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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON MONDAY, 21ST
NOVEMBER, 2011 AT THE ACK ST. PAUL'S CATHEDRAL
HALL, EMBU**

PRESENT

Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Gertrude Chawatama	-	Commissioner, Zambia
Margaret Shava	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya

SECRETARIAT

Patrick Njue Muriithi	-	Leader of Evidence
Simon Njenga	-	Hearing Clerk

(The Commission convened at 11.40 a.m.)

(Opening Prayers)

The Acting Chair (Commissioner Namachanja): Good Morning. First of all, on behalf of the TJRC, I would like to apologise to the public and our witnesses who have been waiting for us here for starting late. The problem is that some of us were held up in Nairobi because we rushed there to sign important documents. As you may be aware, we have been out of the offices for almost a month now since we started the Central and lower Eastern hearings.

Second, let me take this opportunity to thank all the witnesses, members of the public that have participated in recording statements with us and statement takers who helped us record the statements. Out of almost 1,000 statements that we received from lower Eastern, we have selected a few to conduct hearings on them so that, through the hearings, we can paint a global picture of the violations that this Commission is investigating. I know that most of you recorded statements with us, but you might have known that you would not participate in the hearings. This is because of time limitation. But the statements that have been selected for the hearings today and tomorrow are representative of most of the statements that were recorded from here. So, even though you may not testify, you can relate to what people who are sharing today will be sharing as you listen to the testimonies today and tomorrow.

I also want to caution you that the testimonies that we shall be hearing at times are very emotional and may affect us emotionally. Let me ask you to be patient and give total

attention to the witnesses and in order for us to do that, please ensure that all the phones are switched off. Do not even put them in the vibration mode because even as you move out to go and answer them, you will be disrupting the process.

I want to thank the journalists and the people from the media who are here and I will encourage you to be in your designated areas as you record the proceedings and take the photos so that you do not, again, disrupt the process. If you can take photos without flashes, we shall really appreciate.

For now, I would like to introduce the panel that will be listening to the testimonies today.

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

I would now like to check, before we start our hearings, if there is any counsel.

We can now start. Our Hearing Clerk, could you, please, swear in the first witness?

Mr. Patrick Njue: Thank you, Madam Acting Chair and Commissioners. Our first witness is witness coded 004.

(Mr. Jacob Njagi Misengo took the oath)

Could you tell the Commission your names for record purposes?

Mr. Jacob Njagi Misengo: I am called Jacob Njagi Misengo.

Mr. Patrick Njue: Where do you come from?

Mr. Jacob Njagi Misengo: I am from Runyenjes.

Mr. Patrick Njue: What do you do for a living?

Mr. Jacob Njagi Misengo: I am a farmer.

Mr. Patrick Njue: Mr. Njagi, you are seated with us this morning to make a presentation on behalf of the Mau Mau War Veterans. Do you confirm that to be the case?

Mr. Jacob Njagi Misengo: Yes.

Mr. Patrick Njue: To begin with, I want to confirm that you can get a proper translation in a language that you understand, because I will be posing questions to you, after which you will be responding, through which we will be able to understand much more from your statement.

Do you confirm that you are here on behalf of the Mau Mau War Veterans?

Mr. Jacob Njagi Misengo: Yes.

Mr. Patrick Njue: Can you tell us who the Mau Mau were? Or what was the genesis of Mau Mau?

Mr. Jacob Njagi Misengo: The Mau Mau were people from Kenya and they were followers of Jomo Kenyatta. He is the one who told us that we have to ask for *Uhuru* because the British had really made us suffer. During the colonial times, if the colonialist passed and you did not stand up, you could be slapped or even jailed. That is why we felt that these people were colonizing us very much. When our people were employed, they were paid only Ksh5 per month. Where they worked, they never even finished the work. Because of that, we followed what Kenyatta told us.

Mr. Patrick Njue: Which year was this? How long ago was this when the movement was established or formed?

Mr. Jacob Njagi Misengo: It was around 1952, but it had started earlier because that is the time Kenyatta came from abroad. He told us that in Kenya, we shall be asking for freedom and when people were not united, they could not look for freedom. That is when he started to form groups in the whole of Kenya. Although it is said that it is only the Embu and Meru who fought for freedom, but we had reconciled the whole country. This is because Paul Ngei was Akamba, Oneko was a Luo and others although they were not there when others fought for freedom. When we reconciled as Embu, Kikuyu and Meru, Kenyatta told us that because Kenya had been reconciled, we would be asking for freedom.

Mr. Patrick Njue: In 1952, like you have said, the movement was formed.

Mr. Jacob Njagi Misengo: Yes. It had been formed earlier because even when Kenyatta was going abroad, they were looking for freedom and he stayed there for 18 years.

Mr. Patrick Njue: Where were you then?

Mr. Jacob Njagi Misengo: By then, I was young, but when freedom was granted, I was around. I was born in 1936 and I was in school in 1952. That is when Kenyatta said that we should start looking for freedom, forming freedom groups and start fighting for freedom. He said that if we could not fight, we should leave it to God. Kenyatta said that we should not use force at first and that if we could not dialogue, then we should fight.
Mr. Patrick Njue: I have a name Kavote in your names.

Mr. Jacob Njagi Misengo: I was called that name when I was in the bush.

Mr. Patrick Njue: What does “Kavote” mean? Why were you given that special name, Kavote?

Mr. Jacob Njagi Misengo: Because I was a young boy and I was from school.

Mr. Patrick Njue: Talking of the Mau Mau, at the point of recruitment, around how many people would you say you were? Give an estimate.

Mr. Jacob Njagi Misengo: According to us, I can say that when we were in the bush, we were around 3,000.

Mr. Patrick Njue: I want to appreciate how it was back then, even in the bush when fighting for our liberation. What weapons, for example, did you use to fight the white man?

Mr. Jacob Njagi Misengo: We had things like machetes and pangas. We also used guns that we took from the guards.

Mr. Patrick Njue: Except for fighting, did you have any special role yourself in the liberation war?

Mr. Jacob Njagi Misengo: I was a fighter because at that time, we were told that in the forests there were schools, but there was none there; we went to fight there.

Mr. Patrick Njue: Let us talk about life as it is today, from the fighting period up to Independence and up to today. You know we have a day called “Mashujaa Day” that specially recognizes people like you who fought for the Independence of this country. Are you happy with the progress that we made as a nation?

Mr. Jacob Njagi Misengo: I am not very happy because even on *Mashujaa* Day, the Mau Mau are told to go away from the celebrations by the Governor. There is a time Kenyatta told Mau Mau to go away, and when the colonialist governor accepted Kenyatta, they were always fighting; *walikuwa wanavurutana*.

Mr. Patrick Njue: Yes, I wanted to be clear on what you are saying; that there are two different Mau Maus?

Mr. Jacob Njagi Misengo: There are those who were called by the Governor of Kenya and were told to go away lest they be killed. But we remained there and did not go because Kenyatta told us not to do so. Because we were following Kenyatta’s directives, we disobeyed the governor. Kenyatta called us later on and told us Mau Mau to go. So, there are two Mau Maus-- Kenyatta’s and those of the governor-- and they were always in conflict because all of them are calling themselves *Mashujaa*/heroes.

Mr. Patrick Njue: There is another question that I had posed alongside this one on the progress that you have seen or witnessed over the years as a country. Do you think we are on course?

Mr. Jacob Njagi Misengo: Kenya should be recognizing the heroes who remained reconciled. If the person who started the fight was Kenyatta and he ruled us, the Government should know that the people who remained together should be the leaders because they remained firm to the word.

Mr. Patrick Njue: I know there is a group of Mau Mau who are suing the British Government for compensation. Maybe of these two groups – the two Mau Maus that you are talking about – which one is this that is following up the compensation with the British Government?

Mr. Jacob Njagi Misengo: I cannot say which one sued the British Government, but according to me, Kenyatta told us that the British Government has compensated us and that we should reconcile as Mau Mau so that we could be given the compensation. This is according to Kenyatta’s word. Afterwards, the Mau Mau who came as governor said that ‘these people are not the ones; they are not leaders as their leaders went to the forest.’ But the Mau Mau that was left said that we should continue, because Kenyatta had said the freedom we were asking for wanted “rain,” and the rain was the blood of people.

Mr. Patrick Njue: Commissioners, can the witness talk more slowly?

Mr. Jacob Njagi Misengo: But when the colonialist came, he told those people to go away lest they be killed and that Kenyatta was misleading us. But because Kenyatta had told us that if we wanted freedom we should not go; even the Bible says that you should not be a slave. The conflict was between the Mau Mau who were told to go by the colonialists and those told to go by Kenyatta. And those for the governor have their own records in the offices. The colonialists did not go with the records and Kenyatta's *Mau Mau* also have records and that is why you see that during Jamhuri Day, I took a photo with Kenyatta. So, these people are Kenyans but they are always in conflict. That is why in Kenya, *Mau Mau* have never been reconciled; because those people were told to go out and they killed their people. That is why you see these people killed a lot of people and their records are in the Government offices. These records should be checked so that we should see what everybody did.

Mr. Patrick Njue: I am talking about *Mashujaa* Day celebrations. I know you have, in the past--- I have seen you come out going to celebrate this alongside yet another *Shujaa*. What is his name?

Mr. Jacob Njagi Misengo: He is called "Sukuma," but he is now feeling unwell.

Mr. Patrick Njue: Lastly, as you are seated with us today, Mr. Njagi, what are some of the expectations that you may have yourself as a *Shujaa* and even, perhaps, others who fought for the Independence of this country?

Mr. Jacob Njagi Misengo: As a person, I would like that in *Mashujaa*, what they had agreed should be done because according to what we expected in the Mau Mau Government, they said that their people should be treated free of charge in hospitals because most people die because of lack of money. Second, we said that we will take our children to school for free and the Government should pay for education. Because of that, I would like those things to be done. If the Government says they should be done, it should be followed.

Third, when people fight, you always see the other person as a *Shujaa*. I hear that Kimathi had been taken into custody and was killed, but we have never known what Kimathi was. We should know where Kimathi was buried. There is another person called "Kubu kubu" in Embu who we saw killed. Firewood was gathered and lit; he was burned and the ashes were taken and put in a box and the colonialists went with it. We, the *Mashujaa* of Embu, want to know where the ashes were taken to because the colonialists said that they did not want Embu to have such a *Shujaa* again. So, we want to know where those ashes were taken. Those ashes should be brought back to Kenya. That is what I would like to say.

Although Mau Mau was hated and many children called “*chokora*,” they are children of Mau Mau. I would like those people who died-- the parents of those children-- the “*chokoras*” - to be remembered. Kenya is for men and women. We also had women in the bush and they should also be considered because the work they did was great. Embu people say that “a woman...

Interpreter: Kindly tell him to speak slowly.

The Acting Chair (Commissioner Namachanja): Leader of Evidence, we did not get what the witness was saying about what Embu people say about women. If you could repeat from there---

Mr. Patrick Njue: Mr. Njagi, up to the point where you are talking about the role that women played in this all very important fight for the liberation of our country, please, take us through that statement again. Please, for purposes of interpretation, go slow so that we can get the interpretation.

Mr. Jacob Njagi Misengo: Women helped us very much because the person who was not able and had a gun was taken by women scouts. We would send women to go to the military to cheat them; they would use trickery and take him from there. And where he would be taken by the women, because there were other women who were friends, you will see that the women would take the gun and then we were told that we would take the guns from them. We would then go and take the guns; we were given the guns by the women. Then we took the guns and we arrested that man and killed him in the bush so that he will not reveal that it is the woman who had cheated him. So, that is how women worked very hard when we were fighting for freedom. That is why we, the people from Embu, said that a person who is called by a woman is like a person who has been called by death.

Mr. Patrick Njue: I think I am quite clear on that bit now. The same on how you married it in that context.

Allow me to say that I salute you, Mr. Njagi, as all the other Mau Mau War Veterans, some of whom may be here today. What you did back in the day to attain the Independence of this country, I think I would say as a generation, I am living from that benefit. Coming from this community, allow me to say *oriega muno*--- You have spoken very well and I commend you for this time.

The Commissioners will now ask your questions to just clarify your testimony.

Thank you.

Yes, Madam Acting Chair!

The Acting Chair (Commissioner Namachanja): *Mzee* Njagi, thank you very much. Is it in your home that I met the Mau Mau Veteran fighters sometime this year or last year?

Mr. Jacob Njagi Misengo: Yes, it was in my home.

The Acting Chair (Commissioner Namachanja): We have some questions for you, but before we start asking you, I would like to introduce Commissioner Maj-Gen. Ahmed Farah, one of our Kenyan Commissioners who joined us late; he is seating on my far left.

I will also like to recognize Bishop (Rtd.) Gitari and thank him for having liberated this country in the fight for the second liberation. We feel honoured by your presence, Bishop.

Commissioner Ahmed, do you have any questions to our leader?

Yes, Commissioner Shava!

Commissioner Shava: Thank you, Madam Acting Chair.

Mzee Njagi, I do not have any questions for you. I have read your statement very carefully. This Commission presents an opportunity for Kenyans to re-write their own history; our history has been written for us by other people, and they say that history is written by the victors, not by the vanquished. So, it is very important to us that you have come here today to add texture from your own personal experience so that Kenyans can really know what has happened in their country. I would like to thank you very much for that and encourage you. We believe that the new Constitution presents a great opportunity for Kenyans to take control of their own affairs so that some of the things that have happened in your life will not happen again and, finally, to assure you that I personally do recognize the sacrifice of people such as yourself without whom many of us would not have had the opportunities that we have had. So, I thank you and the people you represent for coming to tell us your story today.

Commissioner Dinka: I thank you, Mr. Njagi, for your testimony. You have told us about the suffering of the Mau Mau and how they are coping with life at present. I particularly note happily that you insisted that the Mau Mau is not limited to one region or one ethnic community; rather it was an Independence movement, which included all the ethnic communities of Kenya. I think that insistence is important because it will create a very solid basis for the unity and national reconciliation among Kenyans. Sharing

a difficult period and that very oppressive experience by the population of one country is an important basis for unity.

The Commission has taken note of what you have said. The Commission will, therefore, draw appropriate conclusions and make recommendations in its final report. Thank you.

The Presiding Chair (Commissioner Namachanja): Thank you, Mzee Njagi, for coming to help us re-write history in our own words and the way we understand it ourselves. I would also like to thank you for liberating us. We are here now talking freely because of what you struggled for. At the time I was at your home, what most Mau Mau veterans, including women, share is the failed promises. Could you talk a little bit about this, especially in relation to land for the Mau Mau fighters?

Mr. Jacob Njagi Misengo: We had been told by the Government that we would be given land. We were also promised that we would be kept well after coming from the bush. Promises were made that the children of those who died would be taken to school. Nothing so far has been done by the Government of Kenya. However, my joy is that the new Constitution has given us the freedom of speech. In the first Constitution, if we talked we would be detained. The current President should continue loving the people of the country. You should not hate somebody, but their actions.

According to the Bible, it is God who chooses leaders. Gideon was told to take his people to the water to drink. Those who drank the water using the palms of their hands were taken to war. All of us are Kenyans. We should talk in one accord. We should reconcile and forgive each other. Bishop Gitari is here and he is an old man. Church people managed to reach the detainees and preached to them. Our experiences in the bush brought us near God.

In the bush, we were told to kill white men. In fact, we were asked whose children the whites were. We said that they were God's children just like the black people. We were asked whether there were two Gods, but we said there was only one God. We were asked if we would be happy to go home and find our children fighting. We said no. We were asked if God would be happy to see his children fighting. We were advised to stop fighting and killing each other.

The Presiding Chair (Commissioner Namachanja): I have noted your advice on reconciliation very seriously, because the main objective of this Commission is to promote justice, peace and reconciliation among the people of Kenya. Thank you so much.

Leader of Evidence, please let us have the next witness.

Mr. Patrick Njue: Presiding Chair, the next witness is going to share with us the struggle of the second liberation in our country. He is the retired Archbishop Dr. David Gitari.

(Dr. David Gitari took the oath)

Dr. David Gitari: I have come here on my own behalf, and also on behalf of the people of Kirinyaga. For introduction purposes, I was consecrated a Bishop of the Anglican Church on 20th July, 1975. I was the first Bishop of the Diocese of Mt. Kenya East, which included Kirinyaga, Embu, Mbeere, Meru, Isiolo, Marsabit, Mandera and Wajir. That formed about one-third of the total area of Kenya. I was Bishop of Mt. Kenya East for 15 years; that was 1975 to 1990. It was during that time that I planned to build this cathedral which we completed in 1987. It is my great joy that the Commission is meeting in this cathedral.

Secondly, in my ministry as a Bishop, I believe in a holistic ministry of the church. In other words, we are not only interested in saving souls to go to heaven, but we are also interested in the whole person, that is, his spirit, soul and body. Therefore, in my ministry as a Bishop, I was deeply concerned about the issue of justice in this country. When J.M. Kariuki was murdered on 2nd March, 1975 I went public and criticized the Government of Mzee Jomo Kenyatta because it was clear that some of his close friends were the ones who had murdered J.M. Kariuki. I am deeply concerned about the whole issue of impunity, because people have committed crimes, they are known by the Government, but nothing is done about it.

When J.M. Kariuki was killed, Parliament appointed a Commission to investigate the matter. I was present when (Hon. Elijah) Mwangale gave his report in Parliament. He gave the names of the people who should be investigated, but nothing has been done so far. Robert Ouko was killed in 1990. So many Commissions were set up to investigate his death, yet we have not been publicly told who killed Dr. Ouko. I am sure there are people in Government who know who killed Dr. Ouko. So, I have been concerned about so many commissions which have been appointed by the Government and yet we are never told the outcome of those commissions. It appears as if whenever the Government finds itself in a lot of problems they appoint a commission so that people can keep quiet for the time being and we never get to hear the truth about the commissions. I very much hope that the TJRC will not be like the past commissions.

Let me now come to a personal problem that I went through. The 1980s was a difficult decade for us. The Government of President Moi tried to silence everybody. It silenced Members of Parliament who were outspoken. It silenced the media and the trade unions. The only people they found difficult to silence were a few church leaders. We were not many but you can mention the late Bishop Henry Okullu, the late Bishop Alexander Kipsang' Muge, a pastor of the PCEA church, and myself.

When KANU said in 1986 that elections would be held using the queuing system, we were very much concerned. I chaired a meeting of 1,200 pastors at Kenyatta University and we passed a resolution to oppose the queuing system. We were attacked from every angle by politicians, including the President himself. The personal issue I want to address arose that time. Chapter IV of our Constitution, which was promulgated by President Kibaki on 27th August, 2010, is on rights and fundamental freedoms. It states in Article

35(1) that every citizen has the right to access information held by the State. During the night of 22nd and 23rd April, 1989 my Philadelphia home was raided by a large number of political thugs. They said clearly that their mission was to kill me. They broke the grills of my bedroom and entered the house. They stole and even damaged my property. My family members and I climbed the roof of the house and raised a distress alarm. The neighbours came and chased the thugs away. They damaged my property and stole electronics. It was the early hours of Sunday morning. The matter received wide publicity locally and internationally. The act of raiding my house was condemned by the National Council of Churches of Kenya (NCCCK), All African Conference of Churches, World Council of Churches and Anglican Bishops from all over the world who were meeting in Cyprus at that time.

The then President of Kenya, Moi, had paid a visit to Tanzania. When he arrived at JKIA on 26th April, 1989, he announced that he was going to appoint a commission to investigate the matter. Within two hours of the presidential announcement, five police officers arrived at my home, led by the late Nathan Ombati. They started the investigations. They spend quite some time in Kirinyaga district. I am sure they handed over their report to the President. At JKIA, the President had said that as soon as he received the report, he would tell the whole nation and world the truth about the matter. The President retired at the end of 2002, that is, 13 years since my house had been raided, before telling the nation and the world the findings of the Ombati Commission on the raid on my house.

As a citizen of this country, I have the right of access to that information held by the State. I, therefore, kindly ask this Commission to go to the archives and retrieve that report and give me a copy. I would like to meet those who were sent to kill me so that they can tell me who had sent them and what was the purpose and motive for wanting to kill me. I and my family want to know the truth with a view to seeking justice and reconciliation. As a Bishop of the church, I will be very willing to forgive them. I will forgive those who raided my house and those who sent them. But before I do that, I want to meet them so that we can talk. They need to repent and then I can forgive them. That is the main purpose of your Commission.

The second issue that I want to share with you is that the new Constitution in Article 35(2) states that every person has the right to the correction or deletion of untrue or misleading information that affects the person. In 1987, there was a KANU delegates' conference at Kasarani, which passed 12 resolutions in ten minutes. I issued a statement when I was preaching at Kinoru Stadium in Meru and said that KANU should not use 3,000 delegates as a rubber stamp. They had not been given a chance to debate the 12 resolutions. One of the resolutions was to deal with the NCCCK and even abolish it. I am sure if delegates were asked to speak they would have opposed that resolution. This statement received publicity and on Thursday of the following week, the National Assembly suspended its normal business to discuss a matter of national importance, which was debating me. I was debated by Parliamentarians for two-and-a-half hours. I think I set a record because of that. Bishop Muge had been debated for one-and-a-half hours. None of the speakers dealt with the issues I had raised. Instead, I was called all

kind of names. It was alleged that I was a communist and that I was serving my foreign masters. I was not there to defend myself. That debate was tantamount to character assassination. The full debate was in HANSARD and it was quoted extensively in the newspapers.

Madam Acting Chair and your fellow commissioners, I ask you to find ways and means in which the misleading information about my person can be corrected and deleted; it is untrue and that is what the new Constitution says. I would like to urge that Parliament should not be wasting time discussing innocent individuals who cannot defend themselves because they are not members of the National Assembly. Those are the two statements I wanted to make.

I am accompanied by two elders from Kirinyaga: The chairman of the Kirinyaga Council of Elders, Moses Kimweya, and his colleague, Mr. Kariithi. They have been sent by the council of elders to share with you two other instances of injustices that the people of Kirinyaga have suffered. Thank you so much.

Mr. Patrick Njue: Thank you, Bishop Dr. Gitari for your presentation. You have quite dealt with the issues. We would like to recognize the two elders. Perhaps, you could ask them to stand up, so that we recognize them.

(The two elders stood up in their places)

Thank you, elders.

Bishop Dr. Gitari, looking at the history of fighting for the Second Liberation of this country, you surely have a lot you would want to share in terms of the history of our nation. Do you have an autobiography that you have written?

Dr. David Gitari: It is good to be given an opportunity to add a few things about the Second Liberation. I have just finished writing my autobiography. It has the history of this country and that of the church. I could give a summary of the Second Liberation. This country began as a multi-party State. In 1963, we held the first elections and the main parties were three: KANU, KADU and APP which was led by the late Paul Ngei. KANU won the elections. The other two parties were in the opposition. However, within a short time KADU and APP dissolved themselves and joined KANU so that they could participate in governing the country. I think that was the first big mistake we made in our country because it took us a long time to return to democracy.

In 1966, the late Oginga Odinga tried to form a party called KPU; this led to a little General election and not very many people were elected. They could not even be recognized as an opposition and within a very short time KPU also dissolved.

When the law changed Kenya remained a *de facto* one-party state until 1982. In other words, anybody could have formed a party because it was not illegal but around June, 1982, there was a rumour that the late Oginga Odinga and the late George Anyona were

about to form a new party. That frightened the President. He ordered Parliament to meet and pass a law to make Kenya a one-party state. That debate took only 45 minutes in Parliament. For the first time Kenya became a one-party state. This could have been one of the reasons why we had an attempted coup on 1st August, 1982. That changed the President. He started his rule as a very fine Christian gentleman and we supported him fully. But that coup d'état changed him in such a way that he wanted to stop all opposition. He started by humiliating Charles Njonjo, who underwent 90 days of trial alleging that he was a traitor. In 1986, KANU decided that all elections would be done by queuing. We opposed it as I said before; the first election through *mlolongo* was in 1988. We saw with our own eyes the injustices of the *mlolongo* system.

I went to a few polling stations during the preliminary elections. I saw a queue which was longer than another but in the evening I was surprised to hear Kenya Broadcasting Corporation (KBC) or Voice of Kenya (VOK) say that the person who had five people behind him was the winner, even if the other one had 5,000 people behind him. In other words, in those days, according to KANU mathematics five people were more than 5,000. The sixth Parliament had 75 Members of Parliament (MPs) who had been selected and not elected. Many of them went to Parliament in the preliminary elections because they had received a certain percentage. It was the most disappointing election. The President and the Government of the day removed all the outspoken MPs from Parliament. Those were the ones Charles Njonjo had called the Seven Bearded Sisters. So, in the 1980s and early '90s we had an imperial President who could do anything. He could remove people he did not want and appoint all the ambassadors and ministers of Government; he also gave land to his friends and colleagues.

The coming of the new Constitution has brought fresh air. At least we have removed the imperial presidency. If the Constitution is properly followed we will not mind appointing or electing anybody from anywhere in this country. The only thing is that we must look for people who are capable, God-fearing, trustworthy and incorruptible. You can find that in the book of Exodus, chapter 18 vs 21. Those are the men and women we want to lead this country. I stood with others in debating in favour of the new Constitution because it is far better than that of 1963. To see the new Constitution is like the climax of our struggle for the Second Liberation. We should respect it and make the best use of it, remembering that we still have three enemies, that is, corruption, impunity and tribalism or negative ethnicity. I really pray that in this country when we come to next year's General election people should not choose a president because he comes from their region. A president can come from anywhere in Kenya. Even trying to organize ourselves into regions whether it is KKK or G7 is tribalism. We should allow those who want to be presidents to campaign and go everywhere in this country, so that we can know them and their agenda and decide who will be the best person to lead this country. Mwalimu Julius Nyerere of Tanzania ruled the country for some years but he came from one of the smallest tribes in Tanzania. I am not going to support any individual because he comes from where I come from. We shall elect a person who is capable, God-fearing, trustworthy and incorruptible wherever he or she comes from, including Kirinyaga, where I come from. I will choose someone because they have the qualities of a leader.

Thank you so much, Acting Chair. That was my contribution to our struggle for the Second Liberation. I am grateful to our Prime Minister who invited all those who participated in the Second Liberation for a dinner in August this year. He called all kinds of people, including the Seven Bearded Sisters. He also invited members of various parties and very humbly refused to sit on his Chair, as the Prime Minister, and dragged me to take it. He said that he did not come to the meeting as the Prime Minister but as one of the Second Liberators. I sat on that seat while trembling. I felt as if I was a Prime Minister for a few minutes.

Mr. Patrick Njue: Thank you very much. In answering that question you went ahead and answered many others that I would have asked. I will be looking forward to reading that book. I want to take you back to the issue where you said that you wish that the findings of this Commission will not gather dust like those of many other commissions that have come before us. Allow me to observe that by virtue of the Constitution and the Act that created this Commission, ours will be a report that will mandatorily be made public and the recommendations in it will be bound to be implemented. Further, there is a provision that after certain intervals, we shall be taking stock of the stage of implementation.

Otherwise, I want to thank you once again for your presentation. I also want to wish you well in your retirement. Indeed, yours is a legacy of a hero.

Commissioners, you may now ask questions.

The Acting Chair (Commissioner Namachanja): Thank you very much, Bishop. Actually during the Second Liberation, most of us as young people who participated in that struggle used to look at you as either the Prime Minister or President. So, you should not have trembled in that chair. It was right for you to be there.

Commissioner Farah: Retired Bishop Dr. Gitari, I am not a stranger to you. In 1998 as the head of the Anglican Church, you visited the Kenya Navy where I was the deputy commander. I remember I welcomed you and even went to church with you. We had a very nice lunch together where you gave the Navy a very good word of advice, particularly in relation to the 1997 election, which was the second multi-party election. I am 100 per cent sure that you contributed to a non-tribal election of 2002, when all Kenyans said that they must elect a new leader, who is our current President and who will give hope to this nation. He did so on 27th August, 2010 when we got a new Constitution and a new dispensation. It is unfortunate that this Commission was formed after the 2007 fiasco in elections. We are here today investigating and hearing what happened from 12th December 1963.

We are also glad that we will go into the happenings of 1963 about which we had prior to you Mr. Jacob Njagi, who narrated to us how *mashujaa* fought for Independence. So, you are part of the *mashujaa*. Had you not gone through most of the suffering that you did, I do not think we would be where we are today! We have heard you. Many people who were with you unfortunately are dead today; otherwise they would have narrated many

things to us. God has blessed you by keeping you alive in order to tell us what happened. We have heard your expectations and we have taken note of your requirements. Even though the death of impunity has not been achieved we will do our best. In today's newspapers the entire Anglican Church of the United Kingdom has criticized their Prime Minister, Mr. David Cameron, for reducing the welfare money to 500 Pounds per week per family, yet the Labour Party had allowed up to 500 Pounds per individual in a family. This means that the church has a role to play. Even those who have retired come together. I am sure the Prime Minister has heard them and he is going to do something about it. Even in your retirement, so long as you are alive, you have to continue criticizing in order to polish whatever the Government does. If the men of the collar keep quiet, the rulers might find windows and doors through which to do their evil things. Thank you very much. That is all I have to say.

Commissioner Shava: I think I will address our witness as not retired, because he does not seem to be retired. He is very active.

You expressed concerns that this Commission should not be like those that we saw during the 1980s and 1990s, which seemed to be smokescreens and not institutions that were supposed to reveal some facts and make them public. I would like to take this opportunity to assure you that that will not be the case with this Commission. We see our role as a transformative one for the society and we are thankful for the opportunity; we have no intention of squandering it. As the Leader of Evidence said, according to our statutes, as soon as we publish our report on 3rd May, we must hand it over to the President of the Republic of Kenya, after which we are directed to publish the report widely and publicly. So, we will be in breach of our own law if we do not do that. Thereafter, Parliament has a role to report on the details of our recommendations. That is when all other Kenyans will come in; the report will be public. It will be a tool which we can all use to hold our leaders accountable. It is our belief that our report is not going to be like other reports which have come before and which have really disappointed us.

I would also like to observe that you have made our work easy because your statement is very clear. You have referred to certain sections of the Constitution and particular articles which are going to help make our Constitution a living document and not just a piece of paper. These kinds of challenges should come in order that we have the outcomes that are guaranteed by our Constitution. I think you have laid the ground for the too many things that we were asking for. I think those are things that will help this Commission to achieve a lot.

Finally, you said that we still have three enemies, corruption, impunity and the culture of negative ethnicity. These things are done in the dark and it is the mandate of this Commission to shine the light of truth on them so that reconciliation can take place. I really like the way you laid out the steps for reconciliation. First of all, there should be an internal acknowledgement by the perpetrators, repentance followed by a public acknowledgement that a wrong has been done to such and such an individual. Then one must make amends. That is where justice comes in. Justice can be seen in many different ways. There can be justice in line with our criminal justice system; it is within the

mandate of this Commission to recommend further investigation and prosecution. There can also be more initiatives to justice. We hear of initiatives led by the church and councils of elders, where if I took your cow, when the cow bears a calf I bring you the calf. Those are ways of living together. When you have one Kenya you have to live together. We take your view that we cannot continue to cover up issues and expect that in future they will not explode and harm us.

I would like to conclude by saying that as a young law student, I remember you speaking about insecurity. At that time I did not understand what you meant by insecurity. That was then followed by the raid on your house. That was what made me understand what you were talking about. You have been fighting for a long time and we are a generation that has benefitted from the battles that you have fought. I would like to assure you that we do not take the freedoms that we enjoy now for granted. We recognize that unless we are vigilant the freedoms can be taken away. Thank you for coming today and sharing your rich history with us. Thank you also for your courage and fighting for freedom in this country.

Commissioner Farah: Rev. Gitari, thank you very much for your testimony and for your presence, which is a great inspiration to us. As you know, not only Kenya but the whole continent is under the difficulties which are sometimes inflicted upon by self. We listen to people who do not understand African problems and neglect the views of sons and daughters of Africa like you. That means that people like you that have retired should take time and look at the rest of Africa, starting from the South and moving to the North or the Horn of Africa. You should try to recommend political medication that could bring people out of constant mess. You and your colleagues that are not here with us today will forever be remembered in this continent for the Second Liberation in Kenya. For people who are with us like you, the rest of Africa still expects a lot from you. You should speak out and literally go and speak to young people in universities. Hopefully, when these young people leave the universities and go to the public service or private enterprise, they will use some of the ethical standards which you have adhered to and which paid off. I hope you will do that not only in Kenya but also outside. Thank you very much for coming. We hope to hear from you soon. Your request has been fully noted by the Commission and we will do everything possible to get the reports which you have mentioned; hopefully they will be reflected in our final report.

The Acting Chair (Commissioner Namachanja): I agree with all the views that my fellow Commissioners have expressed to you. We feel honoured by your presence.

Rev. Gitari: May I also thank you so much for having listened to me so keenly and taken note of what I have said, my concerns and also for giving me advice as a retired archbishop, although as one Commissioner has said, we are retired and not tired. I have noted your advice and I will continue using the gifts that God gave me; whenever an opportunity to prophesy to this nation calls upon, I will do so. I wish your Commission every success. I can assure you of our prayers. I hope that out of it Kenya will be a better place.

The Acting Chair (Commissioner Namachanja): Leader of Evidence, please stand down the witness and swear in the next one.

(Mrs. Rosemary Wanja Nthiga took the oath)

Mr. Patrick Njue: Good afternoon Mama. For the record, could you tell us your full names, where you come from and what you do?

Mrs. Rosemary Wanja: My name is Rosemary Wanja Nthiga; I come from Embu and I am a social worker by profession. For the purposes of this meeting, I am representing women, children and vulnerable groups in my capacity as Chairlady, Maendeleo ya Wanawake in the larger Embu.

Mr. Patrick Njue: Very well, indeed. Rosemary, you have just told us why you are here and that you are here in the capacity of the Chairlady of Maendeleo ya Wanawake. For us who want to appreciate this organization, could you tell us what Maendeleo ya Wanawake is and its mandate?

Mrs. Rosemary Wanja: Maendeleo ya Wanawake is a membership organization of women. It was established in 1952 and its core business is to help women in improving their socio-economic and political status. It has contributed immensely to uplifting the standards of women and is the voice of women in articulating the issues that pertain to them and families. In Embu leadership is achieved through elections by women who are members. I was elected in 2003 and this is my first term in the organization.

Mr. Patrick Njue: In your statement you picked certain issues which I will be taking you through. I want you to appreciate how they have impacted on the women and children of Embu before we come to the recommendations. I am looking at one effect, the infringement of the right to own property. Tell us about it.

Ms. Rosemary Wanja: The violations that arise from that are based on cultural practices. According to culture, women do not own land. Before the enactment of the new Constitution, there were many issues which were reported to me about women who had been violated on matters of land. This is because women are not supposed to own property. As a result of them claiming their rights, they had been violated physically. When it comes to women who lose their spouses and they become widows, they have been violated by the relatives of the deceased spouse. They are chased away from their homesteads. Most of them end up becoming landless and moving to towns.

If I can talk about women who get children outside wedlock, by virtue of them having such children, they do not have inheritance rights in their respective homes. So, those are some of the things I have witnessed. These are matters which are reported quite frequently.

There is also gender-based violence, including sexual violence against women and children. I would like to state that it is not only the girl child who is sexually violated. Even the boy child has been sexually assaulted.

I also want to talk about women with disabilities. The buildings that have been put in place are not friendly to people with disabilities, especially women in matters of sanitation. Women are not able to access sanitation as often as they would want.

I want to talk about women living with HIV/Aids. Most of them suffer violence. They are accused of having brought the various diseases into the family. Most of them are ostracised by the family. As a result, they end up living in towns. It also gets complicated when women grow old in towns and cannot eke out a living as a result of old age.

Maybe, I will be making a recommendation that there is need of taking care of the elderly people, especially those who live in towns, because they have been ostracised by their families and when they grow old, they cannot eke out a living.

I also want to talk about education for vulnerable members of society. Even the present Government intervention does not provide for an elaborate way of disbursing bursaries. So, funding is always influenced by political affiliations. So, vulnerable children are not likely to benefit.

There is also something I have noticed from the Free Primary Education. Institutions were not prepared to accommodate the big number of children. What is happening is that because of the large number of the pupils that has enrolled in school, the quality of education has been compromised. This means very much later in life, children of the vulnerable members of the society will not get access to opportunities because the standard of education is low. So, they are not likely to get to levels where they can access opportunities in employment and other areas. Therefore, we are creating a crisis. Children will never pass examinations. What this means is that they will never get opportunities in life.

I also want to talk about health. The cost of health services for the vulnerable members of the society is very high. What this means is that the mortality rate amongst the group will continue to grow. Their lack of access to health facilities will cause a problem. This brings about the issue of the gap between the rich and the poor. I am recommending that the education system and the health system be looked into afresh to bridge the gap between the rich and the poor.

I want to conclude by saying that there is also need to come up with institutions to address trauma because there are so many people who have been violated. Keeping that hurt for long triggers other complications, including medical complications. There is need to come up with Affirmative Action for the vulnerable members of the society to enable them access basic services free of charge. This category includes widows, widowers and people with disability.

Thank you very much.

Mr. Patrick Njue: Thank you very much, Rosemary, for delving into the issues. I am not sure whether I heard you talk of access to justice as a problem for women.

Ms. Rosemary Wanja: I want to cite a case in point so that it can help to explain. On a case of sexual violence, the legal process involves the person going to the police station, recording a statement, getting a medical report supporting that statement and waiting for the legal process to take its course. From what I have experienced as I tried to help victims go through the legal process, I have noticed that the process is traumatising by itself because it further aggravates the situation of the victim. The process is long. The person has to wait until justice is dispensed. Those who have gone through the court process know that it takes a very long time for a rape case to be concluded. During the period, the victim is highly traumatised. Her rights are violated because of being exposed to that process.

My recommendation is that if possible, we could have a one-stop shop to address this problem so that sexual violence cases are concluded in the shortest time possible. We should also put in place counselling centres so that such victims can recover their dignity.

Thank you.

Mr. Patrick Njue: Rosemary, the issues you are talking about are very important to us even as we hear them in public. The majority of the perpetrators are usually from the male gender. Really, if we talk about this in public, we make it known to them that these are issues affecting women and children in the hope that they will come up with a solution themselves.

Aside from saying that, I wish to inform you that we also have a women's forum tomorrow, during which you can delve deeper into the issues that you have highlighted. So, I invite you to attend that forum and further share with our women from Embu who we hope will turn up. Otherwise, I find your presentation quite okay. You were on top of the issues and recommendations. I will encourage you to keep up with the good work that you are doing.

The Commissioners may now ask you questions.

Commissioner Dinka: Rosemary, thank you very much for your testimony. You have very clearly set out the issues facing women, children and other vulnerable groups in Embu. I have no further questions for you. I just want to encourage you to continue with this work, particularly on the issue of education for young people, and young girls. I also encourage you to continue with your struggle against certain cultural practices.

Thank you very much.

Commissioner Farah: Rosemary, thank you very much for your good testimony. I have one question. You talked about the 8-4-4 system of education. You said that institutions in the country were not ready for the 8-4-4 system and that, as a result, children are

congested in the lower classes. I want you to be very clear. What did you say about health facilities? You said that when the two of them are combined, the problem should be solved.

Ms. Rosemary Wanja: I want to talk about health because I have interacted with many women majority of who have cancer. There is an increase in cancer cases. As you know, cancer is a costly disease. This happens because most of the diagnosis is made very late when it requires that the patient goes through chemotherapy. Most of the women I have interacted with have very low income. They always have to raise money through *Harambee* to meet their medical expenses.

My recommendation is that some of those terminal illnesses should be treated at no cost, just as we have had intervention on HIV/Aids. Screening for such illnesses like Pap smear should be done regularly so that cancer of the breast and cervix can be detected early to enable early and free-of-charge medical intervention because it is very expensive to treat cancer.

Thank you.

Commissioner Farah: Thank you very much, Rosemary. It is now very clear to me. I have no further questions for you.

Commissioner Shava: Rosemary, you are playing a big role and I am glad to acknowledge that. I congratulate you for the work you are doing. You spoke about the larger Embu, and one of the issues you spoke about is FGM. What is the composition of the people in this area in terms of their social and religious affiliation? Are there differences, for example, in the issue of FGM prevalence depending on social affiliation?

Ms. Rosemary Wanja: Regarding the population of the larger Embu, constituting Embu West, Embu East and Embu North, I have not done the calculation but the population of Embu West is 106,189; in Embu East, the population is 107,962 and the population of Embu North is 73,841. This is according to the National Census of 2009. I have not been able to get the female figures. The religious composition here is Christians, who form the majority. We also have Muslims and Hindus. Majority of the people are in agriculture, while others are in business. Female Genital Mutilation is practised underground. It is not magnified. So, it is very difficult to know when it happens. There are always reported cases of FGM, which are triggered by cultural perspectives. Until very recently, it was done almost publicly but it is now done secretly. Most of those practices are triggered by the socio-cultural issues of the Embu community. In the past, it had its meaning. It was a rite of passage from one age group to another.

Commissioner Shava: Thank you for those details. That is quite clear. The only thing I would add, in terms of a question, is whether the area that you covered is multicultural or it is mainly about the Embu people. When we talk about things like FGM, are we talking only about the Embu people, or are there other people within the area who also practise FGM?

Ms. Rosemary Wanja: The population is cosmopolitan; this is because Embu is the Provincial Headquarters of Eastern Province. So, the practice is found in the several communities. I cannot answer that question authoritatively.

Commissioner Shava: Thank you very much. That answer is clear. With regard to issues of sexual offences, what has been your experience in terms of following up the numbers? I am particularly interested in whether you have prosecutors who are police officers up to now and whether the courts are using the Sexual Offences Act, or whether they are still referring to the Penal Code.

Ms. Rosemary Wanja: I will answer that question by sharing an experience of a case I followed. It was about a young child and the perpetrator was an old man. That child was one amongst many who were teased and given gifts to go into the house of the perpetrator. That was about three years ago. When the case was followed and the record taking done, in the medical report, it was written “white dry matter”. When I visited the Office of the State Counsel to get the legal interpretation, I was told that the statement was self-defeating because “white dry matter” in a child’s panty could mean even porridge. So, some of the wording may help defeat the case and the perpetrator goes scot-free.

Maybe, that answers the question.

Commissioner Shava: It does, indeed, and that brings out the difficulty of your work because it requires a multi-sectoral approach. The medical people and the prosecutors must all work together to address this issue and sometimes it becomes really difficult. You spoke of a one-stop shop, which I am going to ask you about. Is there one in Embu? If not, where is the nearest one?

Ms. Rosemary Wanja: I want to say that there are interventions that are coming up. I personally run a CBO that addresses human rights issues. This arises out of experiences we have. We collaborate with the other sectors, namely, the Probation Department and the Prisons Service, because we have a programme under which we help in rehabilitating ex-offenders and re-integrating them back to society. Due to the social stigma attached to ex-offenders, we decided to come up with a project addressing human rights.

We did not confine ourselves to prisoners only. We took that opportunity to educate the people on various instruments that govern human rights, including the Sexual Offences Act, the HIV Prevention and Control Act, and generally touching on human rights. I want to say that that is not enough. Maybe, I could recommend that this Commission, in collaboration with the National Cohesion and Integration Commission (NCIC), sets up offices in all counties to keep watch on any form of human rights violations. This is because, as we speak, they still continue. I am sure that there were violations even after 28th February, 2008. Maybe, we should work with the non-state actors to ensure that this becomes a reality.

Thank you.

Commissioner Shava: Thank you very much. Unfortunately, the TJRC will wind up next year but the NCIC will be there. The Kenya National Human Rights Commission will also be there. I had seen their representatives here earlier but I do not see them now.

I have a last question for you. You spoke about the need for institutions to address trauma. You said that many people are walking wounded. Are there any institutions dealing with trauma counselling and healing?

Ms. Rosemary Wanja: We have institutions giving counselling services but I have not heard of any that specialises in trauma counselling.

Commissioner Shava: Thank you very much, Rosemary. I want to commend you once again for the initiatives that you have taken to do this work, which is very difficult and really without which society cannot properly function.

Thank you.

The Acting Chair (Commissioner Namachanja): At this point, I would like to inform the public that we have been joined by Commissioner Gertrude Chawatama, one of our international Commissioners from Zambia. Welcome Commissioner Chawatama. I hope you are feeling a bit well now. I know that you are passionate about women issues. I wonder if you have any question for Madam Rosemary.

Commissioner Chawatama: Maybe not a question but just to encourage her. I do not understand why a lawyer from the State Office would look at a medical report and come to a conclusion instead of taking the matter to court and calling, as a witness, the medical officer who prepared that report and who had an opportunity to observe the child when the child went in for examination. Maybe, when you meet and discuss with other people who are involved in the criminal justice system, each person's role must be very clear. The role of the court must be clear. The role of the people prosecuting and the witnesses must be clear. It is wrong, I think, after a child has been defiled, for the matter to fail to go to court just based on something that the medical examiner wrote that somebody from the State Office does not understand. Do not give up the fight.

Thank you.

The Acting Chair (Commissioner Namachanja): I happen to have worked closely with Rosemary during the statement taking and preparation for this hearing. I know her as a social worker but listening to her now, she is also passionate about what she is doing. She has internalised issues concerning her area. You will think that she is a lawyer. Sister Rosemary, mine is to encourage you to continue serving the vulnerable people in your community. I pray to God to be with you in your leadership. I am looking at you as a leader who, maybe, will ascend from where you are so that you can serve us much better.

Ms. Rosemary Wanja: Thank you.

The Acting Chair (Commissioner Namachanja): Leader of Evidence, that is all from us.

Mr. Patrick Njue: Presiding Chair, I would like to make an application. We have received a request from two elders who have accompanied the Reverend. They are asking whether we could, perhaps, give them ten minutes to talk on the two issues which they felt they wanted to make a presentation on and be guided on how to proceed.

The Acting Chair (Commissioner Namachanja): Please, proceed.

*(Messrs. Moses Gachoki Kimwea and
Ejidio Kareithi Simba took the oath)*

Mr. Patrick Njue: Good afternoon to both of you. I will start with you, Moses, because I am told that Mr. Kareithi will just be adding to that which you may have left out as well as presenting documents. Once again, just for the record, please, tell us your names, where you come from and what you do for a living.

Mr. Moses Gachoki Kimwea: Thank you very much. I am Moses Gachoki Kimwea. I was born in Kirinyaga East. I am the chairman of the Kirinyaga Council of Elders. What I would like to talk about is the piece of land that was grabbed by Kirinyaga County Council after which it was sub-divided and issued to people. We went to court as elders of the clan and sued the Kirinyaga County Council. This was in 1998. We have had this matter before court to seek the truth. Kirinyaga County Council grabbed the piece of land without informing the citizens who are the owners of that land.

The matter is still in court at the moment. The court looked at the matter and said that the subdivision by the Kirinyaga County Council was not legal. So, the Minister for Lands should bring the adjudication officer to supervise the sub-division and distribute the land. Since the court issued the order, the Minister has not done what he was supposed to do. I stayed for a long time and decided to go back to court and wrote a letter. The court decided that if an adjudication officer had not been posted, the Minister should be taken to court for contempt of court. That is what we are waiting for. For all these years, the Judge whose name is Isaack Lenaola made the ruling but it was never implemented by the Minister. The Judges who came to Embu Court all made that ruling, but the orders were ignored. The land is still being distributed to people that we do not know. I was surprised to hear the Minister for Justice, National Cohesion and Constitutional Affairs who at that time was Hon. Martha Karua, saying: "You old men go to court and we will continue distributing the land." I wonder why the Minister who was in charge of legal issues could say that. We agreed to press on with the matter. The minister surprised the elders. At the moment, we are waiting for the Minister for Lands to post an adjudication officer. If he does not post an adjudication officer, he will also be sued for contempt of court. In Kirinyaga and even here in Embu it is the elders who distribute land. The county council's work is just to distribute plots within the towns but not to subdivide and distribute land that is meant for agriculture. That is not the work of the county council.

Mr. Patrick Njue: Allow me to ask you just two or three questions. When you talk of land belonging to *wazees*, is it communal land?

Mr. Moses Gachoki Kimwea: Yes, it is communal land.

Mr. Patrick Njue: How can you describe the land in terms of the description that appears on the title?

Mr. Moses Gachoki Kimwea: When the land was being distributed around 1959, the elders left that piece of land for grazing of cattle. It could then be distributed to squatters or the landless. So, in 1965 the county council went and put its name as the owner and grabbed the piece of land yet, it was not supposed to belong to the county council. It was supposed to be for the community elders to distribute it.

Mr. Patrick Njue: I understand but even as it exists today, as much as it appears in the name of the council, do you have a description to this land? Could it be in your documents? You can ask your colleague to assist you.

Mr. Moses Gachoki Kimwea: That is what made us go to court, so that the court could investigate and determine who distributes that piece of land. This is because it is the elders who decided that they needed a communal grazing land. Later they would determine how to distribute it. When the court investigated, it determined that the council had no right to distribute the land. It was also determined that an adjudication officer should come and stay with the elders; investigate and if possible, report back to the court for an order.

Mr. Patrick Njue: Maybe, you have not understood the questions. If someone was to go searching for that land as it exists today, what is the description on the land? Do you have the description that appears on the title?

Mr. Moses Gachoki Kimwea: The farm was left by the people and elders of Ngariama Location. I know this because my father was a senior chief covering up to Mwea. My father is the one who named the place Mwea. I know that it belongs to the elders and not the county council.

Mr. Patrick Njue: Let me talk to your colleague now, who alongside answering my other questions, will also be giving us the expectations that you have from this Commission.

Before you can answer my questions, kindly once gain for clarity of the record, tell us your names.

Mr. Ejidio Kareithi Simba: According the land registry in Kirinyaga District, the land is recorded as Land Parcel No.Ngariama/Lower Ngariama/431.

Mr. Patrick Njue: Before that I had asked your names once again for the record.

Mr. Ejidio Kareithi Simba: My name is Ejidio Kareithi Simba. I come from Kirinyaga County.

Mr. Patrick Njue: I see that you have some documents with you. I wonder if you would want to share them with this Commission. That will help us better understand the case as has been put by Mr. Gachoki.

Mr. Ejidio Kareithi Simba: Yes.

Mr. Patrick Njue: Tell us what they are.

Mr. Ejidio Kareithi Simba: One of the major documents is the court ruling which was delivered by Justice Lenaola, who is now in a very senior position. He said that the judgement will be overseen by the court to be implemented to the letter.

Mr. Patrick Njue: What about the other documents?

Mr. Ejidio Kareithi Simba: The other documents are several orders which have been issued as the court has been following up the implementation which has proved to be very difficult. There are some people who do not understand the law properly. There are several orders but the latest is the one to the county council of Kirinyaga. If he cannot remove those people that he has settled there unlawfully, he will be imprisoned for contempt of court.

Mr. Patrick Njue: That bit of order is dated when?

Mr. Ejidio Kareithi Simba: It is on 18th November.

Mr. Patrick Njue: What about the other documents?

Mr. Ejidio Kareithi Simba: There are several others which I have been following up with the Minister for Lands, Hon. Orengo, to appoint a land adjudication officer to implement the judgement, but he has been hibernating in his office. He is not accessible. If the Minister will not listen to the court regarding the latest order by the court, an arrest warrant will be issued.

This case was referred to as Civil Suit No.71 of 2006, but it was previously Civil Suit No.57M. We are very grateful about Justice Lenaola who did very well. As we wait for the implementation of the order, we are surprised that Kenya does not understand the meaning of some clauses in the law. That is why we have seen so many processions. We have even physically challenged persons to demonstrate because nobody can hear them.

Mr. Patrick Njue: Mr. Kareithi, regarding the documents that you have just presented, are they copies or would you like us to make copies for our record?

Mr. Ejidio Kareithi Simba: We were called today and could not make copies of these documents. So, if you can extract your own copy we can get our copy. We hope that we can have another sitting where we can talk more because we had previously presented a lot of memoranda to the Truth, Justice and Reconciliation Commission (TJRC). We do not know whether they are the ones that you are trying to follow or you are making some more corrections.

Mr. Patrick Njue: Like you have put there, indeed, we will make copies of this and as soon as you are walking out, we will hand back the originals to you. Together with what you have presented today and the memoranda that you have given before, they will form part of our records to enable us get a complete and clear picture, even as we carry out our investigations and the subsequent final report.

Presiding Chair, if the said documents presented by the witness can be formally admitted.

The Acting Chair (Commissioner Namachanja): They are so admitted.

Mr. Patrick Njue: Mr. Kareithi, my last question to you is: On behalf of other *wazees* whose land was taken, and in relation to this particular case, what are your expectations from this Commission?

Mr. Ejidio Kareithi Simba: From our observations, it looks like the Government of the day does not listen to its citizens. That is why there are so many complaints. If we look at the issue of this land, which is about 20,000 acres, it has been illegally allocated to unknown persons. If there is anything that can be done to promote reconciliation, people should not interfere with other people's land. Otherwise, it could be another eruption after even several years. Unfortunately, land is not transferrable. If we want to record proper justice, we must look properly into the issue of ownership of land. This is the only major gift that God gave his people. This land belongs to these people. It does not belong to Kenya or province. It belongs to the claimants of this land. It is only unfortunate that some of our leaders are so greedy that they do not listen to their citizens. The sooner the implementation of this judgement is done the better. So, when people ask questions and they are not given answers, they resort to their own conclusions and may end up being violent. As a saying in my language goes: "If a person is chased away justly, he does not come back. But if he is unjustly thrown out, he will come back to revenge."

Mr. Patrick Njue: Mr. Kareithi, lastly there is a map that you have that I would want you to point to the cameras if it is a map of that farm or land.

Mr. Ejidio Kareithi Simba: The land appearing on this map---

Mr. Patrick Njue: Point to us where it is.

Mr. Ejidio Kareithi Simba: This is the map of Kirinyaga County. The land in question is this one. It is neighbouring Mbeere District in Gachoka Constituency. This is the land in question.

Mr. Patrick Njue: Thank you, Mr. Gachoki and Kareithi---

Mr. Ejidio Kareithi Simba: Before I finish I would like to say something. We have had a lot of suffering in Africa not because we are poor, but we have been oppressed by our own people. They call themselves leaders. If we do not elect proper people to the right positions, we shall still continue with conflicts. I remember there was an old man here who was talking about the Mau Mau warriors. We have many of them who are suffering. There is one in Kirinyaga called Saverio Nyaga Damiano. He was given 15 acres of land without a title deed far back in 1966 to date. Very recently, the county council grabbed that land from him. They took possession of 13 acres and left him with two acres. Now that old man is facing the grave. He has been trotting from office to office without getting any assistance and it is very bitter. Several of them ask why they fought for this freedom which is nowhere to be seen in the first place. There is also another old man who died last year. His shamba was taken by the county council to build a secondary school. He was kept somewhere temporarily and he has never tasted peace for all those years. He died landless and was also a Mau Mau freedom fighter. Given these scenarios, we fail to understand where and when we shall find justice.

Lastly, I will still talk about the land issue which is a very sensitive issue. Before Independence, Kirinyaga was in Embu, which comprised, then, of Mbeere, Embu and Kirinyaga. There is a portion of Kirinyaga land which went to Mbeere District in 1963. It is in the lower part of Kirinyaga. After a lot of commotion, there was the Chesoni Commission appointed by the President to investigate and give a solution. Up to now, people do not know what the findings of that Commission were. Unfortunately, our learned friend Chesoni is no longer with us. So, we cannot ask him any questions. We do not know where that report is. Also, the then President has retired. Possibly, this Commission can dig out where that report is. We would like that issue to be made public so that people do not continue asking questions. We want to avoid conflicts. I hope that this was the major reason of having this Commission. Otherwise, everybody is bitter and wants to know where justice is. So, when it comes to reconciliation, tread carefully.

The Acting Chair (Commissioner Namachanja): The question is well taken, Sir. Leader of Evidence, do you have any questions?

Mr. Patrick Njue: No, Presiding Chair.

Mr. Ejidio Kareithi Simba: There is one question that I would like to ask this Commission.

The Acting Chair (Commissioner Namachanja): You can do it briefly, Sir.

Mr. Ejidio Kareithi Simba: Some of us have important information. For example, I was a policeman from 1962 up to 1980. I retired because I could not cope with the corruption that was in the police force. Today, I hear that the police force is number one in corruption and yet they are supposed to enforce the law. They have the handcuffs and

enough cells. If I have some important information to put before this Commission, according to the Official Secrets Act, can I be followed? I would like to get that clarification. We have a lot of very important information to this nation. I will repeat again; that we are not having problems because we are poor but because of our type of leadership which has really cost us a lot. Thank you.

The Acting Chair (Commissioner Namachanja): Thank you, Sir. We have a provision of how we can get the information and how you could also testify in camera. So, I will encourage you to see our legal director who is here to see how we can get the statement.

Judge, do you have any question to the witness?

Commissioner Chawatama: I would like to ask maybe one or two questions. When the first speaker said that the land belongs to the elders, did he mean that the land is being held in trust by the elders for a larger community?

Mr. Moses Gachoki: I said that in 1965, the Kirinyaga County Council grabbed that land. It was 28,000 acres. After taking possession of it, they subdivided it. Now it is 16,075 acres. That land made us go to court to know under what law the council used to take it away and subdivide and allocate it to people. We have given this Commission the ruling.

Commissioner Chawatama: I have looked at the judgement and it is, indeed, very sad that up to now, you have been unable to enjoy the fruits of your judgement. I do not know whether or not the council appealed against the judgement of the court at the time but it seems that that did not happen. I do not know who would have been responsible to enforce the judgement and what else you are expected to do because the court has done everything that it possibly could do. We have heard – as we have travelled – instances where the courts have not made any decisions and, indeed, where access to justice has been denied. So, it is very disturbing to hear of a matter where the order of the court is clear but the parties are unable to enjoy the fruits of their judgement. I think based on the documents that you have given us, we can get to the bottom of this. I pray that everybody does their part because it is instances like this that also lower the authority of the courts.

Commissioner Farah: Moses and Ejidio, I think the judge has already said everything because she is an expert in law. So, I have no questions for you. Thank you very much for your presentation.

Commissioner Shava: Mr. Moses Gachoki Kimwea, the Chair of Kirinyaga Council of Elders and Mr. Ejidio Kareithi Simba, member of the council of elders, I would just like to thank you very much for coming here today. I would like to assure Mr. Simba that the provisions of our Act enable us to do all that is necessary in order to arrive at the truth. There are also other mechanisms that we can put in place. So, please, do not feel intimidated. If there is any further information that you would like to disclose, our Leader of Evidence will guide you on how you can give us that information.

I would like to join my fellow commissioners in saying that I am as surprised, shocked and disappointed as you are that the law can be ignored with such impunity. This is clearly one of the issues that we must fight against as you have told us because it is happening all over the country. We have seen it in Busia and now in Syokimau and as you say, it is a recipe for conflict. We have seen what conflict can do in this country and are not keen in proceeding down that path. That is why it is very important that true information comes out. When it comes out, it is important that the law is followed. It is very sad to see a member of Government failing to comply with the law as prescribed by another arm of Government. So, we have seen this issue clearly and we would like to assure you that we will be making the necessary findings and appropriate recommendations in this case.

Thank you.

The Acting Chair (Commissioner Namachanja): Thank you elders. I think that is all from us. Thank you so much for coming to represent your people. Do not tire. *Mtafuta chake hachoki*. That is a Kiswahili saying.

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

Mr. Patrick Njue: Our next witness is Witness No.3. Presiding Chair, we propose that the witness takes oath while seated.

(Loud consultations from members of the public)

The Acting Chair (Commissioner Namachanja): Just a moment. Members of the public, so far, you have been doing so well. We have been listening with patience. Please, let us continue listening. Before our next witness takes the oath, let me remind you of our ground rules. Please, switch off your phones so that they do not keep on interrupting the proceedings. Thank you.

(Mr. Dennis Laiboni Mureithi took the oath)

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

Mr. Dennis Laiboni Mureithi: My name is Dennis Laiboni Mureithi. I come from Mbeere North District. I am representing Mbeere United Disabled People Organization (MUDIPO). I am their secretary.

Mr. Patrick Njue: As you have said, you are here to represent MUDIPO. In your statement, we picked up certain issues that you felt affected you or the membership of the organization. First of all, was the issue about the form from National Fund for Disabled of Kenya.

Mr. Dennis Laiboni Njue: For a disabled person, we have two types of forms which we usually fill. There is this form which comes from the National Council for Persons with

Disability (NCPD). That is a Government institution. There is the other form which comes from the National Fund for Disabled of Kenya (NFDK). That is an organization of the disabled people.

When a person applies and fills these forms, we are always promised heaven but always given hell.

First, I will talk about the National Fund for Disabled of Kenya. They usually have two forms. There is one form which is blue in color. The other form is yellow in color. You fill the blue colored form when you are applying for appliances like the walking stick I am using. The other part of the yellow form is always filled when you are applying for funds; revolving funds or any kind of funds. It is filled by an organization or an institution. We, the people of MUDIPO, have filled all those forms; blue and yellow. The blue forms are filled at individual level but the yellow ones are filled at the organizational level. We applied for all kinds of support for a person who is disabled. Personally, as the secretary of that organization, I applied for a revolving fund to the tune of Kshs500, 000. This money was supposed to be used by the disabled people as a revolving fund. I applied for this money after I was urged to do so by the national office. However, there has never been any feedback.

M. Patrick Njue: How long ago was this? When did you apply?

Mr. Dennis Laiboni Mureithi: We applied late last year. It was in October, 2010. Let me talk about the second form. This is a form from the NCPD. This is a Government institution. We have filled all those forms and taken them to national level. I delivered them personally. I was told that they would act on those forms and help us. It pains me to govern those people when the Government promises you something and they give you nothing. We have always been misused. Those offices are run by people who are not disabled. My recommendation on that part is---

The Acting Chair (Commissioner Namachanja): Excuse me, there is misinterpretation. I think he means that the leaders in those offices are normal people and not disabled. Please, correct that. Just translate that again.

Mr. Dennis Laiboni Mureithi: I recommend that those offices should be run by persons with disability. We have disabled people who are learned. They can run those offices.

Mr. Patrick Njue: In your own estimation, how long should it take for these forms to be approved and funds to be released to you?

Mr. Dennis Laiboni Mureithi: If you are assessed by the doctor, it takes only just one month. If you are not assessed, it takes three months to be implemented. So, I do not see why they have not acted to disburse funds to those people who have already been assessed. Why should it take them more than one year?

When the Deputy Prime Minister and Minister for Finance, Mr. Uhuru Kenyatta, was reading the Budget, he allocated Ksh583 million to people with disabilities. Where is that money?

Mr. Patrick Njue: Have they told you why they are unable to release these funds to you?

Mr. Dennis Laiboni Mureithi: We have not received any feedback from those national offices.

Mr. Patrick Njue: You talked about marginalization in terms of employment. Could you explain what you mean by that statement?

Mr. Dennis Laiboni Mureithi: Persons with disability have been totally discriminated against. Personally, I was discriminated against. I have always been number two in class from nursery to Form Four. I was always on top of the class. My parents used to pay all school fees. I remember in St. Paul's School, we were paying Ksh40, 000 per year. So, for four years, they paid Ksh160, 000. However, I have applied for jobs, but I have never been lucky. I have gone for interviews only to be told that they could not take me on board because of my disability. Even sometimes, I think of suing the Government to refund me my money which I paid for school fees. My mother usually tells me that I am a worthless human being because she spent money educating me but here I am unemployed. This is because people who interview us are very selfish. I would urge those two institutions; the private and Government institutions, to treat us with a human face. We also want to work.

I work extra hard to earn a living. When I apply for that tender, I want to supply your institution maybe with cereals or firewood, please, award it to me. Sometimes we can do better than those people without disability. We also need money to take care of our children.

My recommendation is to ask Kenyans wherever they are, please, employ persons with disability. We know there are some disabilities with which a person cannot acquire a job. That is understandable. However, those of us who have learnt how to use Braille can work. We need money. We need to educate our children like the way you usually educate yours. Thank you.

Mr. Patrick Njue: Those are some strong words. However, I want to encourage you and tell you that you are my brother and you are normal. So, do not look down on yourself and say there is a category of normal people and abnormal people just because of some physical impairment.

In terms of education or professional qualifications, what do you have?

Mr. Dennis Laiboni Mureithi: I went up to Form Four. I did not go to university due to financial problems. However, I have done courses like project management and disaster management. I know in this room, there is nobody who has never invented software, but I

am an expert with software. If you want to know more about my software and my work, just log onto my facebook page at Dennis Laiboni Mureithi. If you google that name, you will be led to all my websites.

Mr. Patrick Njue: I must say you are talented. I would really like you to share more on that. In terms of Government grants, what challenges have you faced?

Mr. Dennis Laiboni Mureithi: This is the most painful part for members of MUDIPO. Why? The Ministry of Gender, Children and Social Development is issuing grants at these places to orphans, single mothers, widows, vulnerable people, old people and people living with HIV/Aids. These groups of people receive Ksh9, 000 per month. When I asked one of the officers why they are not including people with disability, they told us that people with disability have got their own funds. The Ministry which caters for persons with disability is that same Ministry which is marginalizing us. It is proving to us that we are useless. I think when you see those normal people walking, drunkards there--- They are always boast that they are on a Government payroll and are not working. There is that person with a disability who is living in poverty.

Sometimes, I usually ask, why are you giving funds to people living with HIV/Aids? You are giving them money because they acquired that HIV/Aids so that they could go and spread it. It is a pity that we, people with disability, are discriminated against by the society. You are not giving us even Ksh100 or Ksh1, 000. Why? I would like an official statement from the Ministry of Gender, Children and Social Development regarding this issue.

Mr. Patrick Njue: What is your recommendation on this?

Mr. Dennis Laiboni Mureithi: My recommendation on this is that if the Government will not give people with disability these grants of Ksh9, 000, let them scrap it. It pains us to see some people who do not even deserve the money getting it and then boast to us. Those people who get this token of Ksh9, 000 seek medical attention from any Government hospital where they pay Ksh40 only. However, persons with disability require appliances such as walking elbows and wheelchairs which cost Ksh5, 000 and Ksh50, 000 respectively.

When normal people buy a pair of shoes, it costs them Ksh500. My pair of shoes cost more than Ksh1, 000. So, people with disability have more needs than normal people.

If there is any hospital which has ever angered me is Mater Heart Hospital. I usually call it "hell hospital". They cannot even attend to a person who requires a heart operation without money. The least you can pay for a heart surgery is Ksh200, 000. So, it means people are starting hospitals and they charge us, say, Ksh200, 000, then in the evening, they go to celebrate in pubs.

Most of us come from poor backgrounds. We cannot raise such amounts of money. I am lucky because I have been sponsored by Italians and Americans. I would like to say

special thanks to Dr. Bransforce of Bethany International Cure Hospital for sponsoring me. What about those people who do not have sponsors? The Government of Kenya is not sponsoring them. Many of us who cannot afford wheelchairs are lying on their beds. You may refer to them as “useless” because they cannot walk on their own and they do not have wheelchairs or special shoes. We have been marginalized for a long time. Medicine is very expensive. Our medicine costs more than Ksh2, 000. For you, people without disability your drugs are not very expensive. Sometimes I laugh when I hear the Government Spokesman, Dr. Alfred Mutua, saying that he is proud to be a Kenyan. Some of us, we persevere to be Kenyans. I usually feel discriminated against in my own country. I think hell is better than Kenya because people who book themselves places in hell are themselves sinners. But here in Kenya, we are being treated as if we are sinners. We are not disabled because we sinned against anybody or our parents sinned, for that matter.

Mr. Patrick Njue: You have spoken about the other two issues that were in your statement, that is, the medication and the disability assessment when you gave the example of the cost of a shoe. As you talked, I could feel and see the pain. I so much agree with what our Vice-President Kalonzo Musyoka said when he was launching some programmes for people living with disabilities. He said that disability is not inability and that we should change our attitude as a society and treat all of us equally. He said it was high time we included people living with disability in positions of leadership and gave them opportunities to serve this wonderful nation. I think that is what we need more than sympathy. You have clearly proved that, indeed, you are able, normal and all you need is an opportunity to prove your worthiness.

Mr. Dennis Laiboni Mureithi: I think you understand me. We went to the same primary school, secondary school and college. However, when some of you get in those offices, you lock the doors on our faces. For example, assessment as you have said, HIV/Aids. HIV/Aids test is done to everybody free of charge. However, when I go for disability assessment, I am required to pay Ksh2, 500. But looking at me, you can see I am disabled. So, why should I pay Ksh2, 500 to someone to assess my disability whereas somebody who went outside there and acquired a disease is tested free? He is also given money to buy food and do everything else.

Mr. Patrick Njue: Your name sounds like that of a leader from the Masai community. However, I see a lot of leadership quality in you. As a secretary of MUDIPO, it means those people have a lot of trust in you. They know you could articulate their issues properly.

Mr. Dennis Laiboni Mureithi: Let me tell you apart from being a MUDIPO leader, I am a division representative in ABPK. So, I usually come here in the province. We usually meet with physically disabled persons. The problem with these Government grants is their management.

The Presiding Chair (Commissioner Namachanja): We hear you, Dennis. From what you have shared, you have all the reasons to be bitter. I know what it means to leave

Mbeere and go all the way to Nairobi to submit the forms. I know you leave behind people who have filled those forms with a lot of expectations. You reach the office and are assured something will be done; you come back and wait for one month, two months and they do not even care to give you feedback on what has happened to the forms. It is very painful. What recommendations do you have for this Commission?

Mr. Dennis Laiboni Mureithi: Regarding those forms, we would like to be given the feedback. Even when you are applying for a loan from the bank, not all applications qualify but we would like all those who have qualified to be given the right opportunity.

The Acting Chair (Commissioner Namachanja): Please, address all the issues that you have raised in your statement if there are no further questions from the Leader of Evidence.

Mr. Dennis Laiboni Mureithi: We skipped the issue of bursaries. In the month of February, I applied for bursary for 50 students in three secondary schools. These students are either persons with disabilities or their parents are persons with disability. I applied for six slots in special institutions for bursary. However, none of them qualified. I usually wonder where we are going. Is this not marginalization? Even when it came to second and third term, they told me to apply. I told them I cannot keep on applying. I said I will not apply again for bursaries because it is so irritating to involve yourself in an exercise in futility. When I apply for bursaries for these people, they believe I will get it for them. Since today I have appeared before this Commission, I will be getting phone calls inquiring whether this Commission assured me that they will be getting these grants. Sometimes I feel like working by myself. There was a time I was forced to write on my doorpost: "Visitors only allowed from 11.00 a.m." This is because some people are given grants of Ksh9, 000 while people with disability do not get these grants. Some of them come as early as 8.00 a.m. demanding for these grants. When people see me enjoy a glass of beer with my friend, they think I am using their money to buy beer. So, I would like a response from the Ministry concerned.

We have directors of persons with disability. We have all these other Government officials. Why do they not respond to this small group of people? I would like the medical and surgical fees to be reduced so that we can pay for ourselves. We should remember that disabled people were born by people without physical disability.

Mr. Patrick Njue: Thank you for that elaborate presentation. I just want to encourage you to keep doing what it is that you are doing in terms of both your private life and even in representing your people. Yours is service to all humanity. I want to wish you the very best. You are my brother. The commissioners will ask you questions.

The Acting Chair (Commissioner Namachanja): Thank you, Dennis. We have a few questions for you.

Commissioner Farah: Thank you very much for your eloquent presentation. In every county we have visited, we have heard from people with disability but nothing has been clearer than your presentation. You have given us a presentation with a lot of energy and

concern for the people with disability that you lead. So, I just want to assure you that every county has heard. There are quite a number of NGOs and CBOs who try to fill in the gaps and help the Government. But in your presentation, we have heard about the shortcomings of the Ministry charged with this responsibility. We will take it up from there.

Commissioner Shava: Thank you for your presentation which as my fellow commissioner has said was filled with all kinds of energy and has really brought out the issues very well. You have painted for us very clearly a picture of what it is like to live with physical disability and cope with life which is difficult for most people. This is life with the added burden of disability. You speak with a lot of bitterness and anger. To me, this is because you have experienced so much injustice and also the people you are working for continue to experience injustice. You must feel such a strong sense of frustration as you go seeking for assistance where you have been told assistance is to be found only to be disappointed and ignored. Because if somebody does not respond as you have said, there are people who qualify and there are people who do not, but one should be given an answer. So, the very fact of taking trouble to research and bring people together and try and help them and then you do not even get a response, I cannot imagine how frustrating that must be. With all that, you still continue trying to work for people who do not have some of the skills that you have and who do not have the level of education that you have and you are to be commended for that.

I will just leave you with one small piece of advice which is that even when we feel a grave injustice has been done to us, we want to be careful not also to be a perpetrator of injustice towards others. So, even as you feel discriminated against, I would urge you to continue working in the same spirit of understanding that many people experience injustice in different ways.

As you have rightly pointed out, able-bodied people can give birth to disabled people. People can become disabled through a car accident, through wrong medication and through very many ways. So, some things happen to us when we are born and others happen along the way. But in all that, I think I would want to encourage you to continue your work in that spirit. Thank you.

Commissioner Chawatama: I have no questions, but I would like to adopt what has been said by my sister Commissioner Shava as though they are my own words and to just encourage you. Instead of bitterness and pain, focus more on the vision that you have for a better life for those living with disabilities. Be their voice and speak out. As said by Commissioner Farah, we have heard from people living with disabilities and you have added to the voice of those who have spoken. In our report, people will read about you and so many others. The necessary recommendations, be it policy or recommendations to change legislation, it will all be there. So, you have helped us to have a better understanding. I thank you for that.

Mr. Dennis Laiboni Mureithi: I would like to thank the Commission for giving me this chance. When I became disabled, I thought because I am useless, I would never reach the

world. That is why I said I am a software developer. I had to go to the Internet to market my name so that my name will live a million years. Now today I am before this Commission. Maybe it is God's grace and we say thank you a million times for the invitation.

The Presiding Chair (Commissioner Namachanja): Thank you, Dennis, for your passion and representing people living with disability. God bless you.

Mr. Patrick Njue: Presiding Chair, Commissioners, our next witness is Witness No.6 on our course list.

(Mrs. Liberata Warunje Ileri took the oath)

Commissioner Shava: Leader of Evidence, I think we had an arrangement where the interpreter should be provided with certain documentation beforehand so that they do not make mistakes like getting the names of the witness wrong. Can you, please, assist?

Mr. Patrick Njue: Thank you, Commissioner, for that.

Good afternoon?

Mrs. Liberata Warunje Ileri: Good afternoon to you. I want to talk about my son; he was called Julius Mureithi. He was killed during *Saba Saba riots*.

Mr. Patrick Njue: Before the sad demise of your son during the *Saba Saba riots*, kindly for the record once again tell us your names, where you come from and what you do for a living?

Mrs. Liberata Warunje Ileri: During the *Saba Saba riots*, Julius Mureithi was milking the cow---

Mr. Patrick Njue: Please, just for confirmation, Ki-Embu is on Channel two, so that she can be listening to my questions, to which she will be responding. Please, Ki-Embu interpreters. To guide her, she can be looking at me and once I pause, she will know that I have now given the floor or the chance to her to respond.

Mrs. Liberata Warunje Ileri: That time Julius---

Mr. Patrick Njue: I have not put a question to her. So, please, ask her to wait.

So, Mama, before you begin sharing your testimony as to how you lost your son, I want to confirm your names, where you come from and what you do for a living.

Mrs. Liberata Warunje Ileri: My name is Liberata Warunje Ileri from Kieni, Makutano.

Mr. Patrick Njue: What do you do for a living, Mama Warunje?

Mrs. Liberata Warunje Ileri: I am a farmer and I am also a hunter.

Mr. Patrick Njue: To begin with, tell us the name of your son?

Mrs. Liberata Warunje Ileri: He was called Julius Mureithi and he was killed on *Saba Saba*.

Mr. Patrick Njue: Mama Warunje, allow me to, at this point in time, tell you that should you feel that you need a minute or two to compose yourself--- I know bringing up this issue will certainly have an impact on you. So, it is okay. The lady seated next to you is our counsellor and is there to assist and calm you down. So, please, take a minute.

Commissioner Chawatama: I think, through the Chair, Leader of Evidence, you must always understand the witness who is before you and understand how they best tell their story. So, even taking her back so many times is quite stressful. So, allow her to tell the story the best way she knows. Just let her begin to do it. Yeah?

Mr. Patrick Njue: Thank you, Commissioner.

Mrs. Liberata Warunje Ileri: When Moi was passing here going to Meru, Julius was at home milking cows. That was the time when GSU officers came and they met him milking the cows. He was taken away, the milk was poured down and they started beating him. He was beaten so much that he could not board the GSU car. He was taken to the station and then to Runyenjes Police Station. At around 6.00, they went; we tried to ask for him but they refused to listen. He was taken from there to Mugoya, where he was beaten so much. That was on Saturday, 12th; he went, but he could not even wake up. When they were brought to court, he could not support himself; he came to court in a laid down position. From there, there was nothing else that we were told. When they went to court, they were given a bond. We just took him because we could not leave him behind now that he had been given a bond. We went with him and when we arrived home, it was at around 3.00 a.m. at night. He started groaning and he was bleeding from the nose. We looked for a vehicle. We did not even get near the hospital. That was when he died. We

screamed. When we arrived at Kieni Hospital, we were asked “Why have you brought him to hospital yet he is dead?” When we were there, he was kept on a bed and we went back home. When we got home, I had only one son; the other one was a small boy. The elder one was helping me since their father had died. He was the one I was working with. I now have only one son left. The family members and my sisters came and transferred the body to Chuka. When the burial was being undertaken, I was admitted in the ward. That is the story of Julius.

Mr. Patrick Njue: Allow me to begin by expressing my sympathies for the loss of your son, Mama Warunje. I will just ask you a couple of questions with the aim of clarifying, or seeking to clarify, your testimony. I ask that you bear with me. How old was Julius at the time of his death?

Mrs. Liberata Warunje Ileri: He was 18 years; he had left school after his father died, and he said that he would not go on with education.

Mr. Patrick Njue: You have also talked of there having been protests when Moi was passing by Embu. Do you know whether Julius was there in the protest himself?

Mrs. Liberata Warunje Ileri: No, he was at home.

Mr. Patrick Njue: Who was with him at home?

Mrs. Liberata Warunje Ileri: He was with the sister called Grace. I was in a meeting of Maendeleo ya Wanawake at Runyenjes, which had organized a *Harambee* to be attended by Hoseah Kiplagat, who had been invited by Hon. Kamwithi Munyi as the guest of honour. I was there and that was where they came for me.

Mr. Patrick Njue: Okay. Subsequent to the killing of Julius, after he passed on, did you report this matter to any authorities with a view to seeking an explanation?

Mrs. Liberata Warunje Ileri: I went to the police station and reported that my son was missing.

Mr. Patrick Njue: To the best of your recollection, what came of the reporting? Was any action taken against anyone, for example?

Mrs. Liberata Warunje Ileri: By the police? No; there is nothing that was done. They ended up saying that there were some people who had been sent by Njeru Kathangu and they were told to go away.

Mr. Patrick Njue: Lastly, as you are seated with us this afternoon, what are your expectations of this Commission?

Mrs. Liberata Warunje Ileri: I would like this Commission to help me to be paid for my son, who had not wronged the Government; he had not done anything.

Mr. Patrick Njue: Would you know whether there was a post mortem report and, if there was, did you ever have a copy of it?

Mrs. Liberata Warunje Ileri: The doctor who was at Kieni and who was called Nyongura, was his friend. The doctor said that he had been hit and he had broken his backbone. Then, because he was bleeding from the nose---

Mr. Patrick Njue: I have no further questions. Thank you for sharing your testimony with us.

Our Commissioners will now ask you questions.

The Acting Chair (Commissioner Namachanja): Mama Warunje, I am sorry for your losing your son in such a terrible way. We would like to ask you now a few questions just for us to get the facts right.

Mrs. Liberata Warunje Ileri: Okay.

The Acting Chair (Commissioner Namachanja): Commissioner Farah.

Commissioner Farah: Mama, I have no questions to ask you but I empathize with you for the death of your son and we have heard your sad story. Thank you very much.

Mrs. Liberata Warunje Ileri: Okay.

Commissioner Shava: Mama Liberata, thank you very much for finding time to come and relate to us what you went through. The violence in Kenya that was experienced in different ways by different people at that time; you have helped us to understand what it

was that happened over here. We are very sorry for the loss of your son and what happened was not right; he was in his own home and nobody – not even the Government or the GSU – had the right to come in there and take away his life in the manner that it happened. We are very sorry. We have heard your story and we will use all the powers that have been given to us by the law to ensure that justice is done in this case.

Mrs. Liberata Warunje Ileri: Okay.

The Acting Chair (Commissioner Namachanja): Commissioner Dinka?

Commissioner Dinka: Mama Liberata, thank you very much for your testimony and for coming and enlightening the Commission on the situation of the day when your son was killed. I would like to take this opportunity to express the fact that I empathize with you, with your pain and with your loss, which is a big tragedy, and also for taking you through this experience again and making you relive that tragic situation. We thank you very much and we have taken very good note of your testimony and will make the necessary conclusions in our report. Thank you very much.

Commissioner Chawatama: Mama, thank you very much for your testimony. I would like to ask you a few questions; the only reason for this is not to cause you more pain, but I want the fuller picture of what happened so that even in our recommendations, we can make meaningful recommendations, and so that the death of Julius does not remain in vain. Are you ready for my questions?

Mrs. Liberata Warunje Ileri: Yes; you can ask them.

Commissioner Chawatama: When you went to court, do you remember whether Julius appeared in court with other people?

Mrs. Liberata Warunje Ileri: Yes, he went with some people but they also died.

Commissioner Chawatama: You said that apart from Julius, the other people that he was in court with also died? Can you remember the number of all those who died?

Mrs. Liberata Warunje Ileri: I cannot remember quite well, but there were two from Runyenjes and the rest I cannot remember very well.

Commissioner Chawatama: Do you have any court documents so that---

Mrs. Liberata Warunje Ireri: from hospital or where?

Commissioner Chawatama: Whether from the hospital or from the court.

Mrs. Liberata Warunje Ireri: I did not go to court at that time; I want to talk about the truth. When I went home, I could not even think of going to court. I could not think of it because I was alone at home and had two little children. I could not go to court because I was also frightened because the father had just died. I was shocked by the death of the child; he was not sick or what; he was just killed. Even the cow that he was milking also died.

Commissioner Chawatama: Mama Liberata, let me also join my fellow Commissioners in sympathizing with you for the loss of your son, who was the source of your strength and who should have looked after you in your old age. I am so happy that you had time to come and speak to us. We have heard stories of police brutality, how the police have taken innocent people and have either injured them or killed them. We have heard what you have had to say and in our report, we will make the appropriate recommendations. We do not want another mother to go through what you are still going through; your pain is still very clear. May God give you peace and May He give you rest. Thank you very much.

The Acting Chair (Commissioner Namachanja): Mama Liberata, let me also join my fellow Commissioners in thanking you sincerely for summoning the energy to come and appear before us under the pain you are going through. As my sister, Margaret, said, you shared your story. We shall do our best to investigate to find out if there are any leads to why your son died. Thank you so much for coming.

Leader of Evidence, that is all from us now. We shall be able to hear one more witness and then tomorrow we will continue with the remaining ones. Thank you.

Mr. Patrick Njue: Thank you, Madam Acting Chair. We are guided.

Our next witness is No. 7 on our Cause List.

(Mrs. Lucy Muthoni Gichiku took the oath)

Mr. Patrick Njue: Good afternoon, *Mama*?

Mrs. Lucy Muthoni Gichiku: Good afternoon.

Mr. Patrick Njue: Do, once again, tell us your names, where you come from and what you do for a living?

Mrs. Lucy Muthoni Gichiku: My names are Lucy Muthoni Gichiku and I do casual work. Where I get a job, I do it. If I fail to get a job, I just stay; that is what I do.

Mr. Patrick Njue: Where do you come from?

Mrs. Lucy Muthoni Gichiku: I am from Karurima.

Mr. Patrick Njue: Coming to your statement, *Mama*, you are here to share with us your plight on what you call lapses in the administration of justice in a scenario where your daughter was raped, the perpetrator sort of went scot free, and then later this perpetrator went behind your back and instituted a case against you. Can you, may be, share with us a little more details of the case.

Mrs. Lucy Muthoni Gichiku: The one who held my daughter cheated her because she was a school girl; she was 11 years. On the same day, she did not sleep at home and we saw her the following morning when she was peeping out from a door. I told her to go to school, but she refused. We then spoke to her in front of village members. It was discovered that she had been raped. We went to Mugoya, wrote a statement and then because she was injured, we took her to hospital where she was treated. While there, it was seen that she had a disease. She was told that after three months, she should go back to hospital and then she would be tested to see whether the disease had cleared. After that, she has never healed from the disease; she still has the disease.

Now, we even went to court over this issue and we spoke with the perpetrator. He did not accept that he was the one who had done it, yet he was the one who did it. I was later told to go back for the hearing but instead of being heard, I was taken inside and the doctor later checked the daughter and showed that she had been raped. From there, when I went to court for the hearing, my forms were kept. When I was in Court 1 my forms were taken to Court 2 and they were given warrant. I was later kept inside again at Majengo. That was done repeatedly and I gave up. It continued like that until at the last moment in 2006, I was jailed for five months; I stayed for five months at Majengo, suffering. I suffered a lot because in jail the body is like this; you can see even the body looks like that. My whole body looks like that because of suffering in jail. Then, that man told me that if I did not finish the case which was in court--- When I refused to accept his suggestion, he took me back inside; I suffered a lot. I went to jail in 2006 and came out in 2007. I then went back home and in the same week, the case was to be rolled up; I was released like today and he was released the following day. That was the time when he was caught stealing a goat and he was burnt. When we went to court, now that he had died, the case was dismissed and I was left suffering. I was left with a lot of problems

with my child because she is sick. I am sick – my body looks like this; now there is nothing I can do for myself, especially when the sun is shining. There is nothing that I can do. Thank you for listening to me. I have finished saying all I had to say.

Mr. Patrick Njue: Thank you also, *Mama* Muthoni, for sharing with us your testimony. It is sad to note that your daughter still continues to suffer from this disease that she was infected with. It is sad, indeed. As you sit here with us today and noting that the perpetrator as you have said has since died, what would be your other expectations from this Commission?

Mrs. Lucy Muthoni Gichiku: I have no father or mother – they both died – and I have no husband – he also died; I live in the village in a shanty with my children. So, I pray that I get shelter, together with my sons, because they are also suffering; they are everywhere. When I go for casual jobs, I feel a lot of warmth and itching of the body. I also do not feel good and I am not well.

Mr. Patrick Njue: How many children do you have?

Ms. Lucy Muthoni Gichiku: Nine children.

Mr. Patrick Njue: How many daughters?

Ms. Lucy Muthoni Gichiku: There are five girls and four boys. They cannot assist me because they do not have the strength to help me.

Mr. Patrick Njue: How old is the first born?

Ms. Lucy Muthoni Gichiku: The first one was born in December, 1973. I got a child every year.

Mr. Patrick Njue: Did I hear you right when you said that none of them cannot support oneself leave alone supporting you?

Ms. Lucy Muthoni Gichiku: There is nobody who can assist me because all of them are not educated. I tried to educate them with problems.

Mr. Patrick Njue: Presiding Chair, with your indulgence, I notice that we did not have the name of the daughter and the disease could have been deliberate. With your direction, I would like to seek clarification from the witness.

The Acting Chair (Commissioner Namachanja): Talk to her as she is next to you.

Commissioner Chawatama: Through the Chair, it may be appropriate to mention the name, but the child is still a minor! So, I do not know whether it is in our best interest to

mention her name while she is still a minor. I think minors should be protected by this process. She can tell you the name of the minor and you write it down and you share with us but I do not think that it is something that should be openly said.

Mr. Patrick Njue: Thank you very much for that, Commissioner Chawatama. Once again, Madam Lucy, I want to thank you for coming to testify before this Commission. I do not have further questions for you. The commissioners will seek further clarifications from you.

Please, Madam Presiding Chair.

The Acting Chair (Commissioner Namachanja): Thank you very much, Mama Lucy, for coming to share with us how some members from this community are denied justice because of the complications in our judicial system. I am sorry for what your dear daughter went through and what you also went through in the process of seeing that justice is done to her.

I have a few questions for you so that we understand the facts concerning this case more. I will start with Commissioner Chawatama.

Commissioner Chawatama: Thank you very much for taking time to share with us your testimony. It is my understanding that the following are the issues you have presented to us.

There is the issue of the defilement of your daughter and your imprisonment on trumped up charges and the way you were handled by the police and the court. When you were put in prison for five months, did you appear before the same court that was hearing the defilement case?

Ms. Lucy Muthoni Gichiku: Yes, I used to go. When I stood before the court, I was chased away. The door was opened and I was taken inside. I was taken inside and then back to Majimbo and the case was not heard.

Commissioner Chawatama: I want to understand how the judge would send you to prison for five months. Can you remember what the charge was?

Ms. Lucy Muthoni Gichiku: Yes, I can remember. The charge was that I could be jailed because I refused to end my child's case. I was taken to jail without reason. When I went to court and when the time for hearing came, I was taken back to jail. That was the reason why I was jailed; I refused to end the case of my child.

Commissioner Chawatama: Do you have any papers whatsoever from the court?

Ms. Lucy Muthoni Gichiku: I have one paper that is for the sub-area court. I took the other papers because my house was leaking, they got destroyed. I just have one paper.

Commissioner Chawatama: Looking back, do you think the court and the police were working together against you?

Ms. Lucy Muthoni Gichiku: Yes, the court clerks were not treating me well because when I went to court and when our names were being read in Court I; the papers were taken to Court II. When I went to Court II, the papers were not there and I could be taken back to jail.

When I went to Court II and back to Court I, the papers were taken to the other side and that is all I was doing. I stayed for a long time until I gave up.

Commission Dinka: Thank you, Madam Lucy, for your testimony. Can your son now do anything, go to school and work in the house or he is bed-ridden?

Ms. Lucy Muthoni Gichiku: He does small jobs. But while doing those jobs, he feels unwell. He does small jobs.

Commissioner Dinka: Did the doctor identify what he is suffering from?

Ms. Lucy Muthoni Gichiku: Yes. The Embu Provincial District Hospital doctor treated him that day and after three months; he wanted to see whether he had recovered and yet he had the disease. He has HIV/Aids. He is sick.

Commissioner Dinka: The second question that I want to ask you - you have not mentioned the point in this hearing - but you have put it in your statement and that is with regard to your husband's death in the year 2000. His relatives, your in-laws, came to your home and chased you away and took the land and every property. Have you gone to either the village elders, family elders or to court, on this matter to get back your property for yourself and children?

Ms. Lucy Muthoni Gichiku: I had separated with my husband.

Commissioner Dinka: Then the statement is wrong. The husband died---

Ms. Lucy Muthoni Gichiku: When that was happening, I was not there. I was not staying with my husband and he was not there.

Commissioner Dinka: Leader of Evidence, I think this statement must be corrected accordingly. This is because here she says the husband passed away in 2000 and the following year, brothers' in law came and chased her and the children away from the home. So, it might have been---

Ms. Lucy Muthoni Gichiku: I was not chased away. When this was happening, we had separated. We had just separated.

Commissioner Dinka: Hope the records will be corrected accordingly.

Ms. Lucy Muthoni Gichiku: I had left him and we did not have any problem with the property that he had because I had already left.

Commissioner Dinka: Thank you very much for that clarification. I hope something could be done at least as it could explore for your daughter through the special support to see if something can be done to correct that.

Otherwise, I have no further questions. Thank you very much for coming to share with us your story.

Ms. Lucy Muthoni Gichiku: Thank you.

Commissioner Farah: As the other commissioners have said, terrible things happened to you after your daughter was defiled and you were imprisoned. These are sad tales. I empathize with you and thank you for your testimony.

Ms. Lucy Muthoni Gichiku: Thank you.

Commissioner Shava: *Mama* Lucy, I would just like to say that I have listened to your story and despite the terrible things that happened to you, I have seen that you are a fighter. I have seen that you were really looking for justice because even if people tried to intimidate you using the state machinery, you still fought for your child. I would like to salute you for that and encourage you not to give up and thank you for coming before this Commission today.

Ms. Lucy Muthoni Gichiku: Nothing defeats God, God will do His will.

The Acting Chair (Commissioner Namachanja): Thank you, *Mama* Lucy, for coming to share with us concerning your son's story. Thank you so much for coming.

Mr. Patrick Njue: Presiding Chair and commissioners, under your directions; that would be all from the witnesses we had for today. Thank you for your time.

The Acting Chair (Commissioner Namachanja): On behalf of the Commission, I would like to thank the public for patiently listening and being there for the witnesses today. I hope that we will be there tomorrow for the witnesses who will come to complete hearings here.

I would also like to thank the witnesses who appeared before us today, Elder Jacob Njagi, Rev. David Gitari, Rosemary Wanja Nthiga, Moses Gachoki Kimwea, Lechichio Kareithi Simba, Denis Laiboni Mureithi, Liberata Warunji Ileri and Lucy Muthoni Gichiku.

We shall have two proceedings going on tomorrow and we shall complete the hearings. But we shall also have a session for the women's meeting and the hearings will run parallel.

I would like to invite the Assistant Regional Coordinator to let us know where the hearings will be taking place and where the women's meeting will take place.
Thank you so much.

That marks the end of our hearings today.

(Closing Prayer)

(The Commission adjourned at 4.40 p.m.)