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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION HELD ON WEDNESDAY, 25<sup>TH</sup>  
JANUARY, 2012 AT THE KENYA NATIONAL LIBRARY HALL,  
WUNDANYI**

**PRESENT**

<b>Margaret Wambui Shava</b>	-	<b>The Presiding Chair, Kenya</b>
Berhanu Dinka	-	Commissioner
Emily Kimani	-	Leader of Evidence

*(The Commission commenced at 10.40. a.m.)*

*(Opening Prayer)*

*(The Presiding Chair (Commissioner Shava) introduced herself) and the other  
Commissioner)*

**The Presiding Chair** (Commissioner Shava): Welcome all of you to our second day of public hearings here in Wundanyi. We started yesterday with a women's hearing in the afternoon.

*(The Presiding Chair read out the ground rules)*

I will ask our Leader of Evidence to call in our first witness.

**Ms. Emily Kimani:** Thank you, Presiding Chair. We have two witnesses to start off our session today. They are women representatives from this area. They are witnesses Code 3 and Code 21 respectively.

*(Ms. Josephine Kililo Mboje took the oath)*

*(Ms. Frida Mghanga Mwadime took the oath)*

**Ms. Emily Kimani:** What are your names?

**Ms. Josephine Kililo Mboje:** My name is Josephine Mboje. I am a retired teacher. I have been doing volunteer work. I have come across very many women with many problems. Sometimes I feel I cannot do the best for them, but I have tried my best. One of the things that affect women is lack of knowledge of their rights. They are neglected and abused. They do not know how to seek justice. The nearest person they go to is the Chief. The Chief cannot be the judge. So, they suffer quietly.

Our culture silences women and so they do not speak out on these issues. They need to have confidence in you before they start talking. Many take care of their own children. Men are irresponsible. All they can do is drink alcohol. This is very stressful.

A woman could be working, but men sometimes insist that they quit their jobs. Women choose to do what the men want. I have seen women who have been beaten until their faces are disfigured. Some lose their teeth and others suffer broken limbs. They do not take their men to court because they need that home and if they leave their children will suffer.

There is also discrimination of the girl child. If funds are inadequate, the father will opt to educate the boy child. Most girl children leave school early and they are abused. They get pregnant very early and are even married off very early. All these make the women folk poor. They are told not to talk about issues happening in the home. If there is incest in the home, it is difficult for a married woman to speak out about it. They are told to keep quiet about family issues. If they talk about such issues, even the society talks ill of them.

The few women who have been empowered also face negative attitude from their fellow women. These are women who have been brainwashed. They believe that a woman is supposed to do certain things and not others. I realized that our sons are idle. I blame women for this. At home you will find a girl doing chores, but the boy is left to roam about. The girls end up doing all the work while the boys remain idle and, perhaps, engage in drinking alcohol. So, the girl child and their mothers are suffering.

Land and other property belong to the man even in a marriage set-up. If a man decides to sell a cow it is his business. The woman will not get anything out of that, yet it is her who takes care of the cow. Property is not owned jointly. Most times the woman does not know what the husband owns. When the husband dies, the property is taken away from her by the relatives. When you go back where you were born, there is nothing for you too.

Women must be educated about their rights and how to claim them. Legal information needs to reach the women. I have been trying to get legal advice from various paralegal organizations, but still a lot needs to be done. Women look down upon women who have chosen not to marry. Always the girl-child is told to marry very early. If you choose not to, then something is wrong with you. Without a husband, you cannot be a leader. This is very unfair because we have very good and decent women leaders, but because of the brainwashing and the culture, they have been ignored. That is all I would like to say for now.

**Ms. Emily Kimani:** Thank you for your presentation. I now invite Madam Frida Mwadime to give us recommendations.

**Ms. Frida Mghanga Mwadime:** I am Frida Mghanga Mwadime. I am now a student of theology, but I have been in many positions of educating women. I have worked as a

facilitator and programme officer in two NGOs. I was also a participant in the Constitution review exercise in Taita Taveta.

My sister Josphine left out one thing; that is, our county has the northern corridor passing through it. There are so many trucks passing on this road. The road has hotspots. There are many visitors who pass through our region as they go to the DRC. We have towns like Maungu, Voi, Taveta, Mwakitau and Mwatate which are stop-over points for the trucks.

On the other side, towards Moshi we have Taveta, Mwakitau and Mwatate. These are areas where HIV/AIDS prevalence is very high and the people who provide services visit us and leave; the people who work in this region are our sons and husbands. Traditionally, Taita women remain at home to work in their farms since we live in the hills. The old and young men work in the shopping centres. Women have been infected with this disease and most of them are married. This is because of the visitors in the transport sector. Many women have been infected with the HIV disease, but I do not have the accurate statistics; but I can say that 25 per cent of women in the Taita Taveta region have this disease. This is due to lack of employment of older men and the youth.

Another issue that has affected our women, and that is not being talked about, is Female Genital Mutilation (FGM); this is so despite the fact that a law was passed in Parliament to curb it. It is not spoken of and the law is not implemented. In my recommendations, I will try to provide a solution to these issues I and my sister have talked about. The issue of lack of information and ignorance, as Josephine has mentioned, needs civic education; civic education is also required on issues that concern the new Constitution. This is because the new Constitution talks about non-discrimination, abuse and lack of rights, but this information has not come to the women at the grassroots. The people who have this information cannot reach the rural women. So, as women leaders in this region, we insist that there is need for civic education concerning the new Constitution.

Secondly, the Sexual Offences Act has not been well highlighted in our area despite the fact that FIDA has representatives here. We also have the Kenya League of Women Voters; COVAW was there three years ago before it was relocated. Women have not received civic education to know what this Sexual Offences Act contains, and how it can assist them and the girl child when they are raped, defiled, abused or are victims of incest. So, we require these organizations to be able to provide us with civic education to our women. She has also mentioned education.

We have 50 per cent of our girls in Standard One but when they get to Standard Seven and Eight, this percentage goes down to approximately 38 per cent. This is because many of them drop out because of poverty and lack of life skills. They become victims of early pregnancies and marriages. So, since we have organizations that cater for such things, it would be a good thing if a topic on sex education is included in the primary school syllabus. There was a time when it was recommended in Parliament and it was opposed. This sex education also comes with life skills and that is why in schools there is guidance and counseling; but because of the syllabuses, teachers teach only subjects that help

children to pass examinations; they forget to teach life skills. So, we recommend that life skills should be introduced in the primary school syllabus so that these children do not become vulnerable to early pregnancies. During our mothers' time it was the responsibility of the grandparents to teach the children life skills; nowadays grandparents cannot do this because people travel extensively in search of education. So, we recommend that our education system introduces teaching these skills. If we do not do this, early pregnancies will continue happening because children do not have adequate life skills. Life skills will also enable them to avoid early marriages and incest.

Concerning land, this is a critical issue not only in Taita Taveta County. I think you heard of it as you travelled around Coast Province. In Taita Taveta, land is a very crucial issue because 63 per cent of our land is comprised of a national park, Tsavo East and Tsavo West. Thirty three per cent of it is comprised of personal land and ranches. We have sisal estates in Voi and in Taveta and the people who own this land are senior people. I will not mention their names because they are known. In Voi, we also have such land owners. The Taita and Taveta are only left with 6 per cent. This 6 per cent is where we have constructed our schools, dispensaries and it is also used for farming. I will not talk about that a lot because it has been spoken of and it is well known.

So, our recommendation is that we do not dispute that the animals are important and human beings have lived side by side with the animals; but the human beings should live where they can sustain themselves. According to Chapter 4 of the Bill of Rights, our recommendations, as women in Taita Taveta County, are that this issue should be investigated. The area of the national parks should be reduced by 25 per cent and leave them only with 45 per cent of the land area; that will be good. They Government should give us 20 per cent of the land and that will assist us, because every day we are giving birth and increasing our numbers.

As for lack of ownership of land and other property by women, as Josephine has said, I would like to raise an issue here that it would be good for our women, but on the other hand, it has also got some issues. We have micro-finance organizations that came in a good way and tried to empower our women businesswise. If you have travelled around our county from Voi to Wundanyi, you have seen that on the roadside many women have businesses; sometimes we till our land and rain fails to fall. So, we have gone into businesses and they cannot survive if they do not have adequate capital.

So, micro-finance institutions have brought us funds for our businesses, but because of the high interest rates and the lack of adequate education on how to run the businesses, the institutions are a blessing and an oppressor. This is because when women are not able to service their loans adequately; their cows and other household goods are confiscated in order to pay back the loans. So, we recommend, as women of Taita Taveta, that the interest rates should be lowered to about 8 per cent; this would be very helpful to the women. This is because by virtue of the Constitution the constituency is protected, but the people who are represented are not protected. So, we ask that women should be protected by a certain law, so that they do not continue suffering.

Finally, on women in leadership, since 48 years of attaining Independence, there has not been a Taita woman in top leadership but we appreciate that our sister, Dr. Naomi Shaban has vied for a seat and served for a second term. However, in the Mwatate region of Voi and Wundanyi, we have never had a woman who has vied for a parliamentary seat and won. The ones who want to be councillors suffer from a lot of issues. Commissioner Shava was with us yesterday and she heard from the women that most of them are still oppressed by the leadership and many other issues. Since the Constitution has provided for one-third of the seats to be reserved for women, we are worried as Taita women that maybe this one-third will not be achieved; this is because the women who want to vie have been threatened and others have abandoned their families because of gender oppression and they are viewed as not respecting the rights of their men, just because they want to be leaders. So, this problem can only be resolved through civic education and also by showing the public the importance of having women as leaders.

On the women leadership, we ask the Mzalendo Kibunja commission to come up openly and explain the responsibility of any leader, especially a political one. They should guide and protect the women when they vie for political posts; women are subjected to many vulgar words. They want to know if a woman is married and if she is not, she is classified as a prostitute and there is no need to vote for her. If she is married, they want to find out what kind of man the husband is; it is then claimed that she has oppressed her man and she also wants to oppress other men, which is not true. So, the organizations which are concerned with helping women in areas where they are oppressed should take responsibility. Thank you for listening to me.

**Ms. Emily Kimani:** Thank you very much for those sound recommendations on the issues that have been highlighted by Madam Kililo and also for the two additional issues about the northern corridor and FGM. I would like to ask you both a few questions and I will start with Madam Kililo. The first issue that you tackled in your testimony was ignorance and you went further to tell us that you have tried to liaise with paralegals to raise legal awareness levels among the women in this region. What other initiatives have you undertaken to up the levels of awareness among women?

**Ms. Josephine K. Mboje:** We have even attended the FIDA seminars although the nearest office is in Mombasa just to get the knowledge; and when women want to come to seek justice, I do my best to guide them, although many of them fear going to court against their husbands.

**Ms. Emily Kimani:** Thank you very much for that answer which also prompts me to my next question. My last question is about that issue of women and the courts. You raised the issue about domestic violence. What has been the reception of the police and the courts for those who have been bold enough to go to court?

**Ms. Josephine K. Mboje:** It has not been very good; also the process is not right. Let us say when a girl is raped, you take her to hospital. Then after that, she is told to go for a P3 Form. You go to the police to get it. In Voi, those P3 forms are not filled at any time. You fill them at a specific day. After that, you return it to the police and all that costs money.

If the girl is poor, you will have to carry the burden. Then some give up. That is so humiliating. Sometimes you are told that you are dressed badly or this is just a minor thing. Even if you take them for treatment, you will see that the child is ashamed. They cannot even have confidence, and since some of us are not counselors we just give up. We do not know what to do next. Such children should be counseled and encouraged, so that they start living normal lives because if they are left, in the end they will continue doing such things.

**Ms. Emily Kimani:** Thank you very much for your answer. I have no further questions for you. I will now go to Madam Mwadime. One of the additional issues that you raised was about truck drivers on the northern corridor; you said that this has led to the high prevalence of HIV/AIDS. How accessible are the ARV drugs to those women who have contracted the virus?

**Ms. Frida Mghanga Mwadime:** On the treatment of the victims of HIV, it is not very conclusive. We only have three hospitals namely Voi, Taveta and the one which is in Wundanyi Constituency. We also have several dispensaries but there is lack of the required facilities. So, even the treatment and medication that reduces the HIV is not readily available; this is because of the long distance the sick have to walk in order to get there. There is also the stigma; many of our women do not like to come out because they view it as embarrassing.

The second thing about these hot spots, as I said earlier, is that attending VCTs should be mandatory in these areas and the citizens should be reminded of this disease. Permanent residents should also be sensitized on this disease. More VCT centres should be opened in these areas. Infrastructure should be improved so that our hospitals have drugs. The health centres should also be adequately staffed. In the whole county, we have only two qualified men doctors. The rest are clinical officers and nurses. The dispensaries that are supposed to be managed by clinical officers are instead run by nurses. So, staffing should be upgraded. Enough medicines should be provided.

**Ms. Emily Kimani:** My last question is about the Women Enterprise Fund. I know you gave a recommendation that 8 per cent interest rate should be charged. How effective has this fund been to the women in this area to your assessment?

**Ms. Frida Mwadime:** That is why I mentioned first that these funds have not assisted the women in the way that they were expected to. It has even made others to become poorer because of the way these funds are administered. These women have to be in groups of five. You will find that it is not every woman who is educated, informed and who has the experience of running a business. Some of us failed our examinations. You cannot educate a woman for three months, fund her and then expect that she can pay back the loan after one month. So, the major challenge has been that the women have been victims of these funds due to a lack of an education and information. However, the informed ones have benefitted.

**Ms. Emily Kimani:** Thank you very much, the two of you for your candid presentation and for patiently waiting to give us your testimony. May God bless you as you strive to improve the lives of women in this region. We pray that he may give you strength and grace. Thank you very much. I have no further questions. Commissioners, over to you.

**The Presiding Chair** (Commissioner Shava): Thank you leader of evidence.

**Commissioner Dinka:** Thank you very much Madam Mwadime and Madam Mboje for the testimony. The challenges facing these women throughout Kenya are almost identical. There are some local variations depending on tribes, clans and religion. The problem I think is mostly the inaccessibility of information by them. For instance, if you take the inheritance from the husband when he dies or the ownership of property including land, the law empowers them to do that but they do not do that. So, the relatives of the husband come running chase the woman away and then take the property, including the land, away and then impoverish the lady. So, I think as you said civic education is very important. Do you think it is important for example for introduction in the curriculum of civic education to introduce the children, both boys and girls to the new law regarding inheritance, land, rights of women and the girl child, or is it perhaps more effective to do it through civil society, community and faith based organizations, charities, mosques or the Government doing it through its own structures, including radio, television, newspapers and so forth? To have effective campaigns by radio and television, you can assume that people can read. You also talked of high rates of illiteracy and poverty among women, so they cannot afford televisions or even radios. What do you think is the best way to go about this civic education?

**Ms. Josephine Mboje:** I would rather first have the civic educators or organizations doing it to the community or even in the churches to teach these adults. This is because the curriculum in the schools is already overloaded and even if the child knows and comes back to the parents who are ignorant--- In fact, men and women need education. Let it be done by civic educators and NGOs. I do not want the Government to do it because it will go through the chiefs again and some of them suffer from the same problems as all men. So, I would rather have the NGOs doing it and it can be done in churches and seminars.

**Commissioner Dinka:** Do the NGOs have sufficient resources to do it?

**Ms. Josephine Mboje:** I think so.

**Commissioner Dinka:** So, if that is the case, why are they not doing it?

**Ms. Josephine Mboje:** Those who are already on the ground now?

**Commissioner Dinka:** Yes.

**Ms. Josephine Mboje:** I have not seen FIDA since it is very far from us. Maybe they do not have funds; I do not know but I always think that NGOs can help. Paralegals have



been here in Mwatate. They have gradually spread to Voi Constituency and they have been coming.

**Commissioner Dinka:** Do husbands allow their wives to go and listen to these people?

**Ms. Josephine Mboje:** In fact, in our community here, if you go to any meeting, you will find women. Women are in church, school meetings and community work. So, it is easy to get women as long as they are doing it around their homes. If you ask women to go for a seminar for five days in Mombasa, many of them will not go but if you come to the ground, then they will be there.

**Commissioner Dinka:** Then justice can be done particularly by charities and civil society groups. So, my question for my sister Madam Mwadime is: You said that 63 per cent of the land is made of the national parks; you said some other land is owned by big farmers, essentially Taita Taveta. You then said that the remaining 6 per cent is shared by the population. What is an average farmer's acreage in your area? It must be very small!

**Ms. Mwadime:** For many who have a lot of land it measures one acre. Many of them have 0.9 acres and most of them do not have title deeds. The 6 per cent is on the hills.

**Commissioner Dinka:** First of all, it is on the hills and secondly, it is one acre?

**Ms. Mwadime:** One acre and if it is very large, two acres on the hills. On the lower ground where my sister comes from, the entire area is a national park. So, they have been trying to get it returned to the citizens – at least 25 per cent of it. Sometime in 1999 before Kenya became a multiparty state, then President Moi announced that from now then on 25 per cent of the national parks both East Tsavo and We Tsavo would be returned to the residents but that was just empty talk. It was not documented nor gazetted. So, we have waited for so long. When the Independent Electoral and Boundaries Commission (IEBC) was here last week and on Monday this week, the issue was spoken of and we recommended that our size of our land should be increased, so that it includes some part of the Kenya Wildlife Service (KWS). Maybe the commission can consider that.

**Commissioner Dinka:** I come from a very old family and for a family that is husband, wife and two children, one acre is inadequate. So, there must be some kind of land redistribution in favour of the residents. Do you think if they give back 25 per cent of the national park land, it will be sufficient for the population?

**Ms. Mwadime:** Yes, for the time being but for posterity, we still have to push on. For the time being, it will really help our community.

**Commissioner Dinka:** Thank you very much. I have no further questions but you need to inform the women about their rights and at the same time talk to your men folk so that they will be also supportive of the cause of women since they are not enemies. So, men must be part of your constituency. Try to win them over and I think that will be very

effective. Secondly, regarding the land issue, I think you must organize yourselves effectively and present your case to the Government especially now that a new system of county governments is coming up who would be more in tune with your problems and they can do much better for you. Thank you.

**The Presiding Chair** (Commissioner Shava): Thank you, Commissioner Dinka. We have interacted very well Mama Josephine and Mama Frida over the last two days. I am happy for the interaction. Mama Josephine, I just want to confirm that you said that you are a volunteer community worker, and you also work for Maendeleo Ya Wanawake. Is that correct?

**Ms. Josephine Mboje:** Yes. Maendeleo ya Wanawake is a volunteering organization and then I have been doing work in the CDF, education bursaries, District Education Board (DEB) and I was even a director of Coast Water Services Board; I am also a lay reader in the church. So, I interact a lot with the community.

**The Presiding Chair** (Commissioner Shava): You have a very wide network. I also wanted to comment that you are a valuable resource for this area. I am very happy when you talk of the paralegals. Are those the paralegals that were trained by FIDA?

**Ms. Josephine Mboje:** I do not know how it started but there was one time they invited me to go for a seminar but I did not go; I sent a friend of mine there. She has been doing a lot of work and she has brought them down here. They have agreed to conduct some clinics here and there to educate people on some laws or how to go about dealing with their problems and I am very happy.

**The Presiding Chair** (Commissioner Shava): I am also happy that that programme has been effective to help women to be able to represent themselves. Finally, I would like to commend you for your quest for knowledge. I think you are a very good example of a teacher and one never stops learning.

**Ms. Josephine Mboje:** Yes, I am a teacher and we say that we never stop teaching.

**The Presiding Chair** (Commissioner Shava): Thank you very much for your contribution. Mama Frida, I just have one question for you. On the issue of FGM, because there are different communities that live in this area, amongst which communities is this problem prevalent? We know in communities around the country where it happens, it is a precursor to early marriages and even forced marriage; that cuts short the education of the child, so that you have a woman raising children when she does not have a lot of education and knowledge.

**Ms. Frida Mghanga Mwadime:** As I said earlier, this issue has not been spoken of generally among the Taita who live around Mwatate, Voi and Wundanyi and among the Taveta, and even among those who are very religious like Muslims. For Christians, it is not too much, but there are those who carry it out secretly; it is something that is going on.

**The Presiding Chair** (Commissioner Shava); Thank you for that clarification. With that, we have no further questions for you but we thank you for your contribution in helping us to seek the truth for Kenyans, so that we can understand our problems and seek solutions to them. We thank you both very much for your contributions.

**Ms. Emily Kimani:** Commissioners, our next witness is Witness Code 9 as per the list.

*(Mr. Kennedy John Mutungu took the oath)*

**Ms. Emily Kimani:** Mr. Mutungu, how are you this morning?

**Mr. Kennedy Mutungu:** I am all right.

**Ms. Emily Kimani:** The main reason why you are before us this morning is because you recorded a statement about unemployment, you being a former employee of the African Retail Traders (ART) Kenya Limited. Is that correct?

**Mr. Kennedy Mutungu:** Yes, but it is the ART.

**Ms. Emily Kimani:** Before I invite you to make your presentation, please tell us your full names for record purposes.

**Mr. Kennedy Mutungu:** My names are Kennedy John Mutungu. As of now, I am a farmer.

**Mr. Emily Kimani:** I invite you to make your presentation. Highlight the issues and then make your recommendations. Welcome.

**Mr. Kennedy Mutungu:** As you have been told, I was an employee of ART. I joined the company in 1978; we had been employed by the ICDC Investments Company. The ART was under ICDC Investment Company but as at 1999, the company was sold off to a Hindu family called the Meltrata Family. When we were sold off to a new employer we asked to be paid our dues before we were handed over to the new employer.

When we were sold off to a new employer, we tried to ask to be paid our dues before we were handed over to the new employer, but we were told that all our benefits had been transferred to the new employer. We had a provident scheme that was doing well and up to 2003, people who retired and others who left their jobs on their own were paid their dues well. We were surprised when in 2001, the Managing Director Hiteshi Mederata and Mr. A M Nthiga who were trustees to the Asian scheme - as we later realized - had halted the scheme. Funds were being deducted but they were not being handed over to the scheme. It amounted to Kshs100 million. They sold our bonds worth 6 million shillings which had been invested in Barclays Bank. In 2005, the company was taken over by a receiver. When it was put under receivership, we were sent home empty handed. We were not paid even a single cent. The company was doing very well and the receiver

came in to claim a debt of Kshs120 million but for a period of six months, we were able to collect all the funds and the receiver paid himself off but the employees went home empty handed. Every month, the company made over Kshs22 million and so, in six months, it had cleared the debt. A company that was worth Kshs500 million was sold for Kshs40 million and a down payment of only Kshs3 million. Our co-operative ART Sacco tried to buy the company at Kshs200 million but that was not possible. It was sold off to a rich man. When it reached to that point, we tried to look for any legal means to get our dues but we were not successful.

We are requesting this Commission to assist us, if it can, to be paid our dues from our provident fund and if it is possible, even our staff retirement benefits should be paid.

**Ms. Emily Kimani:** Thank you very much for your presentation before us this morning. Before I proceed to ask you questions, there is a gentleman seated on your immediate right, I do not know if you would mind introducing him to us.

**Mr. Kennedy Mutungu:** It is good for me to introduce this gentleman to you because I would also like him to speak a bit. This gentleman's name is George Mwasiwa and he was my colleague at work.

**Ms. Emily Kimani:** You have presented all the issues that you faced. I wish to ask you a few questions from your presentation. You started by telling us that you were employed by ART in 1978. Is that correct?

**Mr. Kennedy Mutungu:** Yes it is.

**Ms. Emily Kimani:** You were employed at what position?

**Mr. Kennedy Mutungu:** I was a salesman and I went up to managerial position.

**Ms. Emily Kimani:** You have told us that it was sold in 1999. Was that the year you were terminated from duty?

**Mr. Kennedy Mutungu:** No. I was not terminated that year. We were handed over to another employer and we continued working with him. In 2005, that was when the new employer laid us off and we went home empty handed.

**Ms. Emily Kimani:** How many employees were sacked?

**Mr. Kennedy Mutungu:** We were about 300 employees.

**Ms. Emily Kimani:** And none of you got to receive his or her benefits?

**Mr. Kennedy Mutungu:** None of us; not even one.

**Ms. Emily Kimani:** Did you belong to any union?

**Mr. Kennedy Mutungu:** Others were in the union but, later, we were pulled out of the union by the new employer who bought the company in 1999. All of us were told that we were in management.

**Ms. Emily Kimani:** Did the union try to advance your cause after your termination from duty?

**Mr. Kennedy Mutungu:** None of us was left behind and so, none of us followed it up.

**Ms. Emily Kimani:** You have highlighted in your testimony that you tried legal means. Maybe, you could give us more details like the case number and when you went to court.

**Mr. Kennedy Mutungu:** We contributed some money but the case was not filed in Nairobi. It was filed in Kisii. It was filed in 2010 and it was case number 55. Up to now, we do not know how the case is going on. We do not have any information.

**Ms. Emily Kimani:** Do you have any lawyers on record?

**Mr. Kennedy Mutungu:** It is the same lawyer who was spoken of. It was said he had filed the case but he was not able to take it to court. Just the other day, we got information that the case was going on but we do not have any written documents in our hands.

**Ms. Emily Kimani:** I have no further questions for you.

**Commissioner Dinka:** Thank you very much Mr. Mutungu for your testimony. You served for over 20 years in this company - 78-99. Is that right?

**Mr. Kennedy Mutungu:** Yes.

**Commissioner Dinka:** When you were dismissed, what was your level in the company?

**Mr. Kennedy Mutungu:** I was a manager.

**Commissioner Dinka:** Manager of the company

**Mr. Kennedy Mutungu:** I was the shop manager.

**Commissioner Dinka:** What do you mean by shop manager?

**The Presiding Chair (Commissioner Shava):** Perhaps, I can assist here. African Retail Traders was an organization where people could buy goods on hire purchase. Is that correct?

**Mr. Kennedy Mutungu:** It was a hire purchase shop.

**The Presiding Chair** (Commissioner Shava): So, you were a manager of one of those shops?

**Mr. Kennedy Mutungu:** Yes, I was the one managing.

**Commissioner Dinka:** Was it engaged in import/export or only in locally produced goods?

**Mr. Kennedy Mutungu:** Some of the goods came from the country and others, especially electronics, came from outside the country.

**Commissioner Dinka:** Finally, when the receivership was declared, was it because the company went bankrupt so they could not pay their debt to the bank or what happened?

**Mr. Kennedy Mutungu:** The rich man had taken a loan from Barclays Bank and he was not able to service it. That was when the receiver came in.

**Commissioner Dinka:** Barclays was paid back the money. So, what happened to the company? Was it dissolved, liquidated or is it still continuing?

**Mr. Kennedy Mutungu:** The company continued when the receiver came in; we worked with him and we ensured that we had collected enough funds and paid the loan. So, we were left with the new owner. The new employer began laying us off on little faults. Any small mistake could lead to being fired because he knew that he did not have any responsibility of paying us.

**Commissioner Dinka:** So, that was a totally new ownership and new management which sort of got you with the company but it is not the original employer.

**Mr. Kennedy Mutungu:** It was not the original employer who had employed us.

**Commissioner Dinka:** Did you have an employment agreement contract with the new company that bought the company?

**Mr. Kennedy Mutungu:** There was an agreement because we had the provident fund scheme which he was in charge of but later, we found out that they took our money and they were investing it elsewhere. They did not become bankrupt. The original owner who had employed us owns companies like Slumber Land and PG Bython which they continue to operate up to now.

**Commissioner Dinka:** They have not paid back even your provident fund that you contributed?

**Mr. Kennedy Mutungu:** Not a cent. I am claiming Kshs2.1 million. That is what they owe me. All my benefits from when I began working to the time I left. I worked for 26 years.

**Commissioner Dinka:** And your lawyer did not come back to you to tell you what happened?

**Mr. Kennedy Mutungu:** We were so many and this was being done in Nairobi so were not able to interact well with them and just the other day, we tried to follow up and we were told that the case is in court and that it was filed in 2010. We do not have any written document showing that there is a case that is really going on.

**Commissioner Dinka:** So the file is still open and the court case is still active although no verdict has been given?

**Mr. Kennedy Mutungu:** I do not know about that very well and no judgment has been made.

**Commissioner Dinka:** Why can't you make a telephone call to your lawyer just to find out the latest? You do not have to go to Nairobi to ask him.

**Mr. Kennedy Mutungu:** We have tried to look for those who were handling that case in Nairobi and we did not find them. We hear others are in Tanzania and they are not reachable. So, we are stuck.

**Commissioner Dinka:** I empathize with your difficulty and I have no further questions for you.

**The Presiding Chair** (Commissioner Shava): Mr. Mutungu, this is a very shocking story that you have told us of basically directors of a company stealing money that belongs to the workers and using it to fund other businesses and leaving the workers without a cent after 26 years of work. I just want to clarify some of the details. ART was under ICDC, and then ICDC sold ART to the Medirata family in 1999. Things continued to go smoothly until 2003 or 2001?

**Mr. Kennedy Mutungu:** In 2005 was when problems started when the receivers came in. In 2005, we started hearing that they had started interfering with our funds and they stopped the scheme because they were deducting money but they were not handing it over.

**The Presiding Chair** (Commissioner Shava): I have written that in 2001, Mr. Nthiga and Mr. Medirata who were the trustees of the provident fund stopped the fund. Is that what you said?

**Mr. Kennedy Mutungu:** Yes that was then.

**The Presiding Chair** (Commissioner Shava): Did they stop taking contributions or did they stop paying people who were leaving?

**Mr. Kennedy Mutungu:** They continued deducting money but they stopped taking the money to where we were saving it.

**The Presiding Chair** (Commissioner Shava): Where was the money supposed to be saved?

**Mr. Kennedy Mutungu:** We had Minet Insurance Brokers.

**The Presiding Chair** (Commissioner Shava): I have also written that in 2003, there was a good employee benefit scheme. Is that correct?

**Mr. Kennedy Mutungu:** Yes.

**The Presiding Chair** (Commissioner Shava): So, those are two separate things. There is the benefit scheme and there is the provident fund. Is that right?

**Mr. Kennedy Mutungu:** That was where we did not understand quite well because all of those who left those years were well compensated but when we started leaving, it was claimed that there was no money to pay us. When the receiver came in, he said he was not concerned with this issue and that we should follow our employer to pay us back our money.

**The Presiding Chair** (Commissioner Shava): You said you rose to be a shop manager. You were responsible for the ART employees working in that shop.

**Mr. Kennedy Mutungu:** I was in charge of the employees and the property that was in the shop and all the activities; banking and all. That is what I used to take care of; the day to day activities of the branch.

**The Presiding Chair** (Commissioner Shava): So, you were responsible for the accounting.

**Mr. Kennedy Mutungu:** We were just required to bank.

**The Presiding Chair** (Commissioner Shava): You were in the position to know how much money was being taken to the bank everyday.

**Mr. Kennedy Mutungu:** Yes.

**The Presiding Chair** (Commissioner Shava): And you were in a position also to know the people who had taken goods on hire purchase. You were the one who has to follow them up to make sure that they completed their payments.



**Mr. Kennedy Mutungu:** Yes.

**The Presiding Chair** (Commissioner Shava): You were responsible for stocking your shop and for paying salaries of employees in your shop.

**Mr. Kennedy Mutungu:** No. The salaries were coming from the head office for all of us.

**The Presiding Chair** (Commissioner Shava): Did you have anything to do with remitting deductions for the staff under you or that was also done at the head office?

**Mr. Kennedy Mutungu:** That was taken care of by the head office in Nairobi.

**The Presiding Chair** (Commissioner Shava): At the time you had the highest number of employees in your shop, how many employees were in your shop?

**Mr. Kennedy Mutungu:** There is a time I had six employees who were working under me and it was a big branch.

**The Presiding Chair** (Commissioner Shava): Did you interact with managers of other shops? Was there a forum, did you use to have meetings or were you in a position to know what kind of profits or losses they were making?

**Mr. Kennedy Mutungu:** Every shop had its own targets on collection and sales. I was in Mombasa Town and we had about four branches. I knew what every branch sold and what they collected.

**The Presiding Chair** (Commissioner Shava): Are you saying that you are in a good position to know the kind of money that should have been remitted to the head office?

**Mr. Kennedy Mutungu:** Yes.

**The Presiding Chair** (Commissioner Shava): Thank you for that clarification. My next question is: Do you know the name of the receiver? Who was the receiver who came in to collect the money on behalf of Barclays?

**Mr. Kennedy Mutungu:** It was a white man called Adrian.

**The Presiding Chair** (Commissioner Shava): And then you said that when the Mediratas took over ART, they said that management could not belong to a union, so you had to leave the union?

**Mr. Kennedy Mutungu:** They said that they were in charge of us. When they took over the company, they were the ones running the company.

**The Presiding Chair** (Commissioner Shava): I am saying that you were asked earlier whether you belonged to a union and you said that when you joined, you belonged to a union but now that you were a manager, the new owners said that managers cannot belong to a union. Is that what you said?

**Mr. Kennedy Mutungu:** It was a law that when you got promoted to managerial position, you could not be in a union. They remained in the union but they were later asked to leave.

**The Presiding Chair** (Commissioner Shava): Is it only those in management who were asked to leave the union or was every employee of ART told to leave the union?

**Mr. Kennedy Mutungu:** All of us were forced to leave the union.

**The Presiding Chair** (Commissioner Shava): Which union was it?

**Mr. Kennedy Mutungu:** It was Food and Allied Workers Union.

**The Presiding Chair** (Commissioner Shava): Thank you. That is clear. My colleague was asking you some questions to try and understand the way your court case is going. I am also having a bit of difficulty understanding that. This all took place in 2005 and then the 300 employees scattered because people were taken by surprise and they had to try and make their living. You say that some even went as far as Tanzania. It was only in 2011 that you managed to come together and put forward some sort of case in court for the first time. Is that the situation?

**Mr. Kennedy Mutungu:** We had started much earlier but the ones who were in charge of it were at the head office in Nairobi. We got a legal opinion and that is what we gave as evidence. Later, they said that he was too expensive and that they would look for another lawyer. They said that they had a lawyer who was now carrying out the case and that instead of filing it in Nairobi, they would file the case in Kisii because they said that there was a small number of cases there than Nairobi. From then, we did not get any information and each one of us had contributed some money.

**The Presiding Chair** (Commissioner Shava): Who is your colleague who is in charge with coordinating with the lawyer in Kisii? Who is the focal point?

**Mr. Kennedy Mutungu:** There is one called Siso.

**The Presiding Chair** (Commissioner Shava): Is Mr. Siso the one coordinating your case with the lawyers?

**Mr. Kennedy Mutungu:** Yes. That is because he is the one who was following it up.

**The Presiding Chair** (Commissioner Shava): But you said that you all contributed money for the lawyer?

**Mr. Kennedy Mutungu:** Yes, we contributed money.

**The Presiding Chair** (Commissioner Shava): Thank you very much. I think I understand the case better now, Mr. Mutungu, and the gentleman accompanying you. This is really a very sad case but the encouraging thing is that these individuals are still around and the fact that you have already started a court case. We, on our part, will do what we can to assist you with that case and to ensure that people are paid because what happened is wrong. Under the Constitution now, it is your right to belong to a union. You cannot be forced not to belong to a union. Rules about management, perhaps, are exempted but workers have the right to belong to a union, workers have a right to strike and workers have a lot of rights. I think this will assist in trying to make sure that you get justice. Please remain; if there is any other question you would like to ask our legal team, then you can talk with our legal team after this session and be assured that we will do all that we can within the powers given to us by the law to assist you to get justice. We thank you and we have no further questions for you.

**Ms. Emily Kimani:** Before I stand down Mr. Mutungu, he has a write-up about the issues that he has talked about. I wish to ask him if he is willing to furnish us with the same. Mr. Mutungu, would you wish to adduce this memorandum as part of your evidence before this Commission?

**Mr. Kennedy Mutungu:** Yes I would like to hand it over. There is another one that we sent.

**Ms. Emily Kimani:** I request that this memorandum be admitted to form part of the records of the Commission.

**The Presiding Chair** (Commissioner Shava): The memorandum is so admitted.

**Ms. Emily Kimani:** Commissioners, our next pair of witnesses are both victims of police brutality albeit under different circumstances. That is why they are appearing before us as a pair. That is witness code 15 and witness code 20 as per the cause list.

**The Presiding Chair** (Commissioner Shava): Leader of evidence, I presume that we will listen to one witness at a time and question one witness at a time for ease of the process.

**Ms. Emily Kimani:** Yes.

*(Ms. Esther Wanjiku and  
Mr. Salim Rashid took the oath)*

**Ms. Emily Kimani:** I will start with you, Mr. Rashid. How are you this morning?

**Mr. Salim Rashid:** I am fine.

**Ms. Emily Kimani:** The main reason you are before us is because you recorded a statement earlier on about police torture and detention. Is that correct?

**Mr. Salim Rashid:** That is correct.

**Ms. Emily Kimani:** I would like you to make your presentation but before you proceed to give us your testimony, you will start by telling us your full name and your occupation for record purposes.

**Mr. Salim Rashid:** My name is Salim Lungala Rashid. I am an ordinary farmer after leaving my teaching job because of the problems I will tell you. I am a resident of Taveta District.

**Ms. Emily Kimani:** I welcome you to give us your testimony. Take us through your tribulations and give us your recommendations.

**Mr. Salim Rashid:** After my school, I trained as a teacher. I started working as a teacher after I went to a college in Tanzania after my education in Kenya. I taught from 1975 to 1986 when I decided to leave my job there and come back home to Kenya so that I could be near my parents being the first born in my family. In 1987, I asked to be a teacher here in Kenya and I was accepted after sitting for an interview in Nairobi and I was employed as a teacher in Mrambani Primary School, Taveta. I started working there in January, 1988. As I was going on with my job, on 30<sup>th</sup> of September, at 2.05 pm, I was picked from school by security officers from the Special Branch in Taveta Station. They told me that they had issues they wanted to discuss with me but the discussion would be at the police station. They took me there but before we got there, we passed through my home and a search was conducted. They searched my home and found that I had some scripts that I had written as a Kiswahili teacher concerning leadership and it was a story. They required letters concerning one of my relatives whose name was Komeja Mswiya but they did not get any such letters. So, they took my scripts and they also took me directly to the Taveta Police Station. They questioned me a little and I spent the night there. In the morning of 31<sup>st</sup>, I was taken to Voi Police Station. I was put in remand and I continued to be questioned.

**The Presiding Chair (Commissioner Shava):** Moja kwa moja is not one by one. It is directly. Just for the sake of the record so that we do not have the Hansard talking about one by one.

**Mr. Rashid Salim:** After I was taken to Voi Police Station where I was questioned. In our discussion, I was associated with an organization that I was not conversant with that was called Mwakenya which many teachers had been associated with. Later, I got information that my relative Mohammed Komeja had also been associated with this association and he was lucky to escape before he was arrested by the police. He escaped and went to Tanzania. I assisted him to escape to Dar Salaam. That information is what led to my arrest because of assisting him to flee the country for his own security. In our discussion, they were asked for information about him and also information about

Mwakenya and the scripts that I had written and that they had found in my house. I answered their questions and told them that I was not aware of any information about Mwakenya but I was aware of Komeja Mswiya and that he had fled the country, but I was not associated with him and Mwakenya. After one week of questioning in Voi Station, I was taken to court on 7<sup>th</sup> November on accusation of having some inciteful literature. I was not allowed to answer to the accusation until the Director of Public Prosecution gave a clearance. So, I stayed in the remand waiting for clearance. After three or four days, the response from the Attorney General came and I was told that the case will be heard in Voi and that I should be released under Clause 87 where I could be released and arrested at any time. When I came out, I did not go anywhere because the policemen were waiting for me right there. They put me under tight security and they re-arrested me. They took me to the police station. That evening, I was taken to a small cell in Railway in Voi where I was detained.

The following morning, I was taken to Nairobi and I was directly taken to Nyayo House. That is where my problems began. The interrogation took long in the Nyayo House cells where I stayed between November and the end of December. The first time I was put in, I was detained in the first cell which was white washed and it had a very dim light. I was not able to tell whether it was day time or whether it was night. I was there for about three days and on the fourth day, the interrogations in front of the security officers began. On the first day, it was just normal interrogation. They asked me about Mwakenya and I told them that I did not have any information about them and I was not associated with it and that, it was something that I had heard about in the news but I was not associated with it. They asked me about the fleeing of Mr. Mohammed Mswiya through Dar-es-Salaam. He later got assistance from the UN and he went to Norway where he still lives. They asked about him and I told them that I knew him well because he was my neighbor but I was not with him in Mwakenya and if he was a member, I was not aware.

They asked about the literature they found in my house and I was able to answer that because it was mine. I had written it but it did not have any kind of inciting message. It only spoke of the neo-colonial system of government and it was in a story form.

So, after interrogation the first day, I was taken back to my cell, the usual cell - I was alone - where I was left for about three or four days again. Then the second round of interrogation began and it continued that way. After every three or five days, I would be taken back for interrogation. The cells are underground at Nyayo House. They normally take one upstairs for the interrogation. During all this period, your eyes are covered with a black cloth until you reach a place where you can sit, then they take off your blindfold and you can see the officers interrogating you. They were never less than 10 in number. They were always between 10 and 15.

After two weeks, I was transferred from the cell because my response was always the same. My response was that I had no association with Mwakenya. I did not have information about the movement. I was transferred and taken to a second cell which had black walls. The size was smaller than that of the first room. The first room could fit only a mattress. There was darkness in that room. There was no light. When you go in there,

the door is closed and you remain in there. It was the same routine there. I would stay for three or four days and then interrogations continued.

Now the beatings began during the interrogation. I would be stripped off my clothes. They would stand up and all contributed towards beating me. They kicked and slapped me while the other officers were seated. That condition continued for up to three sittings. When they discovered that my response was always the same, I was again transferred to a third room.

The third room was red in colour. The size was the same as the second one. A warning was given that if I did not respond as they wanted; my life would be in danger. They told me that I should be aware that every prominent person had been at that place where I was being interrogated. They told me that the seat I was seated on, Raila and Matiba, had sat on it and they answered questions. They said: So, do not try to joke; you are a small person. I answered and said that the truth that is in my heart is what I would tell them and that I could not add anything because lies would not help me. They also told me that I should be aware that President Moi was aware where I was and that they could not do anything without his knowledge. I told them I was happy and that if that was what would take my life away, then it was okay because the President knew that I was there. I told them that if my life would be taken away for speaking the truth, then that would have helped me.

After one week, it was now almost the end of February, my stand was the same. During the interrogations, they would now beat me. They were using some pieces of wire to whip me, but my stand remained the same. In my final week of being there, I was taken to a section with something like a swimming pool. I was left there for three days in that pool of water. There was no food and no one was communicating with me. The pool had very cold water and you had to go in and stand. When I stood in the pool, the level of water reached my neck such that I could not sit. The only thing you were able to do was just to lean on the wall because sometimes you could not stand from weakness. You would lean on the wall and find that you were in water and you could not sit. God helped me.

After three days, they came to take me from there. I was in a bad state. They took me directly to the interrogation room. I was like a fish which had been taken out of the fridge. I was in a very bad state. I was not able to talk. They only brought me tea because they were aware that I had not eaten anything for three days. I was given some tea which I drank. They also gave me some time to rest and the interrogation began. However, my stand was still the same. Once again, they stripped me.

On this final day, from the pool of water, they tied my private parts using some rubber. They started burning my private parts using a small stick. It is a worrying condition. It affected my life but God helped me. I went through these trials---

*(The witness broke down and cried)*

**The Presiding Chair** (Commissioner Shava): Sorry for talking about your suffering and remembering very painful experiences. We will give you a moment to recover. We will take it at your own pace. Take a minute, if you need a minute. We will wait for you until you are ready.

**Mr. Salim Rashid:** Allow me to finish because I am almost coming to the end of my statement. After that, I was taken back to the first room in a very bad state where I remained for about three days. I was taken again through the same torture for a second and third time. At the beginning of January when I had been taken to the first room, one day at about 3.00 p.m., I was taken to the High Court where they preferred charges against me of being in possession of inciteful literature. I denied the charges and I was taken to remand. I was not taken back to the usual remand. I was taken to Industrial Area Prison where I stayed. After one week, I was taken back to court. The same accusations were made against me. When I denied the charges, the judge made his ruling there and then. I discovered that they did not have any evidence, but he convicted me. He told me that I was charged under the law of security, but for a bond of Kshs500, 000 and a surety of the same amount, I could secure my release.

Since I did not have any one to raise that surety of Kshs500, 000, at that time, it was a lot of money. I was taken to the Industrial Area Prison. I remained there up to 3<sup>rd</sup> February. I was surprised to be called again. I was taken from there. I was put in a vehicle and taken back to the High Court at about 4.00 p.m. I remained there and later when I was taken into court, the judge said that he had reviewed my bond because I could not raise it. Therefore, the bond had been reduced from Kshs500, 000 and that it would be my personal bond. I was allowed to go home. The evidence of that bond is right here. I would like to produce this as evidence here and of the charges also. So, I was released on 3<sup>rd</sup> February, 1989 at about 6.30 p.m. However, I was in town without any single penny. I walked up to Makadara to see my relatives. I arrived there at about 9.00 p.m., and they received me well. My life began afresh. I had been affected a lot economically, socially, psychologically and health wise.

Today, I am happy that I have got the opportunity to present this information before this Commission. I am happy because I believe that this is one of the problems in my life that the past Government oppressed me. That was the end of my job. I was not given back my job. It became the end of my employment life. Up to now, I am a farmer.

My opinion is that there no human beings who would like to have their life or income cut short or even to be affected socially. When I was arrested, my family was discriminated against and viewed as a family that should not be visited according to the Government's opinion at that time.

If there is reconciliation and the pursuit of justice, then compensation would be one of the things I would recommend. My family was greatly affected.

**Ms. Emily Kimani:** Thank you for taking us through your very painful experience on which I empathize with you. I wish to ask you a few questions from your testimony.

At the point when you were arrested, you told us much later that you were asked about your cousin; that is Mohammed Kumeja, who had fled to Tanzania and you had assisted him. However, at the first point when they came to apprehend you, did they give you reasons for arresting you?

**Mr. Salim Rashid:** They did not explain it to me.

**Ms. Emily Kimani:** Were you the only teacher who was arrested at that point?

**Mr. Salim Rashid:** From Taveta, I was the only teacher. However, in that same period, other teachers in Kisumu were arrested.

**Ms. Emily Kimani:** You proceeded in your testimony to tell us that they also took you to your house where they found a publication on something that you had written. From your testimony, you say that they found a novel by the name “Cheche ni Moto”. Did these police officers have a search warrant?

**Mr. Salim Rashid:** They did not have a search warrant.

**Ms. Emily Kimani:** Did you know about the Mwakenya group from your cousin prior to his fleeing to Tanzania, or did you first hear about the group when you were arrested?

**Mr. Salim Rashid:** I was not aware of anything about Mwakenya.

**Ms. Emily Kimani:** What did you find out about this group? What was the objective? I know in your testimony, you told us that many teachers were part of the group.

**Mr. Salim Rashid:** Pardon me. I did not hear the question.

**Ms. Emily Kimani:** You have confirmed that you did not know about the Mwakenya group. However, much later maybe from the interrogation and other people, what did you gather about this group as to why it was formed?

**Mr. Salim Rashid:** I later got information that it was a group that was put together to look for political reforms in Kenya.

**Ms. Emily Kimani:** After your arrest, you told us that you were taken to Nyayo House. You kept saying you were kept in a dimly-lit room and they kept changing the rooms. Were you alone in all these rooms or were there other people?

**Mr. Salim Rashid:** I was alone.

**Ms. Emily Kimani:** Were you given an opportunity to defend yourself in the High Court?



**Mr. Salim Rashid:** I was not given an opportunity to defend myself.

**Ms. Emily Kimani:** I have no further questions for you. You have furnished us with some newspaper cuttings which you wish that they form part of the Commission record. Presiding Chair, I pray that the documents that the witness has adduced be admitted.

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

**Ms. Emily Kimani:** Thank you, Mr. Lungala. I am very sorry about what you went through. Before I hand you over to the commissioners, did you go to the court to sue the Government over these atrocities they committed against you?

**Mr. Salim Rashid:** I was not able to because of my economic state. You required enough money to go to court for such a case. I needed to hire a lawyer. I am poor and I was not able to engage a lawyer. At that time, with the kind of Government we had, it was not easy to sue the same Government.

**Ms. Emily Kimani:** Thank you for sharing with us your very painful story. In the coming month, we will also be having thematic hearings on the Nyayo torture victims. So, I hope you will keep tabs to also know what other people underwent. Your recommendations will be taken on board.

**Commissioner Dinka:** Thank you very much, Mr. Salim, for your testimony. It is a very sad experience that you had. We empathize with your suffering and pain. I have one or two questions to ask. Do you know of the Nyayo House torture chamber survivors?

**Mr. Salim Rashid:** I have heard of it on radio, but unfortunately, I have not been able to meet anyone who is concerned with it because I heard that that group is in the central region.

**Commissioner Dinka:** They are known to us. If you talk to the leader of evidence later on, perhaps, she could even give you the telephone number of the chairman of Mr. Buke. It would be useful for you to talk to them because a number of them have gone to court and have won their cases. In some cases, they have been awarded a large sum of money for compensation by the Government according to the court. So, I think it would be useful for you to communicate with him by telephone. He is a very helpful person. He can help you. He was tortured for a long time. He was there with the Prime Minister and Mr. Orengo. So, he will be very sympathetic to your case. He would be very helpful.

**Mr. Salim Rashid:** Thank you.

**Commissioner Dinka:** You were arrested on your return in 1986 and they released you one week later. They then re-arrested you. In total, including the three months in Nyayo House torture chamber, how long have you been in prison?

**Mr. Salim Lungala Rashid:** I have been in prison from 30<sup>th</sup> October up to 3<sup>rd</sup> February in 1989.

**Commissioner Dinka:** I do not know whether I understood you properly, but the interesting thing is that you were sentenced to two years imprisonment or a bond of Kshs50, 000. However, the same day, the judge changed his mind and released you.

**Mr. Salim Rashid:** It was not the same day. It was after three weeks.

**Commissioner Dinka:** The whole of this Commission has visited Nyayo House torture rooms; the black rooms and the red rooms that you have just mentioned. We have seen them together with a number of survivors from that torture place. We know what you are talking about. I assure you we will make appropriate findings and recommendations in our final report.

**The Presiding Chair** (Commissioner Shava): Mr. Salim, I would like to associate myself with the remarks made by my fellow commissioner in their entirety. I will only add that I would like to see you at the hearings in Nairobi when we are talking to the issue of Nyayo House torture chambers. So, I am instructing our legal officers to ensure that this happens. I think it will be useful as my fellow commissioner has said for you to meet other people who have gone through what you have gone through, so that we can see the best way to help you. It is recognized by the courts, the Executive and Kenyans at large that those things were happening even if people were denying them and for that to happen to any human being; any Kenyan, for that matter, is wrong. That Kenyan should have justice. So, in this instance, we hope we will see you in Nairobi where you can listen to the proceedings and where also you can link up with people from different parts of the country who went through what you went through, so that we can look for a solution. Thank you for your courage in coming here to relive that experience. I have no further questions.

**Ms. Emily Kimani:** With your kind permission, there is a clarification I want to make from Mr. Lungala. The statement reads that you were given the option of a fine of Kshs50, 000, but from your testimony, I heard you say Kshs500, 000.

**Mr. Salim Rashid:** It was Kshs50, 000.

**The Presiding Chairlady** (Commissioner Shava): Let us be clear. I believe that the witness said that the first time that the court ruled that the tortures be given Kshs500, 000 in two years time. The second time the court said Kshs50, 000 on your own cognizance. Mr. Lungala, is that the correct position?

**Mr. Salim Lungala Rashid:** Yes, that is the correct statement.

**Ms. Emily Kimani:** Commissioners, our next witness is Witness Code 20 as per the cause list. The witness who was before this one was code 15. So, we are at code 20. Before I proceed, kindly, tell us your full names for record purposes.

**Ms. Esther Wanjiku Mutheu:** My name is Esther Wanjiku Mutheu.

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

**Ms. Esther Wanjiku Mutheu:** I am a farmer.

**Ms. Emily Kimani:** You are here before us because you wrote a statement about police torture. Is that correct?

**Ms. Esther Wanjiku Mutheu:** Yes. That is true.

**Ms. Emily Kimani:** Make your presentation after which you will proceed to give us your recommendations.

**Ms. Esther Wanjiku Mutheu:** On 17<sup>th</sup> May, 2004, at about 9.00 p.m., when we were asleep, I heard a noise as if one of my children had opened the door and was running away. I had some maize in the shamba. Usually, they had to fend off elephants. I ran out and when I went round the chicken house, there was someone standing there. He said: "Mama, go back inside." I was beaten. I fell and I screamed. I told my children: "Run out. There is someone who has injured me. One of the children ran out with a torch but the torch was hit and he was told: "This is the OCS. Shut up." I screamed again. He told me: "Shut up and go back inside." I told them how can I be quiet and you have hurt me? They said: "Wake up. Stop pretending." I told him that he had broken my leg. I tried to stand but I fell back. I screamed again and he spoke in Kamba saying, be silent. Tomorrow morning, you will be brought to my office. They ran away.

It occurred to me that they had got my son and took him with them. In the morning I was taken there with a motorcycle by my last born who took me to the OCS's office. The OCS asked me: "Why were you crying yesterday? I gave instructions for you to be brought here for us to assist you." I told them I cried a lot because you ran off in the night and you left me and I do not have any one else to depend on. He told me that he would assist me. I was crying at that time. He told me to be quiet and that they would help me.

The OCS wrote three letters and told me that this one is for the DO's office. The other one is for the police station and the other one is for me to be treated free of charge because I did not have money and without these letters I could not access medication.

They asked me: "Do you have the ability to take the Government to court?" I told them no, I do not have that ability. They told me they would help me. They took me to hospital in a police car. Outside there was a tree, they left me there. They deserted me there. I sat there waiting for the letters up to 2.00 p.m. My child came and waited with me. The motorcycle owner who had brought me came and asked what was problem. I told him that I was not assisted. They assisted me inside the hospital and I saw the doctor. The doctor told me to go for an X-ray. When I went to the X-ray section, we waited there but there were no doctors. I did not have money. We stayed there and two officers came

along at about 3.00 p.m. and asked me whether I had been assisted. I told them no. They said; “we have been told that the doctor is around. Where is your motorcycle?” I told them it was outside. They asked me where the keys to the motorcycle were. The child took the keys to the motorcycle. When they got outside, they told them to look for some form of transportation to take me home because the motorcycle had been stolen. The child came back and told me I will not be able to help you again because the policemen have come here and claimed that the motorcycle had been stolen. They have taken it away.

I was not treated. I just lay there. My leg was swollen since the previous night. I told him: Look for a bicycle. I have Kshs20. Give this to the bicycle owner to take me back so that I can die at home. He took the money and gave it to the owner of the bicycle. They carried me and I told them to take me to my sister’s house and leave me there. That is where I was taken. I was left there. I slept at my sister’s house on Monday and on Tuesday she took me back to hospital with my child. I went for an X-ray and they found that my leg was broken. I was taken to the ward. In the ward, they asked me whether I was aware that I was supposed to pay Kshs100 per day. Who will pay? I said I did not have any one to pay. I asked them to take me out. They told me to look for Kshs300 to get crutches so that I can continue with my medication at home. My child came to see me the following day and I told him about it. He went and bought the crutches at Kshs300. I left with the crutches and then we went home. He again left me at my sister’s house because he did not have any money to take me home. When my sister came home from work, she gave me some money to get me home. I went home. I was to attend a clinic twice a month. I continued attending the clinic. My child was employed somewhere as a cook. The money was not enough to take me to clinic. We asked another person who is in charge of the police. They told me that it was the OCPD. They told me that I should go to Voi to see the OCPD and tell him about it. The small child is the one who went to ask the police station but she was detained at the police station for two days. We suffered a lot. They went again to the OCPD to tell him about it and the OCPD gave them a letter. The motorcycle had been detained for two months. It got to a point where I could not go to clinic because I did not have any money.

A letter was written and the bicycle was returned. They were asked to look for a village elder to go and collect the bicycle. They went and collected the bicycle and brought it home. The people who detained my child, they took her to remand for two months. They were investigating and saying that this bicycle is stolen. When my husband passed on, he left that bicycle with me. It is broken down but I have kept the frame. My child said that if they say that it is stolen, you go and make a statement, put a signature. If it is really stolen and when I am well, they should come and take it. Up to now, I have that bicycle. The amber frame is also with me. I recorded everything so that they could investigate and find out if it was stolen. They did not find anything. My child was sentenced for 10 years. One person came and told me that we should appeal. We appealed and that child was released. Up to now, I stay with my child at home. I was there and my leg was broken. My child was in school but had to drop out. I cannot do hard work. Even as I sit here, if I stand, you will find that my leg is swollen. I do not sit on chairs. I have seats but I have to sit on sacks on the floor because my leg makes me suffer. My leg is deformed and my X-

rays have been sent to a lady in Voi. They came and took my X-rays and I ask the Commission to ask them to return them to me so that you can see how my leg was broken. They took my X-rays. The CIDs in Voi have them.

**Ms. Emily Kimani:** I am very sorry about your unfortunate predicament. I want to ask you a few questions so that the testimony you have given is much clearer. You started by telling us that you were hit by the OCS. Did you know the OCS prior to his coming to your home that night?

**Ms. Esther Wanjiku Mutheu:** The church that I worshipped in was on the upper side. The OCS worshiped on the lower side. The OCS was saved and belonged to the AIC Church. Even now if you go to the churches, you will find that they neighbour each other. It is not as far as where we came from to get here. They are very near to each other. So, the OCS attended this church and we attended the other AIC Church right next. He is someone that we know well. He is the OCS who is in charge of Taveta in the offices.

**Ms. Emily Kimani:** You have stated in your statement and also from your testimony that when you opened the door that is when you were hit by this OCS who you was familiar with. Did he give you any reasons as to why he hit you?

**Ms. Esther Wanjiku Mutheu:** He did not give me any explanation as to why he hit me. I did not talk to him because I screamed. It was dark. When I screamed, my child came running with a torch to help me. When the light from the torch shone on him that is when I saw that it was the OCS. The uniform worn by the OCS is not identical to that of the junior policemen.

**Ms. Emily Kimani:** You said that your son was also apprehended during this incident. What is the name of your son?

**Ms. Esther Wanjiku Mutheu:** My child is called Julius Nzomo Muvera. At that time, he was about 19 years old.

**Ms. Emily Kimani:** When you went to the OCS's office, he told you that you cannot sue the Government; and you say that you waited for him to give you three letters. What was the content of these letters?

**Ms. Esther Wanjiku Mutheu:** I could not read them. He was writing his own letters and putting them into his shirt's pocket. He wrote another one, read it and put it in his shirt's pocket. Then he told me to sign it, but I told him I could not read them. He asked me how I could be helped if I could not even sign a letter. I told him that I did not go to school. He then told me to take out my hand and then he wrote something on my hand, a large number and he told me to write it on a paper, which I did. He then told me to be keen on what he was showing me and to write it there. So, he tore that paper, wrote on another one, finished and then gave it to me and told me to be keen by looking at the numbers on my hand and then write one by one. I tried to write but I was not able to do it

well. He took the paper and told me that we should take it to the DO because I was not educated. We went with the papers.

**Ms. Emily Kimani:** But were you alone when these letters were being written or were you accompanied by one of your children, who could probably read?

**Ms. Esther Wanjiku Mutheu:** I was alone in the office; we were just the two of us.

**Ms. Emily Kimani:** You also said that you went to hospital. Which hospital did you go to?

**Ms. Esther Wanjiku Mutheu:** The Taveta Hospital.

**Ms. Emily Kimani:** Do you have any documentary prove; maybe a copy of one of the three letters or medical records from the hospital?

**Ms. Esther Wanjiku Mutheu:** Yes. I have a letter and I also have a document I was given at the police station. I have medical documents from Taveta Hospital from the day I was admitted.

**Ms. Emily Kimani:** Do you have documents to that effect?

**Ms. Esther Wanjiku Mutheu:** Yes, I have them.

**Ms. Emily Kimani:** My next question is about the court case on your son, which you told us that he was taken to court on accusations of stealing a bicycle belonging to your husband. When the matter went to court, did you find out who the complainant was in that matter?

**Ms. Esther Wanjiku Mutheu:** The case about the bicycle is that it did not have the owner and after that they said that he had stolen a goat from Muhoho's Farm. That is what they took him in for.

**Ms. Emily Kimani:** He was convicted on allegations of having stolen a goat?

**Ms. Esther Wanjiku Mutheu:** Yes.

**Ms. Emily Kimani:** Who was the complainant in that matter?

**Ms. Esther Wanjiku Mutheu:** On the goat case?

**Ms. Emily Kimani:** Yes.

**Ms. Esther Wanjiku Mutheu:** The complainant was an employee in Muhoho's Farm whose name was Mr. Munywoki, who has since left.

**Ms. Emily Kimani:** Were you related to Munywoki?

**Ms. Esther Wanjiku Mutheu:** I did not have any relationship with him. He worked on that farm and I heard that he was the captain of the captains. I did not know what that meant because I never worked there myself.

**Ms. Emily Kimani:** You told us that he was convicted to ten years imprisonment. Correct me if I have forgotten. Is he serving his sentence now or you appealed on the matter.

**Ms. Esther Wanjiku Mutheu:** When we appealed, that issue was resolved and he came back home.

**Ms. Emily Kimani:** In your statement about the night when you were attacked, you said that when you heard the commotion outside you thought they were elephants that normally feed on your crops on the farms.

**Ms. Esther Wanjiku Mutheu:** Yes. When maize is ready elephants come to eat it and when they come you have to stand in a place where you are hidden so that you flash the torch to them because they can come running and injure you.

**Ms. Emily Kimani:** What should be done to these stray elephants that damage your farm products?

**Ms. Esther Wanjiku Mutheu:** Elephants come to the farm and the Government says that they will put a fence. But I do not know, every time we farm the elephants come to damage our crops and then leave.

**Ms. Emily Kimani:** With you here, do you have any documents about your son's case in court?

**Ms. Esther Wanjiku Mutheu:** I did not bring any document on that issue. I would have brought them along with me, but I did not know if they would have been required here. I was just told to come.

**Ms. Emily Kimani:** The first question is about police brutality. What recommendation would you give to the yet to be constituted National Police Service Commission about the officers who brutally attack innocent citizens?

**Ms. Esther Wanjiku Mutheu:** I would like to be helped to treat my leg. Even my child who sat for an examination, even if he passes we do not have ability to help him. It is as if I have remained very poor because I cannot do hard labour. My colleagues are educating their children by doing jobs of carrying firewood, fetching water or even making bricks. But I cannot do such work because of this leg.

**Ms. Emily Kimani:** Was it the OCS who testified who hit you and up to date you still suffer the consequences of that beating?

**Ms. Esther Wanjiku Mutheu:** You are the ones who will decide if I can be compensated for my leg and find something to help my last born child who is in school.

**Ms. Emily Kimani:** Would you agree that these documents, medical and various correspondences to be part of your evidence before this Commission?

**Ms. Esther Wanjiku Mutheu:** Yes. They are here; I can give them to you.

**Ms. Emily Kimani:** Presiding Chair, we pray that the documents furnished by the witness be admitted into the records of the Commission.

**The Presiding Chair** (Commission Shava): Documents so admitted. Please, reassure the witness that we will not keep her original documents but we will make copies and return her original documents to her.

**Ms. Emily Kimani:** Madam Wanjiku, thank you very much for sharing with us your tribulations. May God bless you and give you strength. I have no further questions for you.

Commissioners, please carry on.

**The Presiding Chair** (Commissioner Shava): Commissioner Dinka.

**Commissioner Dinka:** I have a question to ask just for clarity. But first of all, Madam Wanjiku, I am very sorry for what had happened to you. It is very sad that the police that are supposed to protect you and other citizens are the ones that go on riot and cause that kind of damage and physically harm you.

Concerning your son, first they accused him of stealing a bicycle and then it was proved wrong. Then he was accused of stealing a goat. Was the witness for the theft of the goat tried for that?

**Ms. Esther Wanjiku Mutheu:** I cannot tell who the witness was because I was at home. With the pain on my leg for the two months I was sick, I could not get there. My home is very far from Taveta.

**Commissioner Dinka:** For how many years or months was he in prison?

**Ms. Esther Wanjiku Mutheu:** Are you asking how long the case went on? I did not understand your question well.

**Commissioner Dinka:** How long was your son in prison?



**Ms. Esther Wanjiku Mutheu:** He was there for two years and that is when he came out. When we appealed he came here to Wundanyi and lived here as he waited for the appeal. When it was brought to Manyani, the appeal was successful and he came home.

**Commissioner Dinka:** The first raid on your home by the OCS, Mr. David Mwangangi--  
- For it to be clear in my mind, how far is your home from the police station?

**Ms. Esther Wanjiku Mutheu:** It is like from Wundanyi to Voi

**Commissioner Dinka:** Why do you think he had to come at night to disturb you, damage your house and injure you, instead of calling you like he did and tell you to go; or send somebody to ask you to go to his police station? Why did he do that? Why did he terrorize you? Was there any problem between you and him before this incident?

**Ms. Esther Wanjiku Mutheu:** No.

**Commissioner Dinka:** Did he tell you why?

**Ms. Esther Wanjiku Mutheu:** He did not explain why.

**Commissioner Dinka:** Is this the first time you are approaching any Government authority except for the police commander, to tell them what had happened to you? Have you gone to any other place, like to the District Officer?

**Ms. Esther Wanjiku Mutheu:** No. We went to the OCPD to look for the bicycle and another time we went to FIDA. When we went to FIDA we went there for about one year and they told us to go. I ran out of money, I did not have anything and I just left the matter to rest.

**Commissioner Dinka:** You said you went for one year to FIDA?

**Ms. Esther Wanjiku Mutheu:** Yes.

**Commissioner Dinka:** And they have not done anything for you?

**Ms. Esther Wanjiku Mutheu:** No. None!

**Commissioner Dinka:** I am so sorry for what you have suffered and nobody came to your rescue. Thank you very much for your testimony.

**The Presiding Chair (Commissioner Shava):** Mama Wanjiku, I would just like to understand, if you can remember, because it was quite a very long time ago, what exactly happened on that night when you were assaulted? From your statement and what you have been telling us, you heard the noise and you walked out of your house and then you received this blow. How many people were in your compound? You said that you were asleep. How many people then came into your compound?

**Ms. Esther Wanjiku Mutheu:** They were many people and my son has his house next to mine. The rest of them were in my son's house and the one who gave me the blow is the one who came into my house. When I came out of my house I ran into the maize plantation that could have been eaten by the elephants. When I found out that my son had been arrested, they left my son's house using the main gate coming out down to Taveta. That is when I screamed and they told me: "Let us go." I continued screaming asking them why they broke my leg and left me there when I did not have anybody to help me. He shouted to me. "Shut up!" They said that I should be quiet and be taken to his office the following day. They just ran off and the following day---

**The Presiding Chair** (Commissioner Shava): Sorry. I would like to understand. Just go slowly. You heard noise and your son's house is next to yours. And there were people in your son's house. So, was that the source of the noise?

**Ms. Esther Wanjiku Mutheu:** The noise came from outside. I heard noise and I thought it was from elephants. In our area we all protect our crops, and it is not just me, all of us keep vigil. So when I heard the screams I thought elephants were attacking our crops. When they hit the door, I was convinced that it was not the elephants.

**The Presiding Chair** (Commissioner Shava): You heard somebody shouting: "Elephants are here" and that is why you came out of your house?

**Ms. Esther Wanjiku Mutheu:** Yes. I ran out of the house. I went round the kitchen house to look into the garden because the farm is right near the kitchen. You cannot just run out because the elephant can injure you. You had to go round the house and there was someone standing there with a stick and he held it up and hit my leg and I fell down. When I fell, I screamed and I was not able to stand and that is when they left and my children came to pick me up from there.

**The Presiding Chair** (Commissioner Shava): What had they come to do? Why were they in your compound at night? What were they doing there?

**Ms. Esther Wanjiku Mutheu:** They were claiming that my son had stolen a goat and bicycle.

**The Presiding Chair** (Commissioner Shava): A goat and bicycle?

**Ms. Esther Wanjiku Mutheu:** When his sisters followed up the matter, they heard that he had been accused of stealing a goat and bicycle.

**The Presiding Chair** (Commissioner Shava): They left you on the ground and they went that night with your son?

**Ms. Esther Wanjiku Mutheu:** Yes, they went with him to Taveta.

**The Presiding Chair** (Commissioner Shava): How many were they?

**Ms. Esther Wanjiku Mutheu:** The one who could say how many they were is my son because he is the one who went with them into the night. I was injured and I was not able to stand, leave alone telling how many people were walking away.

**The Presiding Chair** (Commissioner Shava): Okay. Thank you very much, Mama Wanjiku. I have understood that part. The only other clarification I want to seek from you is with regard to these three letters that the OCS wrote. You said that you have never gone to school and then the OCS and you were in a room alone.

**Ms. Esther Wanjiku Mutheu:** It was in his office.

**The Presiding Chair** (Commissioner Shava): You were in his office and then he wrote these letters and then on another piece of paper he wrote what he wanted you to write?

**Ms. Esther Wanjiku Mutheu:** Yes, he used his own hand to write and told me that: "Transfer what I have written here to this other paper." I tried to write but I wrote badly, he took the paper and tore it. Then he wrote on another paper again. He called his officers, there was one who was called Stanley and he told him: "Try to teach this foolish person what she should write here." Then Stanley asked him: "How can we help her if she cannot write even a single paper that will help her go to hospital?"

I tried and I was not able to write the letters well because I am not educated. He took his papers and told them: "Put her in the vehicles and take her to hospital." They went and dumped me in hospital under a tree and they left.

**The Presiding Chair** (Commissioner Shava): You cannot write and it was very wrong for those policemen to speak about you in that manner. Do you have any idea or have you managed to learn since then what was written on those pieces of paper? You said one was to the DO, the other one to the hospital and the other one was to who else?

**Ms. Esther Wanjiku Mutheu:** One was to the DO, one to the police and the other one was for the hospital, making them three.

**The Presiding Chair** (Commissioner Shava): Did you ever know what was written on those papers?

**Ms. Esther Wanjiku Mutheu:** To speak the truth, I cannot read up to date. I did not know what he was writing. He just wrote something to instruct them to help and he just asked me whether I could sue the Government and I told him that I did not have that ability. Then he asked me if he could write something for me to be assisted by the Government because it is the one which had injured me? Then I told him yes, just write something for me. He was writing something that was supposed to help me but I did not get any help. They dumped me outside the hospital and left me there.

**The Presiding Chair** (Commissioner Shava): You said he put those papers in his pocket?

**Ms. Esther Wanjiku Mutheu:** Yes. He did not give out even one paper; he put them in his pocket.

**The Presiding Chair** (Commissioner Shava): We now understand the story. As the leader of evidence and my fellow Commissioner have said, we really empathize with the situation in which you have found yourself in all this time. It is very wrong for those who are supposed to assist in the delivery of justice to be the ones delivering injustice and causing you injuries which have so many ramifications. It affects your ability to work and earn your living and to help your children. So, we want you to understand that we know the seriousness of the situation from what you have told us.

We will do what is within our powers to make sure that you get justice. Thank you very much. We have no further questions.

Leader of evidence, can you give us direction on how to proceed?

**Ms. Emily Kimani:** Presiding Chair, we still have some witnesses left. I propose that we adjourn for lunch after which we will proceed with the remaining witness.

*(The Presiding Chair consulted her fellow Commissioner)*

**The Presiding Chair** (Commissioner Shava): Please, start again.

**Ms. Emily Kimani:** Presiding Chair, I was saying that we have some witness left; some are yet to arrive. So, I propose that we adjourn for lunch so that we give those witnesses time to get to the venue.

**The Presiding Chair** (Commissioner Shava): Thank you leader of evidence. What time do we re-convene?

**Ms. Emily Kimani:** At 2.30 p.m., Presiding Chair.

**The Presiding Chair** (Commissioner Shava): We will re-convene at 2.30 p.m.

**Ms. Emily Kimani:** Thank you, Madam Presiding Chair.

*(The Commission adjourned for lunch at 1.30 p.m.)*

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

**The Presiding Chair** (Commissioner Shava): Good afternoon. Please, take your seats. Welcome to the afternoon session of our public hearing here in Wudanyi on the second day. Today, as we said earlier, we are a split panel. For this panel, we are now entering our final session. Leader of evidence, how many witnesses do we expect to hear?

**Ms. Emily Kimani:** We are set to hear two witnesses. However, as I speak, only one is present.

**The Presiding Chair** (Commissioner Shava): Let us proceed with the one who is present.

**Ms. Emily Kimani:** Presiding Chair, with your kind permission before I invite our first witness this afternoon, Mr. Harun Mwaniki Ng'ang'a has presented the Commission with two memoranda. One from the Weni Washala clan which highlights the issues they are facing. The second is with regard to the Sophia Bona Upgrading scheme. I would request Mr. Ng'ang'a to stand up and I pray that this memoranda be admitted to form part of the Commission's record.

**The Presiding Chair** (Commissioner Shava): Thank you very much. The memoranda are so admitted.

**Ms. Emily Kimani:** Thank you, Mr. Ng'ang'a for taking the initiative to come before us. God bless you.

**The Presiding Chair** (Commissioner Shava): Leader of evidence, were those issues on our cause list?

**Ms. Emily Kimani:** The memorandum on the Sophia Bona Upgrading Scheme, there was a witness who was supposed to testify, but for one reason or the other, he could not. However, we are glad that Mr. Ng'ang'a has furnished these memoranda detailing the issues that the witness was to speak about.

**The Presiding Chair** (Commissioner Shava): It was which number on the code list?

**Ms. Emily Kimani:** It was Witness Code 16.

**The Presiding Chair** (Commissioner Shava): What about the other one? Was it on our codes list?

**Ms. Emily Kimani:** Yes, he was not on the code list.

**The Presiding Chair** (Commissioner Shava): Please proceed.

**Ms. Emily Kimani:** The witness before us is Witness Code 18 as per the cause list.

*(Mr. Mathias Kalela took the oath)*

Mr. Kalela, how are you this afternoon. Welcome to our session. The reason you are before us is you recorded a statement about some violations that you underwent in the hands of the police. Is that correct?

**Mr. Mathias Kalela:** Yes, it is.

**Ms. Emily Kimani:** Before you give us your testimony, kindly, tell us your full names for record purposes?

**Mr. Mathias Kalela:** Mathias Kalela.

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

**Mr. Mathias Kalela:** I am not employed.

**Ms. Emily Kimani:** I now invite you to give us your testimony. Take us through the tribulations that you underwent in the hands of the police. Thereafter, give us your recommendations. Welcome.

**Mr. Mathias Kalela:** I had some cattle and it was the caretaker who was herding them near a farm belonging to a certain lady. The lady came to my home complaining that my animals had destroyed her maize crops. The herdsman told me that my cows had not eaten her crops as she alleged. The lady took the case to the chief. We were summoned. I went to the chief and said that my cows had not destroyed the crops according to my herdsman. The lady insisted that my cows, had, indeed, destroyed her maize crops. The issue was taken to the police. They took over the case.

The following day at about 9.00 a.m. we went to the police station, but the lady did not show up. The police told me to wait for her. I was waiting for her near armoury. Policemen came to collect some items from there. They ordered me to sit down. As they were assembling and cleaning their weapons, one bullet slipped and hit me. I fell down and lost consciousness. I was taken to hospital and underwent an X-ray. It was not possible for me to be operated at the same hospital. I was transferred to Vesso Hospital.

When they looked at the X-ray, they said I would have to accept two things, one my leg to remain paralyzed for ever or I lose my life. However, if the bullet remains lodged inside me, there would be no major problems. They asked me to choose between the two options. I suggested to them to let it remain in my body so long as it would not have adverse effect. That is my story.

**Ms. Emily Kimani:** Thank you very much, Mr. Kalela for sharing with us that unfortunate incident. I wish to ask you a few questions. You started your testimony by telling us that a lady neighbour had taken you to the chief after claiming that your cows destroyed her maize crops. Which year was this? Where did this happen?

**Mr. Mathias Kalela:** It was in the 2000. It happened in Voi.

**Ms. Emily Kimani:** After you were taken to the chief, he forwarded your case to the police, according to your statement. Which police station was your case referred to?

**Mr. Mathias Kalela:** Voi Police Station.

**Ms. Emily Kimani:** That is where you testified that you were sitting near the armoury and you got shot?

**Mr. Mathias Kalela:** Yes.

**Ms. Emily Kimani:** You said you were taken to hospital. Who took you to hospital?

**Mr. Mathias Kalela:** The policemen themselves.

**Ms. Emily Kimani:** Who footed the bills?

**Mr. Mathias Kalela:** I cannot tell if they paid or they did not.

**Ms. Emily Kimani:** The hospital did not ask for payment, after you were discharged?

**Mr. Mathias Kalela:** They did not ask me for any payment.

**Ms. Emily Kimani:** I can see from your statement that the bullet is still lodged in your body. Is that correct?

**Mr. Mathias Kalela:** It is true.

**Ms. Emily Kimani:** What is your health condition like as we speak?

**Mr. Mathias Kalela:** It is not very well because during the cold period my leg is problematic and I cannot walk.

**Ms. Emily Kimani:** What happened to the first incident which led you to be taken to the police station? Did it proceed after your were shot?

**Mr. Mathias Kalela:** It did not continue. It just ended there and I did not see that lady again.

**Ms. Emily Kimani:** At the point where you were shot, were there other people around where you were?

**Mr. Mathias Kalela:** I was alone, but there were policemen who were cleaning and testing their weapons.

**Ms. Emily Kimani:** In your opinion, was this incident an accident or was it deliberate?

**Mr. Mathias Kalela:** It was accident.

**Ms. Emily Kimani:** Did you follow up to find out what happened to the police officer who shot you? Was there any disciplinary action taken against that police officer who shot you?

**Ms. Mathias Kalela:** I was not able to do anything because I did not know where to start. This was a Government institution. I was not able to penetrate to find out what happened to that officer.

**Ms. Emily Kimani:** What would be your recommendation about the behaviour of police officers?

**Mr. Mathias Kalela:** I would like our Government to compensate me.

**Ms. Emily Kimani:** What about these officers who maybe do things that they are not supposed to do to innocent citizens----?

**Mr. Mathias Kalela:** They should be fired.

**Ms. Emily Kimani:** Thank you, Mr. Kalela. I am very sorry about the unfortunate incident in which you still have the scar of that fateful day. Thank you for appearing before us this afternoon and may God bless you. I have no further questions for you.

**Commissioner Dinka:** Thank you very much, Mr. Kalela, for your testimony. I empathise with your pain because what happened to you was a very sad sorry. As you said, it may have been an accident, but still you have suffered.

I have one or two questions to ask you. When the police officers took you to the hospital, did they ever come back to find out how you were doing? You said you stayed in the hospital for two weeks. Who paid for your medication?

**Mr. Mathias Kalela:** They did not come to see me again.

**Commissioner Dinka:** After you came out of the hospital, has the officer or his boss who shot you apologised to you? Have they asked for forgiveness? Have they assisted you in any way?

**Mr. Mathias Kalela:** They have not said anything to me. I have never seen them since that day.

**Commissioner Dinka:** Thank you very much. I have no further question. I am sorry for what happened to you.



**The Presiding Chair** (Commissioner Shava): Mzee Kalela, thank you very much, for coming here today to share your story with us.

Did you ever know the name of the police officer who shot you?

**Mr. Mathias Kalela:** I know one of his names. He is Chalale.

**The Presiding Chair** (Commissioner Shava): Do you happen to know who the officer in charge of Voi Police Station was at that time?

**Mr. Mathias Kalela:** No, I cannot tell.

**The Presiding Chair** (Commissioner Shava): Do you have any documents with you or at home that can help us to follow up this case, hospital records and any police report.

**Mr. Mathias Kalela:** I have some here.

**Ms. Emily Kimani:** The witness has adduced two medical records. Mr. Kalela, do you wish that this also forms part of the Commission's record?

**Mr. Mathias Kalela:** Yes.

**Ms. Emily Kimani:** I request the documents be admitted to form part of the Commission's record.

**The Presiding Chair** (Commissioner Shava): The documents are so admitted. Mr. Kalela, we have heard what happened to you. It is really a great shame that something like that can happen to an elderly gentleman which exacerbates the problems of aging. Apart from medical treatment for which you recognize, you mean that the police have not done anything else to assist you because your mobility has been impaired and you live in pain?

So, we will do what it is that we can within the powers granted to us by the law to assist you to get justice. I have no further questions for you. We thank you.

**Ms. Emily Kimani:** Presiding Chair, we have no further witness, given that the other witness we were hoping would meet us is held up in a hospital. That is what we have confirmed. So, he will not manage to make it to our session.

**The Presiding Chair** (Commissioner Shava): So, leader of evidence we have no further witnesses for this session. That being the case, I would like to thank the witnesses that have appeared before us today; Josephine Kililo Mboje, Frida Mwadime, Kennedy John Mutungu, Salimu Lungala Rashid, Esther Wanjiku Mutheu and Mathias Kalela. This brings us to the close of our public hearing.

I would like also to thank all those who have participated. I would like to thank the people of Wudanyi, Taita Taveta and the surrounding areas. You have assisted this Commission and its work here. I would like to thank the Commission staff, our legal team, interpreters, sign languages and other languages who have translated with confidence and accuracy.

I would like to thank our technical people, HANSARD officers and everybody who has participated and for making these hearings a success. We have come to the end of our proceedings.

*The Commission adjourned at 3.25 p.m.*