records of the Commission.

It appears that where these matters reached in courts, consent order was entered in May between yourselves, Mwatate Land Dispute Tribunal and Singila Majengo Group, and the applicant; Taita Estates. You agreed all the parties that you would need surveyed. It was also agreed that the matter would be heard on 14<sup>th</sup> June, last year, 2011. The matter did come to court on that day. There was an order deemed by consent that you jointly conduct the survey on 1<sup>st</sup> and 2<sup>nd</sup> of July, 2011, amongst and other orders.

Again, I see a report dated 6<sup>th</sup> October, 2011, by J.D. Obel, Licensed Surveyor. His conclusion, if I read the end of the report, although, perhaps, I should first of all, say what the history is, which as much of you have said, that this land at the time of Independence was supposed to revert to Kenya. It should now have become trust land.

The Surveyor Obel concludes by saying that, at paragraph 13 of his report: “Finally, a grant of a title was returned to the Republic of Kenya after Independence in 1964. It was returned on 4<sup>th</sup> December, 1964. Further investigations need to be done to ascertain what was returned to the Government”.

In the documents you have given us, you have shown that there were several different blocks of lands that were occupied, at that time, by this individual, who was called, who had the land given to him by the King, and his name was Sir Charles Sydney Goldman.

The land was given to him by King George V11, and this land was given in several different title, so which is why the surveyor is saying that there is a need to determine, what exactly it is that was returned to the Government.

My question to you is that this report is dated 6<sup>th</sup> October, 2011. Have you been able to proceed, and in what manner to determine what is it that reverts back to the Government?

**Mr. Mwanjala Mwaluma:** Not yet. We have not been formally informed of what the surveyors have done. What the surveyors have done is just to prove the farms that were returned, and parts that were still being occupied.

**The Presiding Chair** (Commissioner Shava): But the investigation is ongoing?

**Mr. Mwanjala Mwaluma:** Yes, the investigations are still ongoing.

**The Presiding Chair** (Commissioner Shava): Thank you very much for your testimony. We have understood what you have said. These issues are some of the things that are underlying a lot of the prices facing this country, Eastern, Rift Valley and Coast provinces. We have seen issues such as the debacles which have happened at Syokimau. There is a problem in the Registry of Lands. There is collusion at high levels which is disenfranchising ordinary Kenyans with regard to their land. This is such a serious issue that the Government has last week decided that no fresh title deeds would be issued until the new Land Commission, as stated in the Constitution, has been constituted.

Although you may have to wait a little longer, we would like to encourage you not to give up with your fight. If no title deed has been issued, no title will be issued until that the Land Commission is in place. We hope will see an end to these kinds of pain and torture for ordinary people in the fight for their livelihoods and of their ancestral lands. So, we thank you for coming to testify today. We have no further questions.

Leader of Evidence, please, stand down the witness and introduce the next witness.

**Mr. Patrick Njue:** Commissioners, I wish to call witness No.1, who is going to make a presentation on behalf the people living with disabilities.

*(Ms. Margaret Mkacharo took the oath)*

Tell us your names, where you come from and what you do for a living.

**Ms. Margaret Mkacharo:** My name is Margaret Mkacharo. I come from Voi. I have a woman living with disability. I am a tailor in Voi Town.

**Mr. Patrick Njue:** Mama Mkacharo, you confirm that you are seated with us this afternoon to make a presentation on behalf of the people living with disabilities, around Voi.



**Ms. Margaret Mkacharo:** Yes.

**Mr. Patrick Njue:** Mama Mkacharo, from the statement that you had given to us, I note that you represent a certain organization. Could you tell us a little about this organization? Tell us also in what capacity you represent it here?

**Ms. Margaret Mkacharo:** The group that I represent is known as Voi Angaza Disabled Group. It is made up of both men and women. Our main objective of forming the group was self-help.

**Mr. Patrick Njue:** When was this group established?

**Ms. Margaret Mkacharo:** We started it in July last year.

**Ms. Margaret Mkacharo:** It was rightly said that you came together as a group to assist each. Since you formed it last year, have you been able to undertake certain initiatives together in the name of assisting each other?

**Ms. Margaret Mkacharo:** To speak the truth, as at now, we have not had much success as we had intended, because we had wanted to write a proposal to the Government to get some assistance, so that we could run our programmes together. However, we have not heard any success.

**Mr. Patrick Njue:** In the statement that you gave on February to this Commission, you identified some key issues that affect people living disabilities. One that you identified is in the area of representation in some leadership positions. Maybe you can share a little on this with us.

**Ms. Margaret Mkacharo:** To speak the truth, the disabled persons have been left out completely. In most sittings, the disabled are not involved. Even in commissions that are created, we do not see any disable person representing us.

If you look at the CDF, there is no disabled person representing us there, because even the disabled persons are ordinary people like others. They have children. They want to educate their children. I think it would be better if they were also included in the committees. If you look at the hospital committee, for example, there is no disabled person representing us in the board. We also fall sick just like any other human being.

Since we are disabled, we also get sick and when we go to hospital we face many challenges especially if one is a woman. When we are expectant and go there, you will find issues that will make you disrespect yourself. We have been left out. When you go to offices and they see you walking with crutches, you will be told that they will look into your issue but nothing is done. When we go to Government offices, they cannot take up your burden even if you have an issue you want to raise. You will find that it is taken lightly.

**Mr. Patrick Njue:** You have talked about health in your presentation. Do you think that there is something more you have left out on the question of health?

**Ms. Margaret Mkacharo:** Yes there is an issue of building. The modern buildings are built in such a way that they do not allow a disabled person to access it. Storied buildings are built for people who can walk on two feet but a disabled person who is probably using a wheel chair it will probably never be able to access the top floors. If you look at the public toilets, you will find that there are no special toilets for disabled persons because some of the disabled people use their hands and will therefore have to hold the floor in order to assist themselves. Even the public transport vehicles have not been made suitable for use by the disabled. For example, I use an artificial limb and when I board a *matatu*, I am forced to strain to sit and I always feel like alighting from the vehicle because my leg cannot fold like the others. I have to sit sideways. Buildings should be constructed with the disabled in mind because we are different. Some of us use crutches and some of us cannot fold their legs and we have to keep them straight and it becomes a problem for them to move from one place to another. Sometimes you can be asked to go somewhere but when you look at the situation of the vehicles, they decide that they cannot get there.

**Mr. Patrick Njue:** In talking there, you somewhat gave your expectations that you would want to see measures put in place in terms of addressing some of these issues. Moving on along the subject of expectations, what are some of the other expectations that maybe you can have that can go a long way towards improving the lives of people living with disabilities?

**Ms. Margaret Mkacharo:** I ask that when people are going to elect their leaders, they should not forget the disabled so that the disabled can also get an opportunity to defend their rights. When we do not have a representative, our issues are forgotten. When they are putting committees together, they should ensure that there is either a male or female person living with disability. The gender issue should also be looked into and our issues will be heard. When we are left out, our issue is never addressed even in Parliament. If it is possible, a disabled person should sit in the House to represent the ones outside.

**Mr. Patrick Njue:** I must also at this point mention that what you have just shared with us today has also come out in the various regions that we have been to. We have had presentations by people living with disabilities and it is good to note that the issues that affect you are more or less the same so yours was a strong voice to add on to that on behalf of the people of this area. I must say that it will go a long way in enriching our reports when it comes to making our recommendations for our brothers and sisters living with disabilities. Thank you for your presentation. I have no further questions but our Commissioners will now ask you some questions.

**Commissioner Chawatama:** Thank you for your testimony. I know in a number of places where we have had an opportunity to hear from persons living with disabilities and the challenges that they face, amongst a lot of issues that have been raised was also the

issue of special schools. You have not mentioned whether or not in Voi there are special schools to take care of special needs. Could you please enlighten us on that?

**Ms. Margaret Mkacharo:** We have two schools in Voi. There is Manyambo and Voi Primary but you will find that those schools are not complete because they do not have the equipment needed. There are some children who cannot speak and who require sign language and interpreters and we also have the blind children who require braille facilities and those are not available in Voi. There are also others who are mentally challenged but we do not have a school for such children in Voi. If such a school was available, such children would attend to get their education.

**Commissioner Chawatama:** One of the issues that have also come up is on employment. You have stated that employment in Government sector should be enhanced. I would like to find out if either yourself or someone that you know and living with disabilities has had an opportunity to apply for a job whether in the Government or anywhere else and that they have been discriminated against because of their disability. Are you aware of any case like this?

**Ms. Margaret Mkacharo:** Yes. The reason that makes many disabled people especially in Taita not to get employed is because disabled people are not taken to school. During our time, we were not taken to school as we should have and because we are not well educated, we cannot get jobs. I think the ones who are educated will now get jobs if they apply but in our time, most of us did not get Government jobs.

**Commissioner Chawatama:** What do you think should be done for persons who through no fault of their own missed out on education? How can they be helped and what sort of ventures have you heard people talk about that they might want to engage in?

**Ms. Margaret Mkacharo:** The disabled persons should be assisted by the Government so that they are able to help themselves because most of them did not get educated. Most of them are now old and they cannot go back to school to get education so the ones who have not been educated should be given special attention by the Government. For example, the funds in social services should be increased so that when they apply, they can get substantial amounts to assist themselves especially the ones in groups.

**Commissioner Chawatama:** Thank you Presiding Chair. No more questions.

**The Presiding Chair** (Commissioner Shava): Thank you very much Mama Margaret which is also my name. How do you call a person who has the same name as you in your language?

**Ms. Margaret Mkacharo:** *Mwasare.*

**The Presiding Chair** (Commissioner Shava): Very good, I will remember that. I just wanted to ask you one question. You have made a very good recommendation which I can see here in your statement and you have said that the council for people living with

disability should make sure that Voi District Hospital becomes a centre for supplies needed by persons living with disabilities. These supplies are things like wheelchairs, crutches, artificial limbs and the white cane for people who are visually impaired. Where does such assistance comes from at this time? Where would such a person have to go to get this kind of assistance?

**Ms. Margaret Mkacharo:** Now there is a problem because we do not have such provisions in Voi. For example, I use an artificial limb but when my limb has a problem, I have to travel to Kabete in Nairobi at Jaipur or I get an order for another one and I have to travel to get it. Right now in Voi, there is a major problem. Other times when we ask for assistance from APDK that is when they send a vehicle to Voi and Taveta and when they are done with that they go.

**The Presiding Chair** (Commissioner Shava): Your group is also based at Voi. What area does it service? People come to you for assistance as far as where?

**Ms. Margaret Mkacharo:** We have people coming from Voi, Sagala and Mbololo and we have set aside one day for the meeting where we plan our things then we all leave.

**The Presiding Chair** (Commissioner Shava): If these services were made available at Voi District Hospital, you think they would help people from as far away as well?

**Ms. Margaret Mkacharo:** If the services are availed in Voi, it will be a relief since Voi is central and people will not have to go to Mombasa or Nairobi.

**The Presiding Chair** (Commissioner Shava): I have no further questions for you. Thank you very much for coming here today to make your presentation on your own behalf and also on behalf of those people who you represent. I am sure there are people all the way between here and Kitui and even Machakos and Mombasa for whom you have spoken and we thank you for coming to make their concerns known.

Leader of evidence, please stand down the witness and introduce the next one. I would like to ask our special support unit to please ensure that if there is anybody in the audience who will benefit from sign language interpretation such as we have here at the front, to ensure that those people are in a position where they can see our interpreters.

**Mr. Patrick Njue:** Our next witness Commissioners is No.5 on our cause list who will share with us an account of an extra-judicial killing incident.

*(Mr. Lawrence Kodi took the oath)*

**Mr. Patrick Njue:** Good afternoon Sir! For the record, once again tell us your name and tell us where you come from and what you do for a living.

**Mr. Lawrence Kodi:** My name is Lawrence Mwajala Kodi and I come from Kisau, Nyangala division. I was a civil servant but I retired and I am now a farmer at home.

**Mr. Patrick Njue:** Thank you and welcome to this afternoon's session. You are seated with us this afternoon to share with us an account of the killing of your brother. Do you confirm that to be the case?

**Mr. Lawrence Kodi:** Yes that is how it is.

**Mr. Patrick Njue:** If you are ready, you can begin making your presentation.

**Mr. Lawrence Kodi:** He was born on 20<sup>th</sup> January, 1964 and he joined primary school in Rukanga. He then joined Kenyatta High School from 1980 to 1983 where he did his O Levels and got Division Three. In 1984, he went to Nairobi to look for a job. He went to my brother called Jefferson Kilimo Mwanjala who died in a road accident and who worked with ICDC in Nairobi. He stayed with my brother for three months and got a job with Car Glory Hire. He worked for about three months from August to October. On October 26<sup>th</sup>, he was sent by his boss to go and change the tyre of the vehicle. I gave the representative from the Commission the details of the vehicle that my brother was driving. When he opened the boot of the vehicle to get out a spare part, the police came. The car was parked in a well known place in Nairobi next to Plaza House next to the High Court. When he opened the car's boot to get the spare part, he was shot in the forehead and that bullet went through his head and he fell down. When the boss heard the gun shot he sent some people to go and check and find out if it was a tyre burst or a bullet. When they went, they found that Samuel was down and he was dead. At that time, police surrounded the area and said that they had found the thief they had been looking for, for five years. My brother was called and he saw his brother. Our MP, hon. Mwashengo Mwachofi, was coming from Parliament when he saw a crowd of people and he went to see what was happening. He saw that it was a young man and when he asked, he was told that this is a most wanted thief. He asked, if he is a thief, why did they not arrest him and investigate since he was not armed. The issue was taken to Parliament and I even have the parliamentary proceedings. The Minister in charge was Tipis and there was a difference between him and Mr. Mwachofi. We were informed of the death of my brother and we went to Nairobi. I used a Government vehicle to take him home for burial because I was a civil servant. After the burial, we went back to Nairobi. In November, we got a lawyer called Mr. Onyango Atieno and we talked to him and we filed the case. After we filed the case, nothing happened and I want to give these court proceedings to the Commission. In 1995, we went back to Nairobi and after our lawyer was employed by the Government we were left stranded and we did not know where to go.

We sat down as a family and decided that we had lost a young family member who could have helped the family and he might even have been useful to the Government because he had just finished school. We went back to court without going through any lawyer. We identified ourselves and we were asked how we could take the Government to court yet the Government has everything. We were told that our file had been thrown away and burnt. In 2000, our former MP approached us and told us to go back to Onyango's office and see whether we could get another lawyer. When we went to the offices, we were told that since we were reviving the case, we were supposed to pay afresh so that the case

could continue. We told them that we had been told at the court that the file had been burnt but they told us that they would register it anew. We did not have enough money to register the case and since we had been told that we could not compete with the Government, we just left the case. Last year, we heard of the TJRC after the new Constitution was promulgated and we went to the TJRC and explained the situation and we also gave them the police statements and the parliamentary proceedings and all the newspaper cuttings that contained the story. We gave them to go and study so that they could understand how that case was going on. I was recently invited by the TJRC staff and I explained to them and yesterday, I was invited to come and give this presentation.

**Mr. Patrick Njue:** Yes, Mr. Mwanjala that is why you are with us this evening and I must say that you have ably made the presentation. You have given a good chronology of events that led to the killing of your brother which I must begin by empathizing with. For the documents that you submitted and those that you have given today, it is your wish that they be formally admitted to the records of this Commission?

**Mr. Lawrence Kodi:** Yes if it can help others. Let it be a lesson because during that period, so many things came up when I was a witness in Nairobi. It is something that cannot be explained. I do not know what the Government was thinking about the common *mwananchi*. The Commission should help us so that the current Government and the one we are going to elect should not do what the previous Government did.

**Mr. Patrick Njue:** Presiding Chair, I pray that the said documents be formally admitted to the record of the Commission.

**The Presiding Chair** (Commissioner Shava): We admit the documents on to the record of the Commission.

**Mr. Patrick Njue:** Mr. Mwanjala, what were the full names of your deceased brother?

**Mr. Lawrence Kodi:** He was called Samuel Mwalongo Elisha. Elisha is the father's name and his baptismal name was Kodi. The leaving certificate is here.

**Mr. Patrick Njue:** Just again for clarity of the record, he was shot on 26<sup>th</sup> October, 1994?

**Mr. Lawrence Kodi:** Yes.

**Mr. Patrick Njue:** His date of birth you said was the year 1964.

**Mr. Lawrence Kodi:** Yes.

**Mr. Patrick Njue:** Lastly, what would be your expectations from this Commission following the killing of your brother for you and your family?

**Mr. Lawrence Kodi:** He was a young man whose life was destroyed and justice should be served. There should be cost to be paid but a human being cannot be paid. You cannot compensate human life and if we get compensation, it would just be to help the family especially the mother who is still alive though very old. We should be given compensation that would be enough for the family.

**Mr. Patrick Njue:** Thank you, Mr. Mwanjala once again for coming and for making your presentation. The Commissioners will now ask you questions.

**Commissioner Chawatama:** Thank you very much for your testimony. Indeed, it is very sad to sit here and listen to your testimony. One can just imagine what Samuel's life would have been like had he been alive. Please pass our condolences to your family. I know that it has been a while since he died but all the same, we offer our condolences. I have a few questions for you. Did you have an opportunity to speak to Samuel's employer after this incident took place?

**Mr. Lawrence Kodi:** Yes I had a chance to talk to them, it was an Asian company then, but they did not offer me any assistance. They said that they were not in a position to help except to give some burial contribution because he had only worked for them for three months.

**Commissioner Chawatama:** Do you know whether or not the police obtained any statements from Samuel's employers?

**Mr. Lawrence Kodi:** I am not aware. I am not sure whether the police went to look for a report or whether they investigated his place of work.

**Commissioner Chawatama:** The few times you went to court, did you ever see the employer or a representative from Glory Car Hire?

**Mr. Lawrence Kodi:** No one from that company has ever come but it was never heard. It was only mentioned and no hearing was ever held.

**Commissioner Chawatama:** Amongst the things that this Commission is going to be tasked with, is looking at the performance of institutions and we will invite them to come and appear before us so that we can ask them certain questions on how they have performed. It is important for us to hear from Kenyans what they think about the performance of different institutions. I will start with the police, in your own words, what did you think of the police and how they performed not only in the shooting of your brother but also thereafter? How do you think they performed?

**Mr. Lawrence Kodi:** In my own thinking, the police did not work as expected because police should only consider shooting when they are attacked. If someone has no weapon that would threaten your life, police should arrest and investigate instead of shooting somebody who is not even armed or threatening their lives. According to me, I think the

police should work accordingly because they are both human beings and humans should be considerate and we do have our rights as human beings.

**Commissioner Chawatama:** Unfortunately, in this situation, the very persons who were supposed to investigate are the people who carried out the shooting. I am asking this question because by the time a matter is taken to court, there must be some investigations that have been carried out. Can you recall whether or not there were investigations that took place?

**Mr. Lawrence Kodi:** I do not know. I am not sure if there was any investigation that was done because in the police statements that I have given, the police said that he had been a wanted man for five years. They said he was a thief and my brother had only been in Nairobi for one year yet the police were looking for somebody for five years. That showed that the investigations were wrong.

**Commissioner Chawatama:** I believe that if somebody is on a wanted list and has been on a wanted list for five years, they would have documents to this effect or even a poster to say that this is a wanted person. Do you remember ever seeing of the police producing anything to show you or to satisfy you that your brother was on a wanted list?

**Mr. Lawrence Kodi:** I am sure that they never produced any picture. If they had given that picture then our honourable Member who was asking the same questions to Mr. Tipis, would have shown the picture in Parliament to prove that he was wanted for five years. The police would have handed the picture to my brother Mwashegu who was there and this could have proved that it is the person they were looking for but there was no picture that was given.

**Commissioner Chawatama:** Often in a country when the courts perform and the foundation of justice is strong, the citizens benefit. I would like you to share with us on the performance of the Judiciary in this particular matter. Were you satisfied with the way the Judiciary performed? If not, tell us why not?

**Mr. Lawrence Kodi:** The Judiciary did not work. They did not give a verdict that the young man who was killed was important to the Government or the family. After that, we were told the file was burnt because it was overdue. There was no justice according to us.

**Commissioner Chawatama:** It is really sad to have to hear you say that it is as if the boy was not important to the Government because every life is important and every life counts for something. I recall sitting on a Commission in Zambia where we also became fed up with the police and one of the things we suggested was that instead of police retiring and getting benefits and Government paying people who sued the Government for careless and reckless acts by the police, that their pensions should be attached.

Even if the Government paid, the money should be recovered from those individuals. Do you think that this is something that could help put an end to police brutality?



**Mr. Lawrence Kodi:** That can be possible if reforms are brought into the police force and if it did work in Zambia and Zambia people are like Kenyans it can work here. If the Kenyan police service is changed, then I think it is good. If the police accept that their pension should be deducted and taken to the Government then that can only be possible if reforms are put in place.

**Commissioner Chawatama:** I think it is important for this Commission to do all that it can in the matter that you have put before us because clearly, it is very important for you and the rest of your family to bring a closure to this matter. I am happy and we will indeed be happy to be associated with the commission that might be in a position to do this. I thank you very much for your participation in this process.

**The Presiding Chair** (Commissioner Shava): Thank you Commissioner Chawatama. As you have stated, these are indeed very weighty matters that Mr. Lawrence Mwanjala has brought before us. We are talking about life and death, we are talking about the importance of human life and the fact that human life is irreplaceable. I would like to thank you for coming to testify. You have carried this pain for 18 years and it is still looking very fresh. The pain is something that your family and you have had to live with all this time. I would like to tell you that the court clerk who told you that the time had expired lied to you because there is something in law called the statutes of limitation and it applied in civil matters not in criminal matters. In cases of murder, there is no time limit and the statutes of limitation are inapplicable. In the first instance be assured of that point.

I wonder if after all this time, are you able to recall or did you ever know the name of the particular police officer who fired that bullet?

**Mr. Lawrence Kodi:** Yes I tried to find out when I was in Nairobi as we were preparing to transport the young man's body but when we went to the police they told us that Nairobi is big so they did not know who shot him and what police station he was based. I have never known his name.

**The Presiding Chair** (Commissioner Shava): I may have missed what you said and I will ask you to just bear with me if you have already said it. You retained advocate Onyango Otieno and then what is it that happened to him? Where did he go?

**Mr. Lawrence Kodi:** Onyango Otieno was employed by the Government as a judge of the Court of Appeal. When he was employed by the Government, we went to his office and he told us to start the case afresh. We were told that the file was thrown away so we got discouraged and just left the matter. It is only recently when TJRC came that we thought it was important to raise the issue. Maybe you can help us.

**The Presiding Chair** (Commissioner Shava): That point is now clear. I would like to assure you that we are now living in different times. I heard what you said about 1984, that at that time, it is not clear if the Government of Kenya was thinking of its people as human beings. It was a time of repression and fear. It is as if the police had the power of

life and death over us but things are changing. There are very hopeful signs. We saw that other day, that there was a police officer who attacked a woman badly in Naivasha in public. He beat her while she was on the ground. The next day, the senior police officers travelled to Naivasha to apologize to that lady and that police officer had to face the law. We saw the other day in Kawangware in Nairobi, a police officer who shot an innocent man and his son as they were getting goods ready to go and sell in the market. They were also arrested and they have to face the force of the law.

The police reforms are going to include a Police Oversight Commission so that the police are no longer going to have the power to investigate themselves for their own crimes so that we can no longer be told that Nairobi *ni kubwa nenda umtafute*. We hope that this gives you a degree of hope. We would encourage you to pursue this matter because it is very clear. We and our legal team will do everything within our power to assist and this case is going to be a part of the record of the Commission so that even after the life of the Commission, this issue will remain a live issue and can be pursued to its logical conclusion.

We have no further questions for you but we thank you for coming here today. It is a very important illustration of the failures that this country has endured in the administration of justice. Leader of evidence, please approach.

**Mr. Patrick Njue:** For the record, this is witness no. 6 on our cause list.

*(Ms. Pamela Atieno took the oath)*

For the record, please tell us your name, where you come from and what you do for a living.

**Ms. Pamela Atieno:** My name is Pamela Atieno. I come from Voi and I am a casual labourer.

**Mr. Patrick Njue:** I want you to confirm that you were with us today in the women's forum and you had a chance to make a presentation there.

**Ms. Pamela Atieno:** Yes I presented myself in the other sitting.

**Mr. Patrick Njue:** For purposes of this sitting, I want you to confirm that you had given a statement to this Commission on what you termed as discrimination based on tribal lines.

**Ms. Pamela Atieno:** I said that.

**Mr. Patrick Njue:** In your statement, you said that the reason for your believing so, is because you could not access CDF funds for the education of your son. Do you confirm that to be the case?

**Ms. Pamela Atieno:** Yes that is the truth and I have the evidence that there are other people like me who were also prosecuted.

**Mr. Patrick Njue:** For the record, please tell us what tribe you come from.

**Ms. Pamela Atieno:** I am a Luo but I have lived and worked in Coast Province for a long time.

**Mr. Patrick Njue:** From what tribe do the majority of the people where you live come from?

**Ms. Pamela Atieno:** They are from different tribes.

**Mr. Patrick Njue:** This particular incident happened in what year?

**Ms. Pamela Atieno:** It happened in 2009.

**Mr. Patrick Njue:** Maybe at this point, you will allow me to say to you that according to the mandate of the Commission, we are looking into violations that have happened over the years since Independence in 1963 to 2008. Be that as it may, yours is a case I believe of continued violation to people like you who have in the past perhaps within the period of our mandate and even after, not had access to the CDF funds like your case was and where proper reasons are not given for the same. Having said so, I want you to give us your recommendations or your expectations of what you think can be done to best address this problem. As you speak, I want you to speak on behalf of others who have suffered in a similar way.

**Ms. Pamela Atieno:** Personally, most our children are lost because of lack of school fees and they would like to continue with their education but the parents are not able. Those who are given the CDF money are the ones who are capable of taking care of themselves; those who are not able are not given. That is why many youth go and indulge in drugs and alcohol because they feel that they are not important in the world.

**Mr. Patrick Njue:** What do you think the Commission can do to help you access CDF or if not the Commission, what do you think can be done and by what body to help you access funds such as the CDF funds.

**Ms. Pamela Atieno:** I felt the pain when I was trying to follow up but when the case was heard, I felt relieved because I felt that I would get assistance from them.

**Mr. Patrick Njue:** I will come back again to that very question. When you say assistance, what kind of assistance are you looking at?

**Ms. Pamela Atieno:** My expectation is that my son should go back to school and any other child who is unable to pay for his fees should go back to school so that they can better their lives.

**Mr. Patrick Njue:** Very well said. Thank you for that Mama Pamela and now that you have confirmed the statement, the Commissioners may want to have a word for you.

**The Presiding Chair** (Commissioner Shava): Thank you Pamela. We were with you in the morning and you spoke very well. You have now spoken not only for yourself but for other women whose children find themselves in this situation and we thank you for that. I have no questions for you.

**Commissioner Chawatama:** I also just want to thank you. I know that it has been a long day for you and your baby but you have stayed on and we have heard you. I admire your determination because you value education and you know that without education, your children may not have a bright future and because of your determination, I believe that you should be helped. I pray that the assistance that you seek be given to you. Thank you very much for your participation. I have no questions for you.

**The Presiding Chair** (Commissioner Shava): Thank you very much Commissioner Chawatama. Leader of evidence, do we have any further witnesses for the day?

**Mr. Patrick Njue:** Presiding Chair and Commissioner, we have had witnesses who were attending the women's forum this morning. They had some more input to make but owing to the constraints of time and want of preparation, I would suggest that they come to our hearings tomorrow. Nonetheless, we thank them for their patience and their time and indeed the entire public today.

**Presiding Chair** (Commissioner Shava): Thank you very much Leader or Evidence. We are so guided. We have come to the end of the first day of our public hearing in Wundanyi. We would like to thank the following witnesses who appeared before the Commission; Najala Mwaluma, Margaret Mkachalo, Lawrence Elisha Kodi and Pamela Atieno Odongo. We will continue with these hearings tomorrow and we will be guided by our master of ceremony who is also the assistant regional coordinator for this region. Thank you all very much.

*(The Commission adjourned at 5.20 p.m.)*