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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON THURSDAY, 24TH
NOVEMBER, 2011 AT MUNICIPAL COUNCIL OF MACHAKOS
SOCIAL HALL**

PRESENT

Gertrude Chawatama	-	The Presiding Chair, Zambia
Tecla Namachanja Wanjala	-	The Acting Chair, Kenya.
Ahmed Farah	-	Commissioner, Kenya.
Patrick Njue	-	Leader of Evidence

(Opening Prayers)

(The Commission commenced the session at 10.20 a.m.)

The Presiding Chair (Commissioner Chawatama): Please be seated. On behalf of the TJRC, we welcome all of you to our hearings here in Machakos. We are happy to be with you. It is one thing to receive statements and another for us to be here to hear directly from the witnesses. We thank you for contributing to the success of this process. We received over 30,000 statements and the attendance for hearings has been overwhelming and, indeed, satisfying. We are happy to be here today to hear from witnesses who took time and gave us statements.

We hope that the public will give witnesses an opportunity to give their testimony and that you will observe silence. If there are any amongst us who have cell phones, kindly, switch them off because they cause interference to the equipment that we have. The oath will be administered to witnesses and the Leader of Evidence will lead them in giving their testimony. The Commissioners will then ask questions.

(The Presiding Chair introduced her team)

Leader of Evidence, please, proceed.

Mr. Patrick Njue: Thank you, Presiding Chair and Commissioners. Our first witness is the Honorable Kalembe Ndile.

(Mr. Kalembe Ndile took the oath)

Mr. Patrick Njue: Good morning, Sir. Kindly, for the record tell us your names, where you come from and what you do for a living.

Mr. Kalembe Ndile: My names are Richard Kalembe Nguluku Ndile. I live in Syokimau and Kibwezi. Syokimau is in Mavoko Municipality. In Kibwezi I live at a place called Mbwisau in the Sub-location of Kunguni, Ngumu Location, Makindu Division, Makindu

District. I am a businessman and also a politician. I am the Chairman of The Independent Party (TIP). Also, I am the Vice-Secretary for the Centre for Multi-Party Democracy (CMD). I am a former MP for Kibwezi. I was also the Assistant Minister for Tourism and Wildlife.

Mr. Patrick Njue: Welcome. You are with us this morning to share with us the plight of the Kamba people. Being a son of this community and a leader, I am sure you have grappled with issues that have affected people. If you are ready, you may begin giving us your presentation.

Mr. Kalembe Ndile: I would like to thank the TJRC for the good work it is doing. I think this Commission has the aim of ensuring that Kenyans live in peace, they are respected and they follow the Constitution. I would like to recognize that there are issues that are going on in our country right now which are not pleasant. I think we would not be sitting here today and yet the Government continues to oppress people. I live in Syokimau and you know what is happening there. People's houses were destroyed. The same thing happened in Kyang'ombe and it is happening in Eastleigh. The Government is not following the law. The court has issued orders against the demolition of houses, but the Government has gone ahead to ignore those orders. There is a Committee of Parliament which is looking into those problems. The Chairman, Mutava Musyimi asked a lawyer Dr. Kamila why the Government could not follow the court orders. The counsel said that it was sad we were reverting to the old Kenya. When I got a chance to speak, I said that Parliament should lead the way and send the Executive home so that another one is selected.

The Kamba Community has had so many problems. I even asked my father why they chose to live in Kamba land and yet other communities like the Kisii occupy productive land. Hunger in Kamba land has a name. If you asked an old person what age they are, they most likely will not know, but they will definitely associate their age with some hunger that had struck the land. The colonial Government contributed towards injuring us. It is said that it is only one community fought for Independence, but the truth is that the Kamba people also fought for our Independence. My father was a policeman. He was in Nairobi working in a police station near Burma. He fought in the Second World War in Calcutta, India.

My mother was also arrested and taken to a court called Nziu. I think it was the first court in Ukambani. She used to tell us how the Englishmen would punish them for taking oath to do inhuman things. Bottles were inserted in their private parts. I could hear my mother talk about those things with a lot of pain. One elder said that removing the colonialist was like removing a white rhino and replacing it with a black rhino.

I found myself in Kibwezi as a squatter. My father knew how to drive tractors. He was employed by a certain company in Mbarara, in western Uganda. However, because of the civil war during Amin's time he left Uganda. I was in Standard V in Emali, Manyani. We were squatters there. We have gone through problems. Being called a squatter means you are a forgotten person. We later moved to Kibwezi at a place called Koinguni. I

witnessed in the 1990s, when Ndeti was elected MP on a DP ticket, a lot of opposition against her election by the likes of Mulu Mutisya and the DC then. President Moi was not pleased with her election. They decided to finish her by fighting her people. That is one reason they changed the borders of Kyulu. The people of Kyulu were pushed downstream. Their granaries were burnt and so were their farms. The cows were beaten and left in the wilderness. The people faced a lot of problems. They lived in tents and *mikumbo* (a shade made of grass and twigs). There were so many camps, for example, Mitava. They are still there. I came to Parliament because we were fighting for people's rights.

I was elected a councilor in that area. There was a young man in a place called Mikululo. He was 22 years old. When he was told to leave the place by the police he asked them where they wanted him to go. Peter Mikilu Ngulutu, as he was called, refused to leave. The police shot him in full view of his parents. People ran away.

There is young man in Kibwezi called Kyusia. When they wanted to take land to set up a university people protested. People had stayed on that land for so long. Kyusia was arrested. He had a wife and twins of age four months. Houses were being burnt. When the police came Kyusia asked them to allow him to go and get his children. He was allowed and he rescued one child. He was not allowed to go get the second child. He was furious and so he picked a *panga* and slashed one of the police officers to death. He ran into the burning house and saved the child. The child is still alive. He stayed in remand at Machakos for a very long time.

People think that it is only at the Nyayo Torture Chambers where there was a lot of suffering. There are other places where there is nobody who could report about the suffering of people. The Chief was the law at that time. When looking for an ID, you had to pay Kshs10 for a KANU Stamp. KANU's regime was very heavy on people. You could pay some money to go to Gatundu. You would be given a receipt from the Chief's office. I remember that I was nominated by SDP whose presidential candidate was Honorable Ngilu. There was the former MP for Kibwezi, Prof. Sumbi who died. We had fought against land grabbers. At that time, the land along Mombasa Road had been grabbed.

In one of the functions attended by former President Moi, I told him that there was a high profile person who had grabbed 32 acres at Kiboko, a Settlement Scheme. The land was meant for a market, churches and schools. I gave former President Moi the allotment letter. I told him that the thief is PC, Kiilu – He is now the MP, Makueni. His place was Emali and not that area in Kibwezi Constituency, but because he was a PC he was able to steal anywhere. You can refer to those things in the Ndung'u Report. He was named in that Report. Maybe that was the beginning of my problems. At that time I was still the chairman of the County Council of Makueni.

Before Moi left, I got my answer. I was told to get into a Land Rover that was waiting. I asked them what I had done and yet I was just trying to help Moi get the thieves. I was bundled into the vehicle. I cried out for help and councilors came to help me. Honorable

Ngilu was also there. I was hidden in Nairobi at a place called Sana Sana near Belle Vue. I stayed there for three days. The MP for Mbooni, Munyao, who had been elected by DP, asked in Parliament why I was being tortured. Mr. Sunkuli answered that it was because I was a highway robber. Honorable Ngilu asked why I had not been arrested all that time. Honorable Madoka answered that I used to block the highway and I would steal together with the squatters.

Before I became an MP, I had nine cases in court. I used to attend all those court cases even though they were set to take place every day and at different places. There is a time I went to court in Makindu and when I was through and on my way to Machakos, police blocked me and arrested me. I was then asked why I had not attended court and yet I had just come from court! They told me that they had instituted fresh charges against me. One of the cases was Criminal Case No.355/1998, assaulting a police officer. This particular officer found us taking photographs of the fence surrounding the farm that had been stolen by Kiilu. I got into my car and drove away. The police drove after us and managed to block our way. This particular police officer came over and grabbed my camera. He went with it. The next day I was accused of kicking the police officer. In court, my lawyer who is now the Chief Justice, Willy Mutunga, asked the police to demonstrate how I had kicked him and yet I was in the driver's seat. The case was thrown out.

Another one was Case No.1129/1998. I was charged with the offence of driving a defective motor vehicle. There is a time I attended a meeting at a place called Machinery. I still pursued the matter of Kiilu having stolen land. I was told by the police to accompany them to the police station to write a statement. I was in the company of Muthusi Kitonga, Katungu, and Kabogo.

The Presiding Chair (Commissioner Chawatama): I seek some guidance. When we began, the Commissioners were informed that this witness would give his testimony on issues facing the Kamba Community. I have heard some issues, but I am also now hearing more on personal events that have happened to him. Was the statement that was obtained about things that happened to the witness personally or are we getting the fuller picture of the issues affecting the Kamba people?

Mr. Patrick Njue: What I will do is to ask the witness to limit his presentation on those issues. For his personal account, he can always submit documents to that effect at a later time. I stand guided and corrected.

The Presiding Chair (Commissioner Chawatama): Mr. Kalembe, I am not saying that what you are telling us is not important. It is definitely an example that touches on the issues of administration of justice on a number of freedoms and violations that you personally suffered. I would want you to separate the issues that affect the Kamba generally and throw in what you personally experienced by way of example.

There are issues that you have referred to; for example, treatment by the police, generally. Then we see no harm in you giving an example of how you specifically suffered at the hands of the police. It is always important for us to hear generally from the first witness what other people within that area have gone through so that when we come

to the specifics, the background would have been laid and there is a good foundation to build on.

Thank you very much. That is the guidance. Can we proceed!

Mr. Patrick Njue: Thank you, Presiding Chair. I believe the witness has heard you quite right.

Mr. Kalembe Ndile: Okay. I thank the Presiding Chair for that guidance. I was trying to show if this issue can happen to me yet I am their leader whom they follow and see me as an example. I was trying to show how the Kamba community has faced difficult situations because I was not speaking about issues that affected me. I would like to talk about issues that affect the Kamba people and Kenya as a country.

As we are hearing this session here today, Commissioners, there is a place called Makwimi where there is a farm of the community which has been grabbed. This is one case and the other cases are before court. As I have said, other people will not come here to give their testimony because the DC and the police were involved in destroying the maize on the farm.

As I am speaking here right now, I can say that, whatever we try to do as a community, we have faced a lot of problems although they do not affect my place only. If you went to Kitui, you will find a place called Makini where people were chased away and are now living in poverty at Nzalai, Mitamizi, Kinyoo, Emali, Mukambita and Mikululyo and even at Kivanda.

I started by saying; if you ask an old woman when she was born, she will tell you about hunger because in the Kamba Community, if you heard about the problems that they are facing, you add more problems to what you would have gone through and it can be so painful. What I have given out as testimony is what I came here to say. This Commission must recommend good things so that later on it can be a good lesson for others to learn.

There is no need to say that we have reconciled because it is not the colonial people who misused us only; the KANU system also misused Kenyans. The Chiefs had powers and even if you had bread in your shop and the chief told you to close the shop, you had to whether or not bread and milk got spoilt.

The Government should make sure that its citizens live well and leaders should be responsible. Today, I do not see need to come here and ask this Commission to recommend that: "Kalembe, because you suffered, we recommend that you should be given this amount of money as compensation." The perpetrators are punished!

When I was in the Government, there was a time I gave out my opinion. When NARC came to power, it was supposed to deal with the problems that Kenyans were facing, but six months down the line, it was very nice and people said that they had seen a difference. But after the six months, the same issues of the old system cropped in again.

If am asked, I would say, Kibaki came to power as pastor but he did the sins of Moi era because Moi has become clean after cleansing himself. Moi made people suffer at Nyayo Chambers and his regime was used to grab and steal public utility land and those people are still “eating”. I would recommend that, there must be set a time when they would be taken to court, like Mubarak! The Commission should recommend that Kibaki be taken to court after he retires to answer charges of police destroying people’s property. The cabinet should follow the law instead of flouting what has already been made by the legislature---

While we say that there were problems in the Rift Valley where people killed each other and houses were burnt down; even in Ukambani there were difficult issues. You were told that, if you are not a follower of Kalonzo Musyoka, even your house would be burnt. At a time when reconciliation was being preached in the Rift Valley; I asked myself what reconciliation they were preaching.

I almost died in Mwingi and, my only mistake was to go for a meeting which I had a right to go to as I was representing my Ministry. Commissioners, I am giving examples so that you can understand the weight of the issues that I am talking about.

In Mwingi, even media people were there and somebody stood with a microphone and said: “Stop everything! There is one person here who is a traitor and does not want Kalonzo to get the Presidency. We have to destroy him!” And I thought; I have to tell Kalonzo to help me to tell his young men that I do not have any issues. But Kalonzo told me: “Just help yourself!” I was chased away like chicken by Kalonzo’s young men who were not fearful and that story was covered on television.

I am giving this as an example. Kalonzo is now the Vice-President. If my children see him today, they will say: “This is the person who wanted to kill our father!” There should be a procedure that must be followed against these people!

I went to court and the court ruled that the Attorney-General should look into the matter, present a case before court so that Kalonzo could be charged. Since then many years have passed and nothing has been done.

The Commission should recommend that people who used to make others to suffer like Kiilu should be charged. You may think that it was only in the Rift Valley where there was chaos; but also here in Ukambani they saw Kalembe Ndile, an Assistant Minister, being chased away like chicken.

Another issue is the problems that we have in our courts and people really suffering. We need to have a similar system like what happens at the International Criminal Court (ICC); where there is a pre-trial chamber. A case should be heard to see if it can proceed to full trial.

I had nine cases since 1998, before courts until I became a Member of Parliament in 2003 when those cases were thrown out. Why should I have such cases before court and they end up nowhere? So, we can have pre-trial chamber systems to reduce cases going to court and being thrown out later. There should be a judge to be listening to cases and determining their worthiness for full hearings. This can save time.

In general, when I watch news on TV that eight thugs have been killed in Kawangware or in Kibwezi and it is said that they were found with four fake or so guns; to me that is injustice of human rights. There should be a system where people are arrested and taken to court instead of being shot dead. If they must be shot then they should be shot on the legs to disable them and arrest them and take them to court for trial.

I lost my brother who was sixteen years old and I want explain a bit so that you can understand this story. In Kibwezi we live on a highway. One day, a lorry came from Mombasa with iron bars and the driver asked some boys to help him so that they could pay them. While the boys were working, the police came and shot the boys dead including my younger brother who was 16 years old and was attending school. We made a follow up and inquired and nothing was done. So, when I hear that the police have killed robbers, I do not see any truth in that. We need to have a system that respects the law and human rights. The police, they should look for a way to save a person's life.

To conclude, I do not know what this Commission is going to do, but we have great expectations from you. You should listen to what has happened to Kenyans for all those years; the injustices that had happened to us without the Commission taking any step. I do not think we are moving forward.

The Commission should receive good recommendations and forward them to the Government for implementation; otherwise we will not be a country to live in.

For example, the Kenya Army, the Navy and the Air Force are pursuing Al Shabaab while the police officers have been left behind destroying houses in Syokimau and Kyiangombe areas. A mother is there innocently seated there and her son dies.

If the Government allows Al Shabaab to put a tent in Kyiangombe, Maasai slums and at Eastliegh, where the houses were destroyed; you would find that the Al-Shabaab are more than you ever thought. I can even be their sympathizers. The Commission seems to listens to us and I cannot know what we can do.

The TJRC Commission should make recommendation on the 1998 killings. People killed each other because of tribalism. The Commission must give strong recommendations because when I went to Rwanda I found that the Rwandans killed each other because they thought others had been given authority more than others.

Here in Kenya we have not learnt anything from the Rwanda Massacre. Tribalism is still rooted here in Kenya and our leaders are not helping the people come out of that. When they come to Ukambani, they tell the Akamba people to be united and when they go to the Kikuyus they tell them to be united. I can tell this Commission that the Kikuyus who

are carrying the heavy loads are at Nyamakima; carrying sacks of potatoes. They carry heavy loads while President Kibaki's pen is being carried by his Security officer or Personal Assistant. That is the big difference.

In Kenya we have two tribes; the rich and the poor. So, the Commission should look at it. We cannot have a system where, for example, the Ministry of Finance, the Minister is a Kikuyu, the PS is a Kikuyu, the KRA commissioner General is a Kikuyu and the Governor of Central Bank is a Kikuyu, Controller and Auditor General is a Kikuyu, the Police Commissioner is Mathew Iteere is Kikuyu, Mbugua is a Kikuyu. Things will go well for them. People will still fight again. So, this Commission should recommend something very strong.

One time I went I talked to the Chairman of the National Cohesion and Integration Commission, Mr. Kibunja and I told him: "You are also from the Hills and you should resign. If I were you, I was to take this to President Kibaki and tell him; you are bringing conflict to the Kikuyu by bringing authority to them without procedure. So, the community is crying saying that their people are being finished and being oppressed. When you put all your people in the security and if something bad happens like what happened during the last elections. If they say that the security people should go to Hague, one tribe will go to Hague. So, let the jobs and responsibilities be shared by all Kenyan tribes. Let the Luo, Akamba, Kisii, Meru etcetera, be given jobs in the security so that they assist each other.

Those are the things which would help this country to be respectable, firm and a country with people who are extremely rich while others are very poor.

Recently, a former Member of Parliament fought his children before he died in Emali because he had a lot of property. I recommend that our system should be made in such way that it helps the common mwananchi. We will not allow a situation where people live a good life while others are living badly.

I thank this Commission for coming to hear from us. We will join hands and support it. Before you make the recommendations we have suggested; you should make corrections on those things that are destroying the country like tribalism.

If you do not do this, our slogan is TIP TIP Amani Kenya. We cannot say this if there is no peace in Kenya.

Mr. Patrick Njue: Thank you, Honorable Kalembe Ndile for your presentation. The order is that I should pose questions to you and then our Commissioners will ask you questions on what you have present.

When you mentioned the Kamba community, one thing is synonymous with this community and that is drought. In your recommendation, since this drought has been there ever since Independence, what is this one thing that can be done to alleviate the drought situation for the Kamba people?

Mr. Kalembe Ndile: The problem in Ukambani is an easy one; we can even feed the whole country. We harvest maize even three times a year, while in the Rift they harvest once a year. It is an issue of availability of water. The government should look for ways of solving the problems of water in Ukambani. If the government wants this problem solved once and for all, it should think of bringing water to Ukambani. I have represented squatters and the Ukambani people and I know that is the big problem and once solved, then hunger will be gone.

Our neighbours are Mwea, Mombasa and if the Government re-aligns settlement and put taps everywhere, that will be one way of solving the problem. I can give an example where we said that there should be one block and people should not live everywhere. We should set aside a place for settlement and another one for farming. We said that we should have four villages and then remember to leave space for public utilities like churches, schools and market centres. So that, when one village has water and a hospital, those facilities should be in less than one kilometre apart. No one should move for many kilometres to fetch water or for hospital services.

For those who do farming, each should; so that when elephants invade farms, they do not destroy one person's farm, but all the farms. The Government can develop Ukambani the way it has tarmacked the roads. Whereas the rail has been vandalized and the metals used as scrap metal; it is possible for the Government to put water for irrigation in Ukambani. Water that drains as run-off to the Indian Ocean is a lot and it is the main contributor to the problems in Ukambani.

Mr. Patrick Njue: Mr. Kalembe Ndile, I saw you with a very nice bound document. Do you have a memorandum that you would want to present formerly to this Commission today?

Mr. Kalembe Ndile: Pardon!

Mr. Patrick Njue: There is a bound copy of a memorandum that you have; could that be the copy that you wanted to present formerly today?

Mr. Kalembe Ndile: I think the memorandum which I have is part of the statement I had written and it was meant to assist me present my testimony. I can make another memorandum on the issues that I have addressed and bring it on another day because it is done by hand. My handwriting is not so good that can be read with ease. I can make another nice copy to give the Commission.

Another thing that I had forgotten is on laws; there should be laws that affect Kenyans in general. There is no torture which is bad than saying that Kalembe who studied with difficulties until he reached Form Four while living in Chulu--- Then you pass a law that one cannot represent people in Parliament unless he/she has a degree. I studied with difficulties while others enjoyed their studies and even went abroad for further studies.

That is not fare! The Commission should make laws anyhow; they should make laws which are democratic.

I am doing my further studies and I want to be professor, but before that, whether I a professor or not, we should go to mwananchi and tell them that we want to be their leaders and that we should be able to tackle their problems. A professor can table his papers and say: "No, you should not give Kalembe Ndile leadership position because I have papers and he does not have." I want that competition to exist because then democracy will prevail.

Another thing that this Commission should take into account is a National Land Commission which I recommend should be tightened so that it can solve problems that we have as it is meant to look at the historical injustices.

In Mololongo, there is a family of Mr. Rufai; an English man who used to oppress our men. He used to press their private parts and even some of them have not fathered children and up to now; he is still there and has not asked for forgiveness. Even if he was not there and his family is there, we want the Commission to look into such issue.

The issue of land is the main one. I would recommend that the problem of farms be solved easily. We had the first generation identification cards and now we have second generation identification cards. I recommend that the people in Commissions be pushed so that all the current title deeds for the first generation be recalled and get recognized by the Government. Even if they are in the custody of banks, they should be returned and new ones issued.

I bought five acres of land and took the title deed to the bank. It is not a must for the bank to return it to me for that purpose of new ones and then take it back to the bank. The bank can return the title deed as it is charged against the loan I have from the bank. If we say that the first generation title deeds will not be recognized, then the people who have them should return them and be given new ones. The Commission should look into the issue of land.

The Commission should ask those people who have large acres of land to explain why they keep thousands of acres when their fellow Kenyans do not have even an eighth of an acre of land. There are people who have, for example, 200 acres whilst others do not have even one acre! They should explain how they got those many acres. In fact, you may find that they do not need those many acres of land. Therefore, they may say that they do not need all those big chunks of land hence we would have solved the problem of land in this country.

But if it continues the way it is now, where Government representatives like Mr. Kimunya and Orengo speaks--- Mr. Kimunya said that in the Rift Valley, title deeds are just pieces of papers and, therefore, such remarks are sources of fights.

Recently, it was revealed that there are fake title deeds at the Ministry of Lands while others are genuine. Those for the common mwananchi are the fake ones while those for the Michukis of Kenya are genuine. There are those who live in the deceased people's

land; they call them home and nobody is questioning them. There are those who have taken land in the same way but they are called thieves while Mr. Michuki is considered holy! We should look into such issues.

We should look at the issues of land from the top to the bottom. We should investigate how much land big people like Kibaki have. We fought about land and we were disrespected by the colonialists. We are happy that this Commission is operational under the leadership of the Lady Commissioner.

Mr. Patrick Njue: Thank you for answering my question. Mr. Kalembe Ndile, you have said you can make a formal write up and send it to us. You have also given us a word of advice and suggestions. I have nothing further to ask you, now Commissioners may ask you questions regarding your testimony.

Presiding Chair, please carry on.

The Presiding Chair (Commissioner Chawatama): Thank you for your testimony and recommendations which we find very useful. At the end of this process, we will come up with a report and in that report; we shall state what we have heard from the Kenyan people. In that report, we will make our findings and we will also make recommendations according to the law that brought us into existence. Our recommendations are mandatory; meaning they have to be implemented. This is why it is important for Kenyans to speak. So, I am sure, Mr. Kalembe that your confidence in this process is high tech.

I would like to find out from the Commissioners starting with Commissioner Farah, if they have any questions.

Commissioner Farah: Thank you very much, Presiding Chair. Thank you very much Honorable Kalembe Ndile. I have known you for some time, you are a leader and you started your leadership from grassroots. You started as a councillor, a Member of Parliament and then an Assistant Minister. We also know that you have advocated for your people, the ones you represented in Parliament and as well as the general Kamba public. In fact, you have even advocated for all Kenyan poor people. We thank you for all that and your presentation.

As you know, our mandate starts from 12th December, 1963 to February, 2008, when the National Accord and Reconciliation Act was signed between His Excellency President Kibaki and the Hon. the Right Prime Minister. It means that this Commission was formed in July, 2009 and up to now there is still impunity going on although it has reduced and democratic space has been opened where hon. Ndile can say anything he wants and no policeman will follow him up.

At the same time, as you said, we are seeing buildings being brought down, which is outside our mandate. All the injustices, we have heard about as we have gone all round Kenya - it is only the Coast Province which we have left - and we are going to present our report on 3rd May, 2012.

If the elections will be held in August, it will only be two months before the elections. And, if they will be held in December, it will still be a few months before that. The future of this country depends on the implementation of the Constitution. We are now looking at the past and, it is only that everything you have been fighting for bore fruits.

How do you see the future of the County Governments and how do you find the greater counties of Ukambani, when they are given resources; shall we still go back to the old politics or shall we now concentrate on the development of our people?

Thank you.

Mr. Kalembe Ndile: Thank you very much as I try to answer that. I think that the money which will come to the counties of Ukambani, will be a small amount compared to the needs of the Kamba community. If you put up water people will come out hunger. The 15 per cent will not be helpful! The central Government should put in place policies that would finish the problems of the Kamba Community. This is because the money reserved for the Kamba community in one way or the other, will be used for other uses like construction of roads, but not for water. For us to move out of hunger and the issues we are facing; I think it will be a small amount of money.

I am appealing to our leaders to look for people who are God fearing and who would stand for their people and look at our resources and take care of them. But, what I am sure of is that, they said that counties will have no authority or power of their own. But I hear that, the security will be ours, so that if the OCPD brings problems here, you will have to go and report that at another place where there is another disciplinary people; because in other countries like America, they have police officers for each county and there are police officers for the whole country who are called Metro Police or some name like that. Those officers can serve anywhere in the country.

On the issue of security, there is somebody who will be answerable at the county level, the Governor. For example, where was the OCS when the houses were being destroyed? There should be police officers like the Metro Police of America who can go anywhere.

They are saying that the Provincial Commissioners will remain working and it is good that I mentioned it before this Commission. The main problem we are facing is the administration. The administration forces were misused and that is why they have been removed in the new Constitution. But, if wananchi are asked whether chiefs should be left in the new dispensation, they will say "yes". But the District Officer, the District Commissioner and the Provincial Commissioners were the ones who used to oppress the people because they were involved in stealing of relief food and when people ask they are transferred.

So, I am recommending that the Government should have a special budget for Ukambani, like the way we have the Ministry for Arid Areas. There is no ministry to deal with the problems in Ukambani, like the water problems that face Ukambani people.

Commissioner Farah: It is still being developed and we cannot speak about it too much. All I know is that regional commissioners will be under Governors and the regional police will be under the Governor. I think the Executive President can also rule the country without the Governor's advice in a particular region.

There will also be some funds set aside for those regions that were not developed before, like Ukambani; by the Central Government, apart from the devolved funds.

We will concentrate on our mandate and we will make appropriate recommendations.

Thank you.

The Acting Chair (Commissioner Namachanja): Honorable Ndile mine really is to thank you for coming to represent your people. We have toured many corners of this country. As one of my Commissioners said, we are now remaining with Coast Province. But rarely do we get leaders to come and share the problems affecting their people, leave alone even coming to attend to hear such problems. We do not want to take it for granted. We know you as a busy person. But the fact that you committed this time to come before us to represent your people, it shows you are a true leader and you care about your people. Thank you so much for the recommendations you have given us.

The Presiding Chair (Commissioner Chawatama): I have two questions to ask you. When you became a Member of Parliament in 2003? Were you in the opposition or the ruling party?

Mr. Kalembe Ndile: I was in NARC Party, the one that removed KANU from power.

The Presiding Chair (Commissioner Chawatama): As a councillor, were you in the ruling party or in the opposition?

Mr. Kalembe Ndile: I was in the opposition.

The Presiding Chair (Commissioner Chawatama): I just want to understand as a person who is in the opposition some of the difficulties or challenges, you faced in leading our people? You were in the opposition. I would like to understand your relationship, if any, with the ruling party at that time. How did your relationship with members of the ruling party help you become an effective leader? Please, be very brief.

Mr. Kalembe Ndile: Thank you very much. Yes, I was in the opposition. I was arrested and charged in a court of law. We were seen to be opposing the Government. You know the Government of KANU had a way of messing people's property.

In fact, I was arrested and accused of pretending to know who killed Tom Mboya and Ouko. They told me that Ouko was not respecting Mzee Moi. At that time, the DC was automatically serving as a nominated councillor in that county council. DCs were very powerful as nominated councillors. There was nothing that could have been approved

without their blessings. He was in charge of the DDC. He used to make sure that we, in the opposition, did not get any support. We used to suffer a lot under KANU regime. The community in Kyulu had a lot of problems because they had elected an opposition councillor. The opposition was from the DP. People were removed from their land, so that they could not vote for the opposition.

If I were to give you my political history, we will stay here until tomorrow. However, I will give you a copy of my book which contains my history in politics.

The Presiding Chair (Commissioner Chawatama): That will be helpful. Now in comparison to then, when KANU was in Government, do you see any difference now in the distribution of wealth? I know that you are in touch with certain leaders. Are you hearing from them that the implementation of certain projects, despite maybe not being in the ruling party, that life is a bit easier, as a leader?

Mr. Kalembe Ndile: I can say there is a big difference. We have freedom of speech where our people can express their views without fearing anybody. As I said, CDF has assisted our people to develop. There are many projects initiated using CDF money. There is a total change in the rural areas.

I was in the Government and did not keep quiet. I used to fight a lot for my people. In fact, there was a time I told President Kibaki that I would not keep quiet even if he appointed me as an Assistant Minister. I was involved in the devolution of resources.

Yes, things have changed, but the level of arrogance in the Government is worrying me. The level of arrogance is too high. People are not respecting the law. However, as a leader, you have to fight a lot for your people. For example, squatters in Kibwezi, I cried for more than three years. I was told I am a son of a squatter. Why did I stay for three years crying for my people? I did not even get assistance for them even if I was an Assistant Minister. I went to State House and asked the President to help me. He told the Head of Public Service, Ambassador Muthaura to solve my problem.

What about the other MPs who did not go to State House? I used to speak a lot on behalf of my people. It is a must that you fight a lot. Today, we have more Kambas in Government, but they are not assisting a lot. They only praise people instead of initiating development in Ukambani. Many Kamba people are in positions of influence. For example, we have Kangeli in KEBS, Mwinzi of NEMA and Mulei of CBK. It is because people have become soft. In my opinion, given a second chance, I will do a lot for my people.

One day, I was with Moody Awori and his house did not have electricity. I fought until he got electricity. It could not make sense to me that a PS would have electricity and a Vice-President stay in darkness.

Right now if you ask Kenyans, who is the second person after Kibaki? He is the Commander-in-Chief. He is the appointing authority. If you ask Kenyans, who is number two, they will tell you, it is Mr. Raila. This is in accordance with the National Accord. However, I can tell this Commission, the second person is Mr. Muthaura. It is not Raila

or Kalonzo. Something can happen without Raila knowing, and without Kalonzo knowing.

You can also hear that Muthaura is the Head of Public Service, and Secretary to the Cabinet. The Government has made this decision. He can tell Raila and Kalonzo not to go to State House. The person who can give orders is the one who is in the second position. So, the Cabinet should be changed.

The Presiding Chair (Commissioner Chawatama): Thank you very much, for your contribution. We have heard you on the issue of the state of the roads in this area. We have heard you on the drought situation and the impact it has on agriculture. We have heard you on the issue of access to justice, land, exercise of various freedoms, including movement and speech.

We have also heard you on the issue of poverty of leadership, and you even touched on extra judicial killings. We thank you very much, for coming, and we look forward to receiving your memoranda.

Leader of evidence step down this witness, and swear in the next witness.

(Ms. Habiba Ibrahim took the oath)

Mr. Patrick Njue: Good morning.

Ms. Habiba Ibrahim: I am fine.

Mr. Patrick Njue: For the record, tell us your name and where you work.

Ms. Habiba Ibrahim: My name is Habiba Ibrahim. I live here in Machakos. I do outside catering.

Mr. Patrick Njue: I want to welcome you, Habiba, once again, to the sitting.

Could you share with us, what it is that you went through according to your statement, which was sexual violation?

Ms. Habiba Ibrahim: I thank this Commission for calling me here this morning. The case that brought you, which concerns rape of my child...

Mr. Patrick Njue: Begin sharing with us the account.

The Presiding Chair (Commissioner Chawatama): Before this witness continues, please, do inform her that it is not necessary for her to mention the name of her child. She can mention the name to you by writing it on a piece of paper which you can share with us. There is no need for her to mention the name of the child.

I was wondering whether or not she has request to be heard in camera, or she wants to speak to us in public.

Mr. Patrick Njue: Thank you Presiding Chair for that question. We have taken caution both, cautioning her against mentioning the name of her daughter, and she has been asked, whether she preferred appearing in public or in camera, and she preferred to appear in public. She may not be mentioning also the name of the perpetrator.

The Presiding Chair (Commissioner Chawatama): Thank you very much, witness and we welcome you to this morning's hearing. We thank you for taking time to come and share with us the story concerning your daughter. We know that it is not easy, and we also know that you had to live with this for quite a long time.

So, please, feel free. Should you have any difficulties, at any time, we will stop to allow you to compose yourself, and carry on. This process is here for you. We are also here for you. Thank you very much.

Mr. Habiba Ibrahim: It was in 2005, I had just moved out of my house. As a breadwinner, I went to do some work. From work, I normally do not have time to talk to my children, or to find out what happened in my absence. So, it was my neighbours who told me my child had been raped. It really irritated me. But I took my time to comprehend what had happened.

When I asked the child what happened to her, she did not tell me the truth. Hadija is fearful because I am harsh. So, she found it hard to tell me the truth. So, I became harsh and I took a knife and threatened her. I told her if she does tell me the truth, I would kill her. I asked her to tell me the truth about what happened to her. After prodding her, she told me what had happened to her. I decided to take her to hospital in Nairobi. I borrowed Kshs1, 000 from my friends to take her to Nairobi Women's Hospital. When we reached the hospital, she was counselled and treated. They found that she was raped. So, after that, I made numerous trips from Nairobi to Machakos. The report was given to me and I took it to Machakos Police Station. At the station, they gave me a P3 form to fill. I went back to Nairobi, so that they could give me the feedback, so that I could sue perpetrators. I was attending the courts frequently and it became expensive for me.

So, as the case was proceeding on, I decided to ask the neighbour why he raped my daughter. I told him if he wanted a woman, he would have approached me because I am a single mother instead of raping my daughter. He just kept quiet. Later on, his wife wanted to hit me with a big stone. But I locked myself inside my house. She really abused me. She was expectant. There was no way I could fight or quarrel with her. She refuted the fact that her husband would have raped my daughter because she really satisfies him sexually.

So, I decided to wait for the court to give my daughter justice. We made several trips to the court seeking for justice. As the case was going on, my daughter fell sick. She was hospitalized. After a few days, she went into a comma. She was unconscious. She could scream. Teachers were surprised and ask me what was happening to her. I told them she was okay, but she was not going to school.

Her condition deteriorated to the extent that she could not eat or even talk. So, that is something that really surprised us. I really got surprised. There are so many rape cases here in Machakos. As a victim of that case, people go to court. However, in most cases, these cases turn against the accusers. My child did not get any justice in court of law. So, I am pleading with the Commissioners to assist us get justice. I do not know if it is only here in Machakos where people are afraid of pursuing justice. A lot of injustice is done on them, but they are afraid of following up these cases. My child was sick. She could not walk, talk or do anything on her own. I really got surprised. Later on, I learnt that somebody did something to my daughter that is why she was not able to go and give evidence against the person who raped her.

After she recovered, I went to court carrying her on my back. It was really difficult for me. As I said, I am a single parent. I separated with my husband long time ago. It was really hell to me. If I wanted to go to court, it forced me to go to my neighbours to give me bus fair or to hire a tuktuk to take my daughter to court. This is an act that is really painful. I did not have anybody who could help me. After the mentioning of the case, I would carry her back home. It is very sad that, at the end of the day, everything turned against me. The magistrate said there was no enough evidence to sustain the case. It was thrown out and everybody turn against me. I wonder why some of us are oppressed by the very institutions we thought could protect us.

So, I just left it to the Almighty God. I did not have any strength. I could not manage to take this case to a high court. The man boasted that there is nothing I would have done because I did not have money. He abused me, but I kept quiet.

There are a lot of rape cases in Machakos Town. I have come here on behalf of Machakos women. I want women who have undergone similar tribulations and come forward and seek justice from this Commission. My daughter has left me with a lot of pains. My child could not stay in class for two weeks. She had a lot of backaches. She was examined and there was no sign of any disease. It is very painful for a parent to see her daughter suffer as a result of being raped. I really plead with you, Commissioners, that the law should take its own course.

It is a pity that neighbours rape daughters of their neighbours and fathers rape their daughters. I know ladies are afraid of testifying as I do because they are afraid of repercussions. What we fear here in Machakos is witchcraft. I plead those women to come forth the way I have done. This is very painful experience. Today, the person who raped my child has his wife and is leaving peacefully. He has his children. His daughter has peace. I do not know if my child would grow up to be married. I do not know if my child would ever give birth. It is painful.

Commissioners, I really plead with you that the law should take its own course. When we got to the courts, we are oppressed. I plead with the TJRC to give us chance to be listened to. People who are weak like us should be protected.

Thank you, Commissioners.

Mr. Patrick Njue: Mama Habiba Ibrahim, I would start by expressing my empathies for the agony that you and your daughter have gone through.

Ms. Habiba Ibrahim: I thank God because my daughter told me that I should take her away from Machakos. I took her to my sister in Kajiado. In Kajiado, she was counselled properly.

So, when she came back to Machakos, she was fully recovered. As we talk today, she is in Mombasa. She is a saloonist. She is really working hard to make ends meet.

Mr. Patrick Njue: Thank God for that. Save for your daughter, do you have any other children?

Ms. Habiba Ibrahim: Yes, I have grown up girls. I have another one younger than Hadija, but still I fear for her because bad people are always there. There are so many rampant cases of rape. If you go to Children's Department, you will understand what I am saying. There is no help that is forthcoming.

Mr. Patrick Njue: Do we have NGOs or such liked minded organizations that are working with women like you in the area of protecting children and their rights that you could have even, perhaps, contacted and worked with for your case?

Ms. Habiba Ibrahim: We have the Children's Department here in Machakos. But even if we take the case there, by the end of the day, we do not get any help.

Mr. Patrick Njue: I know that you have some documents with you. I wonder if these are documents relating to this very case. Are they documents that you are willing to share with us?

Ms. Habiba Ibrahim: Yes, I have documents from Nairobi Women's Hospital. I also have documents from the court. I also have also some documents from the lawyer. I plead also that some action be taken against this lawyer. He wrote something that is very bad to me, something that cannot help me.

Mr. Patrick Njue: Are you willing to share these documents with us?

Ms. Habiba Ibrahim: Yes, I am willing to give out these documents.

Mr. Patrick Njue: We will make copies for our records. We will return back the originals to you. For the record, Presiding Chair, these are just bonds to court and a letter from the advocate. They are also treatment notes from the Nairobi Women Hospital. This could be formally admitted to the records of the Commission.

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

Mr. Patrick Njue: Mama Habiba Ibrahim, you said such cases are rampant in this town. You have come out on behalf of many women who could be facing similar incidences. I identify you as a strong woman. I commend you for that. I ask that your being that voice for the women. Encourage them to come out, join hands with them to fight this and many other vices that affect our women and children. I want to say most importantly, even tomorrow we have a women's forum, and I encourage that you and other women attend to share more. Thank you coming; our Commissioners can seek clarifications from you.

The Presiding Chair (Commissioner Chawatama): Thank you very much for sharing what your daughter went through with us. I would ask Commissioner Wanjala, if she has any question.

The Acting Chair (Commissioner Namachanja): Thank you so much, sister Habiba for being strong to come and share, what happened to your daughter. I would like you to help this Commission by coming up with practical recommendations, on what needs to be done to ensure that justice prevails in such situations. You have said so many times that you did not get any help. What kind of help, did you feel that you were supposed to be getting at that time and you did not get?

Ms. Habiba Ibrahim: As I said, I am a single parent. I was not able to continue with the case. But the law ought to have taken its course because there are so many women at the grassroots level who have suffered just like my daughter. When they go to court, they cannot raise money to help them continue with the cases.

Many ladies at the grassroots level believe in witchcraft. If you believe in Almighty God, nothing will affect you. Today, I am here and I have really seen that my issues will be addressed. I am God fearing, but I also believe there is witchcraft. If you come forth, and speak for yourself, just believe in God, and He will defend you.

Women should not be afraid of speaking the truth. I know people in Machakos believe in witchcraft. I do not fear witchcraft. If at all I feared witchcraft, I will not be here today. I urge women not to fear witchcraft. They should believe in God and they should be frank with themselves. They should come forth and be honest and be open to this Commission. That is what I wish to tell women, especially single parents.

The Acting Chair (Commissioner Namachanja): You also said that your case was thrown out of court because of lack of evidence and that there was no witness. What about the lady who informed you? Did she not come to testify in court?

Ms. Habiba Ibrahim: She did not come because her husband was employed by the same people I was accusing of raping my daughter. There was one lady who was supposed to come and testify, but she was transferred to Hola. She was very good. She was supposed to be my witness, but she was transferred.

The Acting Chair (Commissioner Namachanja): You did not have any means of getting her from Hola.

Ms. Habiba Ibrahim: No, I could not get her because I did not know specifically where she was staying in Hola. I was told that she was afraid that if she involved herself in this case, her husband would be dismissed. There was a house girl or maid who heard my daughter scream as she was being raped. She was to be my witness, but she was dismissed by her employer because she would have revealed the truth. So, I did not have any witness.

The Acting Chair (Commissioner Namachanja): Thank you Mama Habiba. *Pole sana dada yangu.*

The Presiding Chair (Commissioner Chawatama): I have a few questions to ask. One of the things that we, as a Commission, will do is to hear from institutions. We will start with judiciary. We will also hear from the police.

My questions are directed at the way you were treated by both the police from the time you reported as well as the judiciary. Could you share with the Commission your experience with the police when you reported the incident of the defilement?

Ms. Habiba Ibrahim: There was no help forthcoming from the police. I just got good counselling from the hospital. The police officers helped me, but later on, I did not succeed.

The Presiding Chair (Commissioner Namachanja): Did you feel comfortable when you were making the report of the defilement to the police?

Ms. Habiba Ibrahim: Yes. I was comfortable.

The Presiding Chair (Commissioner Namachanja): Did they get the statement from you or your daughter?

Ms. Habiba Ibrahim: I am the one who recorded the statement, because my daughter is ...

The Presiding Chair (Commissioner Chawatama): Did the policemen get statements from any of the witnesses? You talked of a woman who told you about the incident who was transferred to Hola. You also talked of a house girl who heard your daughter scream. Did the police take any statement from them?

Ms. Habiba: There was no one who recorded his statement, or her statement as a witness. This is because the maid was dismissed and the woman was transferred to Hola.

The Presiding Chair (Commissioner Chawatama): So, when you went to court the police did not bring any witness to court? What did the police say to the magistrate or the judge in as far the witnesses were concerned?

Ms. Habiba Ibrahim: What surprised me was that I took my daughter to Nairobi Women's Hospital. When the case was going on, there was no doctor from that hospital who came to give a report. The report was given by somebody from Machakos General Hospital.

The Presiding Chair (Commissioner Chawatama): In what ways did you find the court unhelpful?

Ms. Habiba Ibrahim: I did not get a doctor as a witness from the Nairobi Women Hospital.

The Presiding Chair (Commissioner Chawatama): There is a provision in all laws in Commonwealth countries because it is recognized that not everybody can afford to come to court and pay the fees that are required. So, there is a provision for poor people to be assisted, especially in a case like this where it was a criminal matter and it is the Government of the Republic of Kenya, who were bringing this case against the person who was alleged to have defiled your daughter. I do not understand why you had to go through all those problems.

We thank you for your testimony because it will help us understand how the players in the criminal justice system are carrying out their work and how ordinary citizens in this land can access justice because justice is supposed to be for all. Justice is not for the rich only but for all people. We thank you so much. Our report will be richer because you have contributed to it. We are also grateful especially Commissioner Namachanja and myself because being women, we are happy that you are able to speak freely in a public place so that the men may understand some of the challenges that we go through as women and mothers and that it is wrong for a man who should have taken on the role of a father to have defiled your daughter and yet it was not your daughter's fault or your fault. It was the man who chose to defile your daughter which was totally wrong. We thank you once more and we formally invite you to the women's meeting tomorrow where we will share in depth and assist other women who have found themselves in similar circumstances.

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

Mr. Patrick Njue: Commissioners, our next witness is here and ready to present his testimony.

The Presiding Chair (Commissioner Chawatama): I think you need to tell us who the person is and what his role in preparation of the memo was because depending on his role we will decide whether his role is to just present the memo to us or whether we will allow him to speak over the memo.

Mr. Patrick Njue: From the copy of the memo that he has just given to me, I can see that he is one of the editors or writers of the memorandum. He is called Dennis Kiseli. I

believe that he is well versed with the matters in the memorandum and he can ably make a presentation.

The Presiding Chair (Commissioner Chawatama): The memo comes from the elders but is his position in the council of elders?

Mr. Patrick Njue: He is the coordinator.

The Presiding Chair (Commissioner Chawatama): We will proceed in this manner. In the absence of Dennis Kiseli who was listed to be heard this morning, we will hear the coordinator but also bear in mind that the first witness also spoke on the challenges faced by the Akamba people. I do not know if we could ask this witness to maybe fill in the gaps. I do not know if he was present when the first speaker presented. If he is able to, let him just fill in the gaps.

Mr. Patrick Njue: Unfortunately, he may not have been there. He just walked in a few minutes ago but I will guide him on the issues and recommendations.

(Mr. Stanley Mulinge took the oath)

Good afternoon, Mr. Mulinge?

Mr. Stanley Mulinge: Good afternoon.

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

Mr. Stanley Mulinge: My name is Mr. Stanley Mulinge Kaleli. I am a retired social development assistant. I have been working here in Machakos for 25 years and now I am retired and at home. At the moment, I am the coordinator of the council of elders of Thome. We call them Tumewathome.

Mr. Patrick Njue: You are also flanked by a lady this morning. Maybe you could introduce her to us.

Mr. Stanley Mulinge: Her name is Jacinta Gechahara from Yatta District and I am from Masinga. I am the coordinator of Masinga and Yatta. She is the District Treasurer of Yatta.

Mr. Patrick Njue: You are supposed to be accompanied by Mr. Dennis Kiseli. Could you tell us where he is this morning?

Mr. Stanley Mulinge: I was to come with him but he is not feeling well. I am from his home in Masinga and he told that since he is not feeling well, he cannot come.

Mr. Patrick Njue: When you go back, take back messages of quick recovery to him. Now on the presentation that he was supposed to make this morning regarding the issues that affect your community in this county. In the memorandum that you have brought us, there are issues that touch on education, could you tell us how that has been affected in this county?

Mr. Stanley Mulinge: We have schools which are very old like Kabaa, Kagundo, Esuni and Kiteta. We want these schools to be upgraded so that they can be like Maseno or Mang'u. I do not mean that they are bad but their standards are low contrary to our expectations.

Mr. Patrick Njue: What about water? You have listed in your memorandum that water is a big problem in this community.

Mr. Stanley Mulinge: We have so many rivers in Ukambani like River Athi but during the drought in Yatta and Masinga we just see water at the river but we cannot use it. We would like the rivers to be used effectively so that we can get water. The Government should construct big dams so that the effects of drought in Yatta and Masinga are reduced.

Mr. Patrick Njue: Let us move on to roads.

Mr. Stanley Mulinge: There is no proper infrastructure in Masinga and Yatta. All the roads are earth and we do not have tarmacked roads. As we were coming along we took a lot of time because the road is not good. I come from Masinga and from there to this place takes a long time due to the bad state of roads. There is no road that has been tarmacked in the district. If we could have two or three tarmacked roads, then infrastructure would be very good and transportation would be very easy. Even in such meetings, it would be easy for our people to attend. Trade would also be enhanced if we had good infrastructure.

Mr. Patrick Njue: Let us talk about employment.

Mr. Stanley Mulinge: We have many companies here including KenGen which is in Masinga Dam but the people in those areas are not considered during employment. The people working in those companies come from very far. They are not even considered as casual labourers. So, we are saying that if possible, we should also be given an opportunity so that our residents benefit from the fruits of independence.

Mr. Patrick Njue: What about the issue of land?

Mr. Stanley Mulinge: There is a very big land near KenGen that belonged to the community but it has now been taken over by KenGen. Now people are squatters in Kivami, Ndalani and Sabuku. There are many people there who do not have land and yet there is that big land that belongs to KenGen. The people who were evicted from that place were not compensated. We were promised to be given 20 per cent of the proceeds

that come from all the projects but up to date we have not received anything. We were thinking that this Commission should recommend that we also share in the revenue that comes from there and the fallow piece of land should be given to people or the people should be compensated.

Mr. Patrick Njue: I also note that there are some historical injustices mentioned here. Could you quickly take us through some of the historical injustices that occurred here?

Mr. Stanley Mulinge: Thank you very much. We are saying that the boundaries that were in Ukambani have been changed. For example, Kilimambogo Teachers College used to be Ukambani but we no longer have it. The boundaries were changed from the side of Thika. The other places were taken by Kiambu, Thika and Nairobi. When you go to history you will realize that Embakasi was in Ukambani but it is now in Nairobi. We are requesting that the original borders should be reinstated and if there is a problem then we should be told. We have lost a lot of chunks of pieces of land and that people are landless. The revenue that used to be collected used to come to Machakos County Council but now it goes to Kiambu, Murang'a and Thika. So, we are saying that if there is a problem then we should be told because we just see our land being curved away and we are not told what is happening.

So, we are seeking redress over that.

Mr. Patrick Njue: How is the issue of oathing of 1963 of concern to your people? Tell us what it was all about.

Mr. Stanley Mulinge: I was not there when this report was being written about the oathing incident. I wanted Mr. Kiseli to tell us how the oathing is affecting the people. So, I cannot talk about because I do not understand it properly and I did not compile this report especially on the part of oathing. Maybe other people from Ukambani could give you information about it.

Mr. Patrick Njue: Looking at the recommendations, other than what you have given, are there any other recommendations that you would want this Commission to take on board?

Mr. Stanley Mulinge: I wish to request that if possible land rates should be reduced and the revenue given back to us the way it used to be. We want our schools to be upgraded to the level of Mang'u and Maseno so that they become national schools. We also want to urge that if there is any project being carried out in our area the residents should be considered for employment so that they also benefit. That is why we said that we expect this Commission to recommend justice to all.

Mr. Patrick Njue: Mr. Mulinge, we now have devolved funds from the Government like the Constituencies Development Fund (CDF) and most of the problems that you have raised including schools development, roads and water development have these funds not been of any use?

Mr. Stanley Mulinge: We are very happy because since the CDF came many schools have been constructed. Masinge Boys is really progressing but it has not reached the standards of Mang'u or Maseno Schools. It is only recently that Masinga came up. There is another one that is still not developed. I cannot say that money is misappropriated but we do not know how it was utilized. We want the oldest schools that we have should be upgraded to be at par with other national schools in Kenya.

Mr. Patrick Njue: Now we are expecting the County Governments, what are your expectations? Do you see a bright future for this region?

Mr. Stanley Mulinge: We have organized ourselves from the grassroots to the County level and we have our elders there who will be watching how our money will be utilized. Initially, we did not get that opportunity but now we have structures. All the money that is meant for the public will be used as per the plan.

Mr. Patrick Njue: Thank you, Mr. Mulinge. Thank you for coming to give your testimony and we ask you to take a message of quick recovery to your friend.

The Presiding Chair (Commissioner Chawatama): Thank you Leader of Evidence. Commissioner Major General Farah, do you have questions for this witness?

Commissioner Farah: My question is about the boundaries. You are claiming all the way up to Kiambu and Nairobi?

Mr. Stanley Mulinge: Yes.

Commissioner Farah: Do you think that is feasible?

Mr. Stanley Mulinge: If possible, the revenue that was meant for this place should come back. A place like Kilimambogo was in Ukambani. If it is not possible, it is fine with us but somebody should tell us what part we are going to play regarding those areas.

Commissioner Farah: That is the only question I had. All the other concerns are genuine and we have taken note.

The Acting Chair (Commissioner Namachanja): *Mzee* Mulinge, in your view, why do you think since Independence Masinga and Yatta do not have even one tarmacked road?

Mr. Stanley Mulinge: I come from Yatta and there is only one main road that goes to Garissa and the other goes to Matuu, Yatta and Kithimani. I am a resident of that area and I have been working for community development so I know the terrain very well. Connecting from Masinga to Githini is a problem because there is a river there. So, the only route to Githini is via Embu or Thika. If we can get one road that connects Matuu, Githandini and Masinga Dam it would be good. We need a road to Masinga Dam. If infrastructure was good transport would be easy.

The Acting Chair (Commissioner Namachanja): Are there any reasons why up to now the two areas do not have one tarmacked road? I want your own opinion as a leader. What do you attribute this to?

Mr. Stanley Mulinge: We have proposed several times for example the road from Kivandini to Masinga Dam, the one from Kithimani- Machakos-Makutano and to Kitui. I heard that promise when I was young but I do not know what is happening. We have written a number of proposals and in the meeting we were promised that something will be done but up to now nothing has happened.

The Presiding Chair (Commissioner Chawatama): Thank you. From your testimony, there are hardships that your community faces. You have talked about education, water, roads, employment and land issues. You have also equipped us with recommendations for which we are very grateful. We thank you very much for taking time to appear before us and to have taken the place of Dennis who is not feeling well.

Leader of Evidence let the witness step down and call the next one.

(Mr. Lawrence Mbithi took the oath)

Mr. Patrick Njue: Good afternoon sir. For clarity of records, please tell us your name, where you come from and what you do for a living.

Mr. Lawrence Musangi Mbithi: My name is Lawrence Musangi Mbithi. I come from Ol Donyo Sabuk and I am a businessman.

Mr. Patrick Njue: Mr. Mbithi, you have a lady beside you, could you introduce her to us before we proceed?

Mr. Lawrence Musangi Mbithi: This is my wife. We wedded in 1995.

Mr. Patrick Njue: Mr. Mbithi, you are seated with us this afternoon to share with us what you went through in the hands of police officers in 1997 according to the statement that I have. Do you confirm that to be the case?

Mr. Lawrence Musangi Mbithi: Yes, that is the truth. In 1997 police officers came to our home and said that they wanted to take me to court. They were six police officers. They said that my step father was going to give me my birth right in the court. They got hold of me and took me to Kamburu Police Post. One day in the wee hours of the morning when I was in the cells, the one who was in charge, that is, Senior Serjeant Mwangangi ordered others to punish me before being taken to court. I asked them why they wanted to punish me. I was not meant to ask anything regarding my rights and the problem between me and my step father. They handcuffed me and took me to Matuu Police Station. They began beating me. One police officer called Marua stepped on my private parts to finish me so that I could not be normal again. When he was doing that, he missed my private parts and instead stepped on my bladder. I now could not go for short

call. I became unconscious and when I regained consciousness, I found myself in Matuu Police Station. I felt pain all over my body. The Officer Commanding Station (OCS) at Matuu ordered two police officers to take me to the hospital. One of my legs was paralyzed due to the torture that I had gone through.

It came to a point where I was unable and I did not know what to do. I just persevered and the left foot that was really hurt was bandaged when they took me to the hospital. They referred me to Kenyatta National Hospital so that the doctor could examine me properly. After that I was taken back to the police station. The OCS pitied me and wanted to release me but because of the grudge between my step-father and me I pleaded with the OCS to take me to court. I needed a piece of land to develop and to settle my family because I was married by then. The OCS keenly listened to me and he told me that he would not release me but he will take me to court. I was taken to court when I was still sick and I pleaded with the court to release me on bond. I was given a free bond worth Kshs10, 000 and that is when I was able to go to the hospital for treatment. The court realized that I was tortured so it gave me a free bond and that is when I got an opportunity to go to Kenyatta National Hospital Neurology Clinic. I was operated on because I was not able to urinate. They inserted a bladder that enabled me to urinate and I still have it on me up to now. I did not have enough money for the operation so that I could be normal.

I appeal to this Commission that, if it is possible, weak people like me who were tortured and could not afford treatment should be helped. I managed to win the case that I was being accused of because I was innocent and the court released me. They charged me with creating disturbance in a disorderly manner and when we were in court, the truth did not come out. There was not enough evidence to pin me down so the court released me under Section 215 because there was no evidence. I asked the court if it was right for me to be injured but God helped me. The judge told me to go and take the court proceedings and judgment and look for a counsel who could write to the Attorney-General. I went and did that in 1999 and began with a lawyer from Embu. He delayed and when I saw that he was delaying, I took the case from Embu to Nairobi and sought another lawyer who could help me. I did not get any lawyer who was capable of helping me quickly so I withdrew it from Njagi and Company in 2000 and approached Rumba Kinuthia and Company who took up my case.

The case has been in court since then and nothing has happened. In 2004, I gave out my testimony and I have been in court since then and every time I go to court I am told that the court cannot continue with the case. It is postponed and sometimes it is heard only once in a year. Sometimes I get a different lawyer each time I go to court and so I bump from one court to another. I have been living under stress and I have one child and up to date, I have never gotten another child. I was innocent even before God who created me and the police officers destroyed my life and now I cannot even get children. I am still sick and ailing to date yet those police officers are still in their jobs.

I recommend that people like me should be helped by the Commission so that I can also have peace knowing that the law has taken its course against the perpetrators. There are

very many people whose rights have been violated by the police officers and I would recommend to this Commission to see what can be done to the victims because these people are poor and weak. This will enable these people to resume their normal lives. I cannot go for an operation because I am not able and the case has taken many years in court and nobody is giving a verdict.

My life has been destroyed and the only person who cares for me is my wife and it has been very hard on her. It is hard for a man not to work because of being disabled. I was disabled by a police officer because he had a crown. Instead of investigating the case that is before them, the police officers just think that they should be given bribes.

I recommend to this Commission to find a way of helping all those victims whose rights were violated and who were tortured by the state and are still languishing in poverty. The Government should take responsibility so that those people can enjoy their rights. I also pray that police officers should make sure that justice is done when they arrest people by investigating the case before taking them to the cells. There are very many people who are arrested for no reason because the police do not follow the procedures of arresting people and taking them to custody.

During Moi's regime, bribes used to be given out and this made this practice to continue up to today because someone could be killed because of my bribe. I recommend that the Commission should ensure that justice is done. If one is accused, the accused person should be investigated before being arrested. That is all I have to say.

Mr. Patrick Njue: Thank you Mr. Mbithi. I start by expressing my empathies for the pain and suffering you have undergone during the ordeal with the police officers. That is pain which is evidently shared by your wife today. You have talked about the date being 28th in 1997. What month was that for the record? You say that the reason why they took you was because there was supposedly a grudge between you and your step-father.

Mr. Lawrence Musangi Mbithi: Yes. The problem that led to my arrest was that when my mother got married to this man, he did not like me as a child. He felt that I was not his biological son and there were many problems between me and the gentleman. He used to punish me when my mother was not there so when my mother died in 1993, he chased me away and said that I am not his child since he did not give birth to me. That is how the tug of war between me and this gentleman started.

In my ID, I am called Lawrence Musangi Mbithi and you are John Mbithi Mtwewa so I asked him who my father was and why he was denying that I was his child when my mother was no longer there. I told him that I do not know who will show me my real father whom he was telling me to go to and he said that he will take me to court and show me my dad. I told him that that is my right because the government is there to protect me and I have an ID. I just accepted because my mother was not there and I was the first born in the family and he started oppressing me because he did not give birth to me. So, I really had problems getting satisfaction and living normally like any other child. It forced me to accept that he should go and sue me in court and the court should decide if I am

really his child so that justice should prevail. I moved out of his home and I am now living in Donyo Sabuk because I was searching for my real dad. I thought it wise to go to my maternal grandmother who showed me my real father in 2004. I went to my biological father and told him what had transpired and he accepted me and told me to stay and live like his child and I am still living there. I really strained a lot before I finally met my father and I would recommend that when those children who were born out of wedlock have problems with their step-father or step-mother...This Commission should ensure that justice is done to all children because a child is a child be it biological or not. It is not right that when one parent is no longer there, then the child is segregated. I would request this Commission to try and look at the rights of the weak

Mr. Patrick Njue: The point at which the police officers were assaulting you, were they talking to you as they assaulted you?

Mr. Lawrence Musangi Mbithi: They told me that I was just being disciplined. I was handcuffed from behind and they landed on me with kicks and beat me everywhere especially on the reproductive organs. They should not have handcuffed me from behind and beat me. They should have taken me to court for the judge to decide. These police officers do not really follow the law and they violate human rights.

Mr. Patrick Njue: I wonder when was the last time you spoke to Rumba Kinuthia the advocate who was handling the case on your behalf.

Mr. Lawrence Musangi Mbithi: I was with him in March this year at the High Court in Chamber No. 12. When we went to that chamber, the case was postponed and the doctor was supposed to come and give him a report about my health status.

When I followed him to ask, he told me that because I sued the State, it has to move slowly. He told me that he will make it to move faster because of my health and I told him that justice delayed is justice denied. He told me that if I see that he is not working well on my case, then he can get another lawyer for me and he demanded Kshs30, 000 from me. Taking the case from him meant that I was to pay him Kshs30, 000 and I did not have the money so I just agreed because I am a poor person. I just decided to leave the case with him. I believe that God will help me and God performed a miracle when this Commission came and I was invited to appear before it so that a child out of wedlock will be given his right.

Mr. Patrick Njue: I was asking because I wanted to know of the next hearing date but since we have the case number I can notify you of the progress. You had previously submitted some documents to us which basically are the charge sheet and the proceedings of the criminal case, letters from Rumba Kinuthia informing you of the various hearing dates and even the medical report. Would you wish to have these documents formally admitted to the records of this Commission?

Mr. Lawrence Musangi Mbithi: Those are the documents and there are still more like the court proceedings of the same case and the judgment of that case. I did not take them

from the advocate. After the first case in 1997 and when my dad saw that I was given a chance to continue, he brought in another case from January to March, 2008. My father brought another case so that he could oppress me because he really hated me as a stepchild. There are more documents that I can bring to this Commission if it allows me.

Mr. Patrick Njue: That you can always do. Indeed, we can access the documents at any given time. Presiding Chair, we pray that the said documents be so admitted.

The Presiding Chair (Commissioner Chawatama): All documents are admitted as prayed.

Mr. Patrick Njue: Lastly, you have said that there is still need for future medical operation.

Mr. Lawrence Musangi Mbithi: I still do need an operation.

Mr. Patrick Njue: What is the catheter that you are using at the moment?

Mr. Lawrence Musangi Mbithi: I heard the doctor saying that he will perform an operation and that is why I was given a catheter. A hole was pierced in my stomach where a catheter was inserted so that I can release urine because I cannot urinate normally because I was injured when they stepped on me.

Mr. Patrick Njue: Thank you, Mr. Musangi. The Commissioners will now ask you further questions for clarification.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. Your testimony is very clear. I personally felt as if I was sitting back in my court room and listening to a witness. It is pretty straight forward and the only thing I would like to understand is where does the blame lie for the delay in having your matter disposed of?

Mr. Lawrence Musangi Mbithi: I wonder if the case will end when I am already dead because it has taken a lot of time and I am suffering. The Government officers who injured me are normal right now, they are eating and they are doing their duties. I was paralyzed and I am just staying in the house being taken care of by my wife. Why should it not be speeded up so that I can go for an operation? This Commission should guide the Government or recommend to the Government on what it should do because the Government should take care of me so that my health can normalize. That is why I am saying that the problem is the delay of that case and it is not good.

The Presiding Chair (Commissioner Chawatama): We will study the documents that you have submitted to us and we will make the appropriate recommendations and if there is a way that we can intervene early enough and if we are able to engage certain officers... We will try to see if we can quicken the process. We have had instances where we have partnered with other organizations and we will possibly look at whether or not

we are able to facilitate your being medically attended to. There are some things that we can do in the short-term while others are long-term. So, we will look at your issue and see at what stage we can resolve it and you shall be informed accordingly. Thank you very much for taking time. Where the institution of marriage is strong, those are the kind of countries where lives of their citizens is also good and where children...

(Technical hitch)

...person that she is for the patience and love that she has exercised and today we acknowledge that she is a hero. We wish you well and we wish your marriage well. We thank you very much.

Mr. Lawrence Musangi Mbithi: Thank you very much. I also appreciate.

Mr. Patrick Njue: The Presiding Chair and Commissioners, next we have Witness No.6 on our hearing list.

The Presiding Chair (Commissioner Chawatama): Could we just be informed how many more witnesses we have present.

Mr. Patrick Njue: It is only the witness who has just taken the stand.

The Presiding Chair (Commissioner Chawatama): Please go ahead and swear the witness.

(Mr. Dismus Kaviti took the oath)

Mr. Patrick Njue: Good afternoon Sir! Please tell us your names, where you come from and what you do for a living.

Mr. Dismus Kaviti: My name is Dismus Nzioki Kaviti. I was born in Uvaini Village, Masii Location in Mwala District but currently, I am in Donyo Sabuk selling clothes. I am a prophet of God and I am sent by Him to different churches, pastors and bishops.

Mr. Patrick Njue: Having recorded a statement with this Commission on dismissal from employment; having been a constable serving in the police force, maybe you can take us through the circumstances that led to your dismissal. Before telling your story, I will ask that you do it slowly so that we can get the translation in English.

Mr. Dismus Kaviti: It was on Tuesday, 23rd May 2003 when I was working in the police with a team called “standby”. At around 8.30, we were informed that four bags of pineapples have been found at the AIC gate. I left with another police constable called “Japheth Mutisya” to that place and we found the four bags. While we were looking for *mkokoten*i so that we could load those pineapples, three people came. They were two females called Nancy Mutua and Jane Wairimu and a man called Alexander Muthama. They told us that the three sacks of pineapples were theirs so Nancy Mutua started

threatening us and I told Constable Mutisya to go and take bonds because I knew that the case would take long. He went and I was left alone. I sent one member of the public to go to the police station and call for reinforcement and bring a *mkokoteni* so that we could load the pineapples. The Good Samaritan went to the police station and told the officer who was on duty that I had sent him. He was given the *mkokoteni* and he came with Constable James Ngunyi. When he came, he found the woman still abusing me and saying that even if I took her to prison, she would not sleep there because she would bribe the officers. She also said that she would make sure that I was transferred and if not, she would make sure that I was fired from my job.

We put the four sacks in the *mkokoteni* with Constable James Ngunyi and we arrested the three people; two females and one male. We went with them to the police station and at the station we found a police constable called Samson Mautia on duty. He booked the suspects in the Occurrence Book No.6 of 23rd May, 2003 at around 0900 hours and wrote that police constables Dismus Kaviti - No.53319, James Ngunyi - No.52929 and James Ngunyi had arrested them. It was recorded that we both took two female suspects namely, Nancy Mutua and Jane Wairimu and one male suspect Alexander Muthama and charged them for being in possession of farm produce; four sacks of pineapples. They were put in the cell and the four sacks of pineapples were taken to the store as exhibits. The entry was signed by Mautia.

I was to report for duty at 3 pm and it is written here that Dismus Kaviti was to take over duty from PC, Mautia, while five prisoners were held. The prisoner's property reads, "Cash Kshs350" and I have signed where I have put the entry. At 4 pm, the OCS came in and I told him that we had arrested two women and one man with four sacks of pineapples from Del Monte. I told him how the woman said that she would not sleep in the cells and that she would make sure that I was transferred and if she failed, then she would make sure that I was fired. He sneered at me and if you look at the OB of 23rd May 2003, at around 1800 hours, I was working at the report office when one police officer called Constable Busienei came with Mbai. That constable asked for the keys to the cell where the prisoners were held and said that the OCS had asked that I give him the keys. He was told by the OCS to remove the female from the cell and take her to the house so that she could give him money and he frees her. When you look at the OB of 23rd May 2003, you will see that it is written that prisoners were released under the instructions of OCS, Inspector Stanley Nyaga. The PC Busienei released one prisoner namely Nancy Mutua on cash bail of Kshs1, 500. She left the station without any complaint. This entry was sent by Busienei and it is true in the occurrence book. You will see that there is no place where they are told to go to the police station or to court. In the occurrence book of 23rd May, 2003 at around 2100 hours the prisoners were released. Prisoners are not allowed to be released at night and you can see here that the prisoner was released under the instructions of the OCS Inspector Nyaga and Mautia and it said, "release two prisoners namely Jane Wairimu and Alexander Muthama on cash bail of Kshs1,200". They were told to report to the OCS on 14th May without fail. They left without any complaint while appearing normal. This entry was signed by PC Mautia. Normally, I would have left the job at around 11.00 pm but there was a constable called Mwangi who had not arrived on duty. Leonard Mwangi was booked on sentry duty while one prisoner

was held on custody and you can see that VC Mwangi has signed. My time for leaving was around 11 pm, so I sensed danger because I saw that they wanted to write that I was on duty because as a police officer, you have to hand over the prisoners, money and weapons to the other person who takes over. If there was nothing, then they would not take over and I saw that there was a game they were trying to play. Maybe they would say that I have lost a gun or pistols. So in OB, 13/5/2003, at around 2100 hours, I took Mwangi to the cell to look at everything and I gave him the guns. I walked with him to the yard and I showed him all the exhibits including the pineapples and the cars that had accidents and when he was satisfied, I handed over. I did not write the entry duties because in future, this thing can help many people and they would see what was happening to the police officers.

Mr. Patrick Njue: We have the documents detailing the events of the OB and since this is an ordeal that took place and you know the facts, you can only speak from the top of your head. Tell us what happened without necessarily reading from the OB since we have these copies. From the top of your head, tell us your story. What happened after you were released?

Mr. Dismus Kaviti: My sacking comes from this OB and this is my main document in my case. This is what will make me to be compensated or not. I wrote duty hand over to Mwangi as per order from the OCS Inspector Nyaga with one prisoner in custody. The others I had arrested in the morning had been released and it is in OB6, "Being in possession of four sacks of Del Monte pineapples". I came and briefed the OCS of how one woman namely Nancy Mutua behaved towards me. The same prisoners were released at 1800 hours and others by the OB at 2100 hours. He told me that he is the OCS and I do not have any powers to defy what the OCS has decided. The same prisoner told me that they would transfer me or make me to be sacked but the OCS seems to be on their side. The officers of this station have witnessed everything concerning the prisoners. I have also brought members of public who were there when I arrested the said prisoners. I have told the OCS the same and I have handed over MV5 Rifle, serial numbers 7500743 with 30 rounds to PC Mwangi who signed in the remarks column. I was the one who made that entry and if you see in the OB No. 8, the following day at about 7.45 am - the OCS must check the OB - it showed that the station record was checked and found well maintained. He had noted that Police Constable Dismus Kaviti seemed to have forgotten his role as a police officer as regards discipline and he would be charged to serve as an example to others. He said the he would brief the OCS, Kangundo, with the details and meanwhile Sergeant Kemboi would serve the Constable with notification. He also noted that one prisoner was held in custody with no complaint and the OCS himself had signed.

That was one of the charges that made me to be sacked. I looked at this and saw that this was a difficult situation. There was no other senior officer that I could complain to further. I went to Machakos and complained to the OCPD about the case and I wrote an OB in Machakos, OB10/14/65/2003. I then wrote at the Occurrence Book that I arrived at Machakos and I waited for the OCPD. I entered into the OCPD's office and told him everything that had happened, how the prisoners had threatened me and how the OCS had discharged me. I was employed in 1987 and I had served for 16 years, so I wanted

my file to be clean so that I could be promoted. I wanted the OCPD to know the truth and he told me that he would come to Donyo to look into the problem. I slept in Machakos and in the morning, I wrote in the Machakos OB and then I came back to Donyo. When I came back to Donyo, I wrote in OB9/15/5/2003 at 1050 hours. I wrote that I had returned and that I had talked to the OCPD and I signed. Things went badly that day. I heard the OCS talking on phone saying "Yes, Sir". So I thought that he was speaking to the OCPD. He told me that he would make sure that I was charged. I told him that I went there to finish my problems and that I had finished my exams a long time ago and that he wanted to make my file dirty. If it were not for these charges, I would not have anything bad on my files. I had served for five years in Moyale and no member of public had ever complained about me, but he told me that I had to be charged. At one point, I wanted to write about my frustrations because I had gone through many problems since I left college in 1987. I was posted in Marsabit and in 1988, I moved from Marsabit to Moyale. In 1989, I went to Sabari and in 1990, I was transferred to Laisamis.

The Presiding Chair (Commissioner Chawatama): According to the brief that we have received, what we expected to hear today is on the issue of your dismissal from employment. From what you have told us so far, you have laid the foundation or what we think is the foundation that led to the action of your dismissal. We would now like you to focus on that.

Mr. Dismus Kaviti: I was frustrated and I wrote a letter narrating how I arrested prisoners and they were released and how I had finished my exams yet I had not been promoted. I also wrote a letter of retirement due to frustrations. On 16th, a journalist with *Taifa Leo* Newspaper who lives in Donyo Sabuk called Victor Nzomo asked me why I had written a retirement letter. I told him how the prisoners whom he had seen had bribed and they were released. I told him how they said that they would make sure that I was transferred or fired and how the police officers were looking for a way to spoil my file. He asked me where the letter was and I showed it to him. I did not hide the letter from him and God had said to me that there was no problem in showing him the letter and that in future, it would serve as documentary evidence. The *Taifa Leo* Newspaper and the supporting documents would show the truth.

In July, I was given a notification that I was charged with using subordinate language. I was told that it was wrong to speak to journalists, so I was charged for that also. I signed the notification, but there was another game that was coming in and they were looking for something to make sure that I was fired. I stayed in the station throughout and one day, I was omitted from the duty roster. One is removed from the duty roster if he is fired or transferred. I applied for 21 days leave and on 24th, I wrote an entry. I wrote that I had been omitted from the duty roster. I was called in Machakos and the police charges were read. I wrote a letter to the Commissioner of Police through the OCS, OCPD and PPO.

I was told that the Commissioner had rejected my letter, but I told them that there was no way he could refuse by word of mouth. When the charges started, it is as if I was winning. I asked them questions but they were not answering. My service divisional file had the order room proceedings. The witnesses finished giving their evidence and it was now my time to defend myself. The person I had handed over to PC Mwangi went to his home for three days because he knew that he was one of my witnesses so he was given

permission to go home. I told them to call my witness so that I could defend myself but I do not know if they did. I used to work as a report office personnel and one day a car came with typed documents and I was told to sign order room proceedings. I told them that order room proceedings were not over because I had not defended myself. I told them that I would not sign because I had signed the original document and I feared that they may forge and write other things. I told them that I would not sign the typewritten one, so I did not sign. One Sunday in August, a police officer called PC Businei came and told me that I was wanted in the police station. When I entered the station, the deputy OCPD told me that unfortunately, I was not one of them. He gave me a dismissal letter and told me to sign. I signed and I remember I cried and even now, I still cry when I remember. I remembered that I had served for 16 years without any single previous conviction and that is 100% clean record and I had finished five examinations. I was supposed to be promoted. I was employed in 1987 and now I had nothing. I cried and prayed to God and I told them that curses would follow them because I knew that I was a servant of God. I went with them to my house and gave them all the police items. My wife was at work and if she would have been there, she might have fainted. The dismissal letter dated 29th August, 2003 was written by the PPO called Mr. Dolo.

Things were no longer good for me and I struggled with life. I started following up on my money. One time I went to the Treasury in 2007 to follow up on my money and the Treasury people told me that they had my duplicate file which contained my request for retirement. The police wanted them to pay me WCPS. They asked me why my salary was stopped before I was fired. My salary was stopped on 29th August 2003 and the dismissal letter was written on 29th August 2003. God is great because this thing came out. They wrote another letter saying they wanted a formal dismissal letter. They gave me the letter to take to police headquarters. I am using documentary evidence and it is not me who is speaking. These are some of the things that make the police kill their seniors. Most police officers cannot speak because they are cowards. They fear to be fired just like I was fired. I will speak because I fear nobody but God because he is the only one who can kill me. The policemen kill their leaders because of this. Life was not good for me anymore and in 2004, I lost my child because I did not have money to take him to hospital. I was in Nairobi when I was called to come and take my child to hospital and when I arrived I found that he had died. In 2005 I was called from Nairobi and told that another child was sick and that I should take money so that he could be taken to hospital. I was given 5000 shillings at the place where I was working and when I reached Donyo Sabuk I found that the child had died. If I had money, I would have hired an ambulance to take my children to hospital but things did not go well with me. My wife saw that I was not contributing any money at home and she started making me suffer. She could not give me food, she did not clean my clothes and she did not even want us to sleep together. I cried to God and asked Him where he was. My wife was unfaithful to me yet there is HIV/AIDS. I tried talking to her and I asked my people and the church to counsel her. I did not beat her or do anything to her but we separated in November 2005. I told her that I would neither beat her nor pray for curses for her. I told her that it was not my wish that I was sacked. After we separated, I started reading the bible a lot and God started coming to me and speaking to me. My friends, the police and my wife left me but I had one friend Jesus Christ. He did not run away from me and he gave me the support of the Holy Spirit. In

February while living alone, I had problems since my wife had separated and she started living with a man openly and I felt like killing myself.

It is not a must that I be compensated but I want to talk on behalf of those who have been sacked by the police force and those who have been tortured in other areas of their jobs. There is corruption in Kenya police, teachers' offices and even in hospitals. I urge Kenyans to stop corruption. My problem was brought about by corruption but I thank God because he is protecting me. If I am not compensated, God will pay me. I have finished my testimony and may God help the TJRC. This is the truth and Genesis 18:21-22 says that the first judges and magistrates were chosen by God. They were not corrupt and they were well behaved. If you are a preacher, you should not preach because of money and if you are a prophet like me, you should not prophesy because of money. Micah 3:11 says they preach the word of God because of money and if you have been chosen to lead people, do not use your money to elect yourself. Let God anoint you to be president (Hosea 8:24). They elect kings and leaders without my consent and we chose councillors and MPs without the consent of God. That is all and may God bless you. I am fearful of God and I depend on Jesus.

Mr. Patrick Njue: Amen as well Mr. Kaviti for even the words of encouragement and wisdom from the holy book. I will ask you two questions. As you sit with us today, you have not been paid your benefits

Mr. Dismus Kaviti: No I have not been paid even one shilling.

Mr. Patrick Njue: There are some documents that you had earlier submitted to this Commission which is basically what you have been referring to, up to and including the newspapers cuttings that led to your dismissal. Is it your wish that these documents be admitted to the records of this Commission to accompany your testimony?

Mr. Dismus Kaviti: Yes.

Mr. Patrick Njue: Presiding Chair, may the documents earlier produced be admitted.

The Presiding Chair (Commissioner Chawatama): Documents admitted as prayed.

Mr. Patrick Njue: I have no further questions for you. Our Commissioners may seek clarifications from you. Thank you for coming.

The Acting Chair (Commissioner Namachanja): Dismus, yours is a sad story that you went through. Thank you for coming to talk for the voice of the voiceless. I just have one question; there are police reforms and institutional reforms taking place according to our new constitution. Do you have any recommendations for police reforms based on your experience?

Mr. Dismus Kaviti: Yes I have recommendations. People should be promoted if they have studied and if they are educated. They should be promoted publicly and not in secret because there are people who are promoted and once they are promoted, they oppress the people who have a bright future. I would also like the new police service being formed to go around all the police stations, police divisions and patrol base and posts every month

to look at the officers who have been oppressed and who are thinking of suicide. The crime branch officers are the most educated police officers, but they are given jobs like they are not educated. There is a problem in the police force but at least God has seen.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. I would like to ask a question on the procedure that was followed that led to your dismissal. Were you satisfied that the proceedings that led to your dismissal were conducted in a fair manner?

Mr. Dismus Kavita: It is eight years now and I still do not know why I was fired because somebody should first be warned and I did not have any previous conviction. My case should have been taken to operation area or transfers. There are people who have committed crimes in the police and are still working. They should not take me back because I have God.

The Presiding Chair (Commissioner Chawatama): Were you told of your right to appeal and if so, why did you not exercise that right?

Mr. Dismus Kavita: I did appeal and the police refused. I used the human rights commission and they appealed and they refused. I did not have any other way but through you, this is the right place to appeal.

The Presiding Chair (Commissioner Chawatama): We would like to thank you very much for taking time to come and testify before us this afternoon. Indeed, we have heard issues of unfair or wrongful dismissal in our travels across Kenya. You have added your voice to the many voices that have spoken about how unfairly they have been treated. They have also spoken about the impacts that the dismissals have had on their families and it is evident that your dismissal has also had a very negative impact on your family life. It has led to you and your wife separating so there are very serious consequences to decisions that are made. You also mentioned the loss of your two children and from your testimony, what you seem to have in mind is that if you were employed and you were able to afford to have your children treated, maybe they would have been alive today. We thank you so much for sharing with us your very painful experience. We will closely study your testimony and all the documents that you have submitted to us and we will make appropriate recommendations.

Leader of evidence, step down the witness and call the next witness.

Mr. Patrick Njue: Next we have witness number five.

(Mr. Jonesmus Mwanza Kikuyu took the oath)

Good afternoon Sir! Kindly for the records do once again tell us your names, where you come from and what you do for a living.

Mr. Jonesmus Mwanza Kikuyu: My name is Jonesmus Mwanza Kikuyu. I come from Wote location, Central Division of Machakos District and I am a Kenyan. My source of livelihood is peasant farming right now.

Mr. Patrick Njue: Mr. Kikuyu, according to the statement that we have which you recorded with our officers earlier you are here to share with us on what you yourself suffered in the name of detention and torture during the regime of the former president, Mr. Moi. We have indeed heard so many accounts of what happened during that regime to various people and you are here to share with us what particularly happened to you. Please in making your presentation which you will do in a slow manner for the translation to be relayed to the public, please I will ask that you begin your presentation and stick to what happened to you.

Mr. Jonesmus Mwanza Kikuyu: I begin my presentation by saying that I finished school in 1977 as a university graduate. When I saw how the people of my constituency were suffering, I decided to join politics.

After working for one year I joined politics. In 1979 just about a year after school, naive as I was I was nominated as an MP. I was not nominated I was elected. When I was elected the then KANU Government thought I was naïve enough to be controlled. They learnt very soon that I was not the type to succumb. Immediately they started following me in many different ways. I was harassed by being followed by the police and special branch officers. I was not like honorable Member, I was like a prisoner. This went on and then somewhere in Machakos Town when I was sitting with KANU people because everyone was in KANU, I told them what I had dreamt.

The dream went up to the icons of power. The dream was that one day people would be surprised to see Kibaki being the President and me a Minister. When that got to icons of power...

The Presiding Chair (Commissioner Chawatama): I think to assist our support staff and to be fair; they work very hard in their translations and it is very important for the person giving their testimony to chose a language and stick to that and not have them shift from one language to another. It is not good for them. It is not good for me because I do not understand Kiswahili nor is it good for the HANSARD. Therefore, the witness will chose one language and stick to it.

Mr. Jonesmus Mwanza Kikuyu: I will try my best although it is getting confusing when they are translating. I think I am answering them.

Commissioner Farah: It is okay. What goes into our HANSARD is what you speak. If you stick to English, please, do so and we shall get the HANSARD in English.

Mr. Jonesmus Mwanza Kikuyu: When what I had dreamt reached the office, it was decided that I be arrested.

Mr. Patrick Njue: Presiding Chair, I was just conferring with the witness if he could use Kiswahili because the English translation it is not going out to the public and in that way he would not be confused.

Mr. Jonesmus Mwanza Kikuyu: Okay, I will speak in Kiswahili.

It was decided that I should be arrested. The person who was supposed to arrest me was Assistant Director of the CID at that time. He sent his boys to Machakos and they arrested me. They took me to his office. He told me that he would charge me with high class treason. I do not know what it is called in Kiswahili. He threatened me. That night he blind folded me himself. They then took me around Nairobi. I was taken to an underground house. They took me to a place where there was a snake and ants. I was told to accept but I denied. They threatened me and continued saying so but I continued to deny any wrong doing.

The following day he took me to court in Nairobi. I was charged with treason. I was remanded without bond. I was taken to Kamiti. When I was being taken to Kamiti I was handcuffed and my legs were also tied. There was Land Rover full of GSU Officers with guns. It was a KANU ploy to show that this person is very dangerous. When we got to Thika Road we followed the wrong side of the road. It was a hell of confusion. We stayed at Kamiti waiting for the weekly mentions. They used to come to Kamiti to threaten and beat me. They said if I refuse to accept the charges they would kill me and I would disappear like the others. He mentioned J.M, Mboya and others.

They changed the case to sedition. They continued to torture me. I was almost accepting the charges of behaving in a manner likely to cause breach of peace. At that time Sokhi came and told me before I go to the courts my lawyer must come. The lawyer was called Musyoka Anan. He is still practising even now. The lawyer told me that even if the charge did not have evidence I should just agree because if I refused I would just rot there in prison. I agreed to the charges.

I would like to tell the Commissioners that before I was arrested there were rumours all over in Parliament and in Nairobi that I would be arrested. Njonjo came to the office of the then Clerk of the National Assembly who was called Leonard Ngugi and closed the door while I was inside with Ngugi and Justice Kasanga Mulwa. He told them, "Help your friend if it is possible because we are going to detain him".

When Njonjo left, Kasanga and Ngugi told me that this guy was not joking, "If he said you should be detained, you shall be detained. Take a pen and write and request for a study leave because you will go in." Kasanga advised me to apply for study leave for one year. I did so. It was approved by the Clerk and I took it to the then Speaker of the National Assembly, Fredrick Mbiti Mati who accepted and signed it. One copy was taken to Parliament and another given to my lawyers. When I was brought to court I accepted the charges.

After accepting the charges the then Chief Magistrate, Abdalla Hussein sentenced me for three months because I was in remand for three months. According to their thinking, it was as if they did not know what was happening. They did not know that detaining someone was paramount to denying someone a chance of being in Parliament. When they went to the Speaker to announce the seat vacant, the Speaker told them I had been in for only three months and they could not declare the seat vacant. Njonjo forced him to

announce the seat vacant but the Speaker replied and said, “Kikuyu is on study leave and according to the law he is in Parliament so we cannot announce what you want us to”.

I had been in prison for one and a half months. Those who know issues of prison know that after serving two-thirds of your term you are released if you did not do something bad. I began preparing for my release. That is when Satish Gautama came and brought me a petition telling me to sign because they were beginning petitioning. To me, that did not appear to be right but I just signed because I did not have an otherwise. When I reached the two-thirds remission my wife, father, mother and relatives came to pick me up. The Commissioner by the name Mutua said that it had been said from above that the remission had been cancelled. I was taken in again where I took another one month. After the one month, we were released.

I was supposed to go and campaign again. To me, it was very shocking. I did not expect it. That was the smallest petition I have ever seen because it was less than three pages and it was not with the Chief Justice. The Chief Justice said, “Kikuyu you are innocent and Maneno is innocent, the Government should give you and Maneno Kshs75, 000 each but the seat in Parliament is vacant so you go and campaign again”. I did not have a problem campaigning because people had just elected me.

(Technical hitch)

During elections, even an agent was not allowed; it was just Government officers and the police. The then Provincial Special Branch Officer whom I cannot remember the name, after counting four ballot boxes, when they realized that I was winning, brought a pistol into my mouth and said, “I will blow your head off if you say it”. They counted and realized there were no more ballot boxes and yet I had already won. We stayed and nobody announced the results. We then saw some more ballot boxes being brought around. After the counting of these boxes Nthenge defeated me with six votes. Not all the boxes were counted but when he was ahead with six votes, Nthenge was announced the winner. I remember very well. It was around 2.30 a.m. The following day was 12th of December. At around 10.00 a.m. at the stadium there were celebrations to install Nthenge to be the elder of the Kamba. It means that this had already been arranged; the clothes and chairs were already there.

I decided that I should leave the arena. I even left teaching which I had trained in. I said it was not good to work with those people because they could even finish me. I went into farming. When Moi was in Kisii he talked about one person he termed as a betrayer and wanted to overthrow him. Later on he announced a by-election that used to be known as “Little Njonjo Elections”. I won the by-election. However, KANU did not leave me alone. It started following me. When I was taking one errand to campaign for Ngei, in Matiliku, the areas chief asked me to give him some money for *harambee*. I told him that I did not agree with the *harambee* philosophy because most of the money we give out did not reach the intended people. That reached the people above and they felt that I was one person who was disagreeing with the philosophy that had built the nation and therefore, I had to be arrested. When I realized that they were about to arrest me, I pretended that my leg had been broken. I told a doctor to bandage my leg. It was then hang in a bed in a

hospital so that I could plan for the next course of action. I thought it wise to stay in hospital. I had gone to Machakos Nursing Home. I was there for two weeks waiting to hear how they would continue with the case. I came out and used a walking stick for two weeks. Later on I took away the plaster and they arrested me. However, I had already known how I was to hire my lawyers. They did not look for me; I just went to the police station and the DCIO told me the files were ready and we should just go to the courts immediately. They took me to court. I had arranged for bond and everything.

Kamunyi was the magistrate then. He later on became a judge. He gave me a bond. He said he needed all my title deeds. He was very harsh because he was campaigning. I was to report to the police station at 10.00 a.m. and at 4.00 p.m. In that bond, it stated clearly that I was not allowed to speak to more than three people. This was happening yet people were campaigning. We continued with the case and towards the end I saw the Attorney-General, Guy Muli, come to our town. During the hearings the Attorney-General sat there, and after the verdict was given he took the file and said he was going to appeal.

I would like to tell this Commission that I was really harassed. I had no time to work. I am a person who went to school and got education. I have, however, wasted my days. I have not built the home that I thought I would build. Even during the time of Mulu Mutisya, I used to be summoned to kangaroo courts here in Machakos and Nairobi. I could not even concentrate on my own things.

When we went for the by-elections, everybody was told that Kikuyu had won. The headline on *The Standard* Newspaper was, “Kikuyu Beats Former PS Kyalo”. I was at home and I knew I was already an MP. It however, came through the radio station that Kyalo was the MP for this area. I have searched for that newspaper even from the Standard Group headquarters but I have not been successful. They told me to go to the Macmillan Library in Nairobi. I have also sent someone to check for me at the Parliament archives because I believe it is still there. That was direct robbery of a parliamentary seat by KANU. I did not have money to petition and so went home and began farming. That was the end.

Some of these things are so emotional and if I repeat them I can cry. I do not think they are very necessary.

Mr. Patrick Njue: Mr. Kikuyu, I thank you for that presentation which was characterized by certain moments of highs and lows in your life. I guess I will just ask you a couple of questions to clarify what you said and perhaps elicit more information from your statement. I begin by confirming that you said you were studying education. You are a teacher by profession?

Mr. Jonesmus Mwanza Kikuyu: Yes, I am a teacher by profession.

Mr. Patrick Njue: I wonder, in your life in the university, were you a student leader?

Mr. Jonesmus Mwanza Kikuyu: Yes, I was a special member of the Kenyatta University College.

Mr. Patrick Njue: In your life in detention in Kamiti, it did quite appear that you were tortured.

Mr. Jonesmus Mwanza Kikuyu: Yes, Sokhi used to come there at night. He could open the doors and beat me and tell me, “You accept or we just finish you like that”.

Mr. Patrick Njue: From your statement there is an incident you have referred to in 1992 when you saw certain bodies dumped somewhere?

Mr. Jonesmus Mwanza Kikuyu: After the 1992, here in town the dump site had people who had been buried. I went there and saw the bodies. They had been eaten by vultures and other birds. When I saw them I thought it wise to go to the DC to inform him. When I went there I did not find him. To me, it appeared somebody was following me because when I reached the road from the DC’s office, I met the then Special Branch Boss from Machakos District, Mr. Kikara. He was a Kisii. He asked me, “Where are you coming from, Kikuyu?” I told him, “I am coming from the DC’s office. I wanted to see him”. He then asked, “Why do you want to see the DC?” I told him, “There is something bad I have seen and I want to report it to him”. Then he told me. “I am the secretary to the Security Committee. Tell me”. I then told him that I would tell the DC personally. He really harassed me. He told me I had to tell him what it was and I did so. After that he told me that he would investigate and he should not hear that thing from any other person and that should be the end of it.

The following day there was heavy movement around. By then we had only one Land Rover. It took people but I do not know to where. I have not spoken this to anybody. The only time I talked about it is when I was writing my statement with the officers from the TJRC. It was traumatizing and I feared for my life.

Mr. Patrick Njue: You had submitted certain newspaper writings detailing what you shared with us today. As I peruse through, you can check if you indeed gave such copies to our officers.

Is it your wish that, today, these newspaper cuttings be formally admitted into the records of this Commission to accompany your testimony?

Mr. Jonesmus Mwanza Kikuyu: Yes, I do wish that they be taken as further evidence to this Commission. If I get the other one that I was looking for from *The Standard*, I will bring it. If I get more evidence, I will bring it too because it has been a long span of time and the documents are scattered all over. So, even if I get the ones from the courts, I will bring them to the Commission.

Mr. Patrick Njue: We encourage you to do so and we appreciate it. Madam Presiding Chair, I pray that the said documents be formally admitted.

The Presiding Chair (Commissioner Chawatama): The documents are admitted as prayed.

Mr. Patrick Njue: I wonder, do you have any political ambitions today, Mr. Mwanza Kikuyu?

Mr. Jonesmus Mwanza Kikuyu: Yes. In the year 2012, I will again contest for the parliamentary seat.

Mr. Patrick Njue: We wish you the best. My very last question; it is not a question, but rather to make a comment in terms of expectations. As a witness, you wanted to speak on behalf of many others; perhaps, who suffered under the Moi regime; what is the one thing that you would want to see done for them?

Mr. Jonesmus Mwanza Kikuyu: Generally, during Moi's regime, many families were made to suffer and many people's dreams were shortened, not because they were bad people, but because they were seen not to be loyal to the President himself. So, according to what I think, our great nation could – for those who suffered a lot and those who were oppressed and tortured – do something for them so that the gap should be bridged. For example, for most men, their private parts were tortured and destroyed; so, you cannot really pay them. Some of them were killed or murdered; so, the Government could give them something to wipe away their tears and just tell those who perpetrated these atrocities to accept them and say that "We really did this to you, victims". There are people who have died but those who are still living and we are still with them, they should be ready to accept their misdeeds. Even if we are not paid anything, we should be told: "We are sorry for what we did to you people." I think that is human enough and, as a Kenyan, I will receive it positively.

Mr. Patrick Njue: Very well put; thank you, once again, Mr. Mwanza Kikuyu for coming and sharing your testimony with us. Commissioners may want to seek clarifications from you Madam Presiding Chair?

The Presiding Chair (Commissioner Chawatama): Thank you very much, Mr. Mwanza, for your testimony. I will ask Commissioner Farah if he has any questions for you.

Commissioner Farah: Yes, Mr. Kikuyu, you are famous because you were always in the headlines during the Moi era. I have just gone through the newspaper cuttings you have presented here and it is true that you suffered. I have a few questions for you; number one, why did you not contest in 2002, when Moi was retiring and NARC was coming in, and why did you also not contest in 2007? That is my first question. The second question is, have you met some of your tormentors – Charles Njonjo is one I have in mind; Fidahusseini Abdalla is another one; did you have an opportunity to meet them, even in social gatherings and try to ask them: "Why did you do these things to me?"

Mr. Jonesmus Mwanza Kikuyu: In terms of elections during the year 2002, I contested but I did not win the elections. In the election that came after, I did not have enough money to manage my campaigns. So, I thought it wise not to contest. I am now saying that I will contest next year, 2012. Meeting people like Njonjo, Fidahusseine Abdalla, Gautama, Sokhi Singh, I was not in their class by then. Even when I was the MP, you know, at that time you could not sit at the same table with people like Njonjo and have a cup of tea. When you were taking tea, he could tell you that your detention warrant was in his pocket and he could show it to you. So, it was too much then; it was real torture. So, you could not really associate with them. There was one time when he sent the late Keino, who was then the Speaker of the National Assembly. He gave him Kshs10, 000 in an envelope and said that I should have one very big gathering here; the Government would facilitate and people would come. I should come and abuse the late Ngei in this stadium here. So, he sent me Kshs10, 000 in an envelope. I did not even open that envelope; I gave it to my wife and told her to put it below the mattress down. You know, at that time, the money I earned was little; as an MP, I did not earn much. We took some time, then after six months--- I never used that money until Njonjo was called to open the annual show here as the guest of honour. We met at Makutano and he asked me in front of everyone - that was the intimidation of the highest order - "*Wee Kikuyu, are you Kikuyu? I gave you money and you did not do what I said; where did you take the money? I want it!*" Everybody was there, including the Provincial Commissioner. So, I told him: "Sir, your money is in my house and on Tuesday, when I will be coming to Parliament, I will bring it; I will give it to the same person you sent to me". So, I went and took that envelope, because it was labeled "Kshs10,000 only," I took the envelope, and went to Keino and Keino told me: "I was instructed that you go there personally" and I said: "I will not go alone; we will go together. That person could strangle me". So, I just walked from Parliament to Sheria House together with Keino, and we went and gave Njonjo his envelope. He just opened the envelope, looked at me and said: "You poor man; you have not even spent a single cent!" He gave me Kshs2, 000 and we left. That was all.

Commissioner Farah: What is in your heart? Are you vindictive and, therefore, if tomorrow you become a Member of Parliament, will you revenge against these people, or will you forgive them in the spirit of reconciliation? If you meet them, what will you tell them if you are going to forgive them?

Mr. Jonesmus Mwanza Kikuyu: I am ready to forgive them, but according to what I explained earlier on, they should also be ready to accept that they were really corrupted by absolute power. To me, it was absolute power that corrupted them and I really do not want this to be repeated in Kenya. That is why I am here today; it is not for anything else. I want people to know that what they do will be known later on, even if it takes 200 years. It will be known; other people will know what you did. So, if there is that absolute power and you have that immense power, you should not use it badly to really make others suffer. Let us just tolerate each other.

Commissioner Farah: We had the Njonjo Inquiry; the same powers he was enforcing turned against him and the only difference was that he is wealthy. But I am really

impressed by your attitude and your heart because you are a man of reconciliation. You are right; even in 200 years, what happened must be known and that is why we are here today. In the name of reconciliation, I thank you very much for having come forward today and said all that in front of this crowd.

Thank you very much, Mr. Kikuyu.

The Acting Chair (Commissioner Namachanja): Mr. Kikuyu, some of the issues you have shared make us laugh but, actually, they are very sad. I thank God that you are here to help us write our history. Some of the issues you have shared with us, I am sure when the new generation will read about them, they may think they are fictitious, because they are unbelievable, but we thank God that we are getting them from the first witness. So, thank you so much for coming. My first question concerns your name, “Kikuyu”; any meaning?

Mr. Jonesmus Mwanza Kikuyu: The name “Kikuyu” is my father’s name, but “Kikuyu” in Kamba means a fig tree. The Kikuyus call it “Mukuyu” but the Kamba call it Kikuyu. During famine, when you go to Kiambu searching for food and a child is born there, the child is called Kikuyu.

The Acting Chair (Commissioner Namachanja): Thank you. That was out of curiosity. In your statement, there is a mention of the “Seven bearded sisters” and according to the statement you were one of the seven?

Mr. Jonesmus Mwanza Kikuyu: Yeah.

The Acting Chair (Commissioner Namachanja): Could you talk a little bit about this phrase and what it means, because we have heard it mentioned several times in our hearings?

Mr. Jonesmus Mwanza Kikuyu: The “Seven bearded sisters” was a group of young men. These were young people who had just gone to Parliament. There was me, Mwashengu wa Mwachofi, Koigi wa Wamwere, our sister Chelagat Mutai and a few others in that group. So, that was the name we were given by Mr. Njonjo, because we were opposing almost all the Government Bills in Parliament, like the one that enacted Section 2A to create a single party system instead of multi-partysm. When we were in Parliament, we amended the Constitution about ten times and they were not really keen. We just managed to really amend the Constitution.

The Acting Chair (Commissioner Namachanja): Young boys; why did they not call you “Seven bearded brothers;” why “Seven bearded sisters?”

Mr. Jonesmus Mwanza Kikuyu: In my opinion at the time – I apologize for saying this – women really used to depend on men so much. It is like when you want tea and it has to be brought for you and you are calling yourself a politician. That was the way I saw it.

The Acting Chair (Commissioner Namachanja): I understand. Now, concerning what you saw as the dumping place for mutilated bodies, where was this site? Was it here in Machakos or elsewhere?

Mr. Jonesmus Mwanza Kikuyu: Yes, it was here in Machakos; there is dumping site where we throw rubbish from the city.

The Acting Chair (Commissioner Namachanja): How many bodies do you think they were?

Mr. Jonesmus Mwanza Kikuyu: They were more than 20. The ones that you could see and count were 20, but there was a possibility that some were covered.

The Acting Chair (Commissioner Namachanja): Did you find out if they were removed or did they continue just rotting there?

Mr. Jonesmus Mwanza Kikuyu: I know the bodies were retrieved, and those who were retrieving them were police officers, who used to eat in small butcheries around here, at a place that was known by the name “Korogocho.” There is a small butchery around here. So, they used to roast meat there; any police officer tired in the field would pass by and eat meat. So, I was not really able to monitor, but I know that police officers removed the bodies. I also know that they ate around here in town and it took them 18 hours to finish that piece of work. I left town at around 4.00...

The Acting Chair (Commissioner Namachanja): Thank you for honouring this Commission by coming and appearing before it. We will also depend on you when it comes to the implementation of the recommendations, because by then these Commissioners will not be there; we pray that you will be there at that time.

Mr. Jonesmus Mwanza Kikuyu: Thank you.

The Acting Chair (Commissioner Namachanja): Thank you very much for your testimony. When you began to testify and talked about your dream, I thought about Joseph and wondered whether you had read the story about Joseph and how, sometimes, it is important to keep dreams to ourselves. You obviously bore the consequences. But then, again, you are still alive to see that dream come true. I think the only fulfillment is-- I do not know whether or not you have served as Minister. Well, we will live to see that.

Mr. Jonesmus Mwanza Kikuyu: She used the very healthy Swahili Language; can I get it in English?

The Presiding Chair (Commissioner Chawatama): Yes, you will get it in English. I said you have spoken about the past and what happened to you and what, possibly, happened to so many other people who dared to exercise their freedom of speech. Could you, just briefly, share with us what you are seeing now because Kenya, as a nation, has come a

long way and what your hope for the future of this country also is? Just very briefly, please.

Mr. Jonesmus Mwanza Kikuyu: Briefly, I might say that at the time we promulgated the new Constitution, I was among the happiest people in this country, although I did not have the bus fare to go to Uhuru Park. But I felt that for all my suffering, I had achieved something for this nation. I am happy today since I can speak without looking around to see who is following me. I am seeing a future for this nation where our children and our grand children will say that, at least, when they read history, we did some work for them. I hope that the Constitution which we have promulgated will not be mutilated also. I know there are areas which are touchy, and which need ironing out here and there; but I must ask all like-minded Kenyans to stand firm and say we do not want mutilation of the Constitution, unless changing a provision is necessary for the benefit of the whole nation. Thank you.

The Presiding Chair (Commissioner Chawatama): I would also like you to comment on this. Having had experience with the courts in the past and seen the changes that are taking place after the appointment of the Chief Justice and the Deputy Chief Justice, the establishment of the Supreme Court and the reforms that are taking place in the Judiciary now, what sort of Judiciary do you see in the future?

Mr. Jonesmus Mwanza Kikuyu: I am seeing a Judiciary which might be what is expected of a Judiciary; what I expect of a Judiciary... You go there to seek justice; you are two different people giving information to one person and you know your way. The idea is just to balance you two; I was not there; I did not read law. If I read law and I was a judge, my idea would be to balance the two, so that they go home happy. You accused me and I accused you; a verdict should be given which brings us closer together and not make us drift apart. Therefore, I am thinking that we will have a Judiciary which people can trust when they get decision from it. But when you have a Judiciary which jails people whom we know are not guilty, when we have a Judiciary which takes property from people and gives it to others who do not own it, then you can see it is wrong. I am not a lawyer, but I think we need a good Judiciary; I think we are coming to a situation where you can have a balanced opinion. People will never stop making mistakes, but the idea is to have both of them going home happy. I am talking as an elder; although some of the people in the Judiciary are young, the Judiciary should be meant to make people to agree; it is not meant to punish heavily; it is just meant to make people agree on what may have gone wrong.

The Presiding Chair (Commissioner Chawatama): We have gone round the nation, and one of the issues that we have often raised is that Kenya will be going for elections very soon, whether in August, December or on any other date, what would your message be to Kenyans about the next elections? I am asking you this because you are a Kenyan; I am not asking you this as a person who is going to stand as an honorable Member of Parliament.

Mr. Jonesmus Mwanza Kikuyu: With the experience of the last elections, my message is first to the Independent Electoral and Boundaries Commission, IEBC; it must conduct a transparent election that will be acceptable to all. To Kenyans, I am asking them also to believe that the IEBC can run a free and fair election and accept the verdict of the IEBC.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your contribution. At the end of our work we are required to come up with a complete and accurate historic experience of Kenya. Where, maybe, there are certain things that have been said that have not entirely been true or have been exaggerated, we are going around seeking the truth and basically putting the record straight. So, we value your participation in this process. It is very clear that as a Kenyan, you have owned this process and you have been happy to participate. We have heard you tell us that there are things you have said to us that you have not said anywhere else. We thank you for that confidence in us and, indeed, in this process; our prayer is that what you have shared with us today will be of great benefit to Kenyans for generations to come. We thank you very much.

Leader of Evidence, stand down the witness. Thank you.

Mr. Jonesmus Mwanza Kikuyu: Okay; thank you very much all of you.

Mr. Patrick Njue: Thank you. Madam Presiding Chair and Commissioners, allow me to say, for the record, from the desk of the Leader of Evidence, we wish to close our file because that is all that we had by way of witnesses for the public hearings in Machakos. Thank you for your time and we will, indeed, thank everyone else.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence, on behalf of the Commissioners, I thank you for a job well done. We are also aware that, maybe, one or two witnesses did not attend and our prayer is that the witnesses who have testified have covered the issues that the people who did not turn up would have covered.

We have heard six witnesses – hon. Kalembe Ndile, Habiba Ibrahim, Stanley Mulinge, Lawrence Mbithi, Dismas Kaviti and Johnesmus Mwanza Kikuyu. We thank all the witnesses who have appeared before us; indeed, without their testimony, our work would be incomplete. We thank them for their time and patience. We also thank the members of the public, who have sat through these proceedings, who have patiently listened to the testimonies. It is our prayer that all that has been said in these proceedings, one way or another, to some extent, everybody identifies with the experiences of those who have given testimonies. For those who have not been able to testify, and who feel that they have a burning issue, I suggest that you see our staff, speak to them and they will give you guidance.

This marks the end of our public hearings here. The other group of Commissioners is also conducting hearings in Makindu. We will have the women's meeting tomorrow, where we will discuss themes that affect women and have affected women in this community.

On behalf of our Commissioners, Ahmed Farah, our Acting Chair, Tecla Namachanja Wanjala, and, indeed, on behalf of the staff of this Commission, I would like to thank you very much for your time and patience. As you go out, we encourage you to preach the message of peace, justice and reconciliation. We thank you.

Ms. Meldline: I just want to announce that the hearing for tomorrow for the women will be at the Catholic Hall from 8.00 a.m.; it is just across the road.

The Presiding Chair (Commissioner Chawatama): Are we ready to proceed? Please, introduce the next witness, Leader of Evidence.

Mr. Patrick Njue: Presiding Chair, Commissioners, our next witness is Mr. Danson Mutuku Muema.

The Presiding Chair (Commissioner Chawatama): Mr. Muema, we welcome you to this in-camera hearing. According to the law that establishes the TJRC we are allowed to conduct in-camera hearings. You have chosen to give your testimony in camera and we welcome that.

(The Presiding Chair introduced herself and her team)

(Mr. Danson Mutuku Muema took oath)

Mr. Patrick Njue: Good Afternoon Sir. For the record, please, tell us your names again, where you come from and what you do for a living.

Mr. Danson Mutuku Mwema: My names are Danson Mutuku Muema. I am the Chairman of Kiima Kimwe Residents Rights and Integrated Development Association. I am a private clinical practitioner at Machakos Health Care Centre.

Mr. Patrick Njue: Who is the gentleman accompanying you?

Mr. Danson Mutuku Mwema: He is Jonathan Musau Wambua. He is one of the executive members of the organization.

Mr. Patrick Njue: We welcome you here. You are here to make a presentation on behalf of the Kiima Kimwe Residents Rights and Integrated Development Association. Tell us when it was formed and what its objectives are before you can give us details of the issues that will arise.

Mr. Danson Mutuku Muema: This Association commenced on 16th October, 1997. Kiima Kimwe is a human rights group. It was formed to fight for the rights of Kiima Kimwe residents which have been trodden on since the colonial government as from 1908 when their homes were burnt down by the British Government. They were evicted from their land which is commonly known as “Machakos Commonage Farm” and other farms in Kapiti Plains. This association was launched by residents of Kiima Kimwe who

felt that it was time to fight for the human rights and land rights affecting their community. It evolved out of the initial effort of a few people who were committed to change the lives of the poor people of Kiima Kimwe. Today it is a force to reckon with. It has grown into a large CBO with a voice. It looks into several activities of the society by providing civic education and other necessary assistance as stipulated in their constitution.

On 19th March, 1998, we published a public notice in respect of L.R. No. 1491, Machakos Commonage Farm. The photocopy of that is attached. On 25th October, 1998, the OCPD, Mr. Okach, disrupted a civic education session at Dumumba Hotel using a riot squad. On the following day on Saturday, we held a civic education session at Ithemboni Cultural Shrine on the farm. On 8th December, 1998 we filed a High Court Civil Case No.2765/1998 at Nairobi. It was transferred to Machakos High Court as No.255/2009. The documents are attached. On 4th April, 2011, we sued the DC, Machakos, Kobia *wa* Kamau and the OCPD Machakos. The documents are attached.

We humbly request TJRC to handle the institutions and individuals responsible for harassment, intimidation, torture of our members, and marginalization of the community. Poverty is visible and none of the civil servants, politicians and traders who organize cartels to frustrate our efforts to utilize our natural resources to uplift our standard of living accepts wrong doing. These groups are happy to see us remain as beggars among them. They appear to enjoy exploiting our natural resources without mercy.

This is signed on behalf of Kiima Kimwe Residents Rights and Integrated Development Association, Mr. D.M. Muema, Chairman.

Mr. Patrick Njue: What is the size of the land?

Mr. Danson Mutuku Mwema: It is 3,679 acres.

Mr. Patrick Njue: Is this communal land?

Mr. Danson Mutuku Mwema: Yes, it is.

Mr. Patrick Njue: So, the land has not been subdivided to members of the group that you represent.

Mr. Danson Mutuku Mwema: I have provided the names of the people who have been allocated land illegally and irregularly.

Mr. Patrick Njue: So, the land had been apportioned before?

Mr. Danson Mutuku Mwema: Yes, but illegally and irregularly by the Municipal Council of Machakos and the Commissioner of Lands in 1995/1996.

Mr. Patrick Njue: What size of land has been given out?

Mr. Danson Mutuku Muema: About 4,450 acres.

Mr. Patrick Njue: Therefore, what is left now is 3,679 acres.

Mr. Danson Mutuku Muema: Yes.

Mr. Patrick Njue: Have you apportioned that remaining land?

Mr. Danson Mutuku Muema: We have sub-divided that amongst our members and we have issued them with letters of utilization.

Mr. Patrick Njue: Who are the individuals you say were given the land illegally and irregularly?

Mr. Danson Mutuku Muema: We kept them off. That is why we went to court and then to the lands office. We wrote to the Ndung'u Commission which revoked those allotments.

Mr. Patrick Njue: What is the standing of these people in society? Are these individuals people of influence?

Mr. Danson Mutuku Muema: Most of the allottees are people in high positions in Government, parastatals, military and some are traders and politicians.

Mr. Patrick Njue: Was the case you talked about ever concluded?

Mr. Danson Mutuku Muema: The judge who presided over the case in 2004 ordered the counsel of the plaintiff and the defendants to exchange documents. They never provided any authentic documents.

Mr. Patrick Njue: The case is still in court?

Mr. Danson Mutuku Muema: It was transferred from Nairobi to Machakos as Case No.255. We have mentioned that in the application for a stay. The documents are attached.

Mr. Patrick Njue: What do you think can be done by this Commission to help resolve this dispute?

Mr. Danson Mutuku Muema: We are wondering why security agents keep on arresting our members for trespass on the land. So far the court has dismissed over 100 cases under Section 215 of the Criminal Procedure Code.

Mr. Patrick Njue: You submitted some documents to us. Do you wish that we admit these documents as part of the record of this Commission?

Mr. Danson Mutuku Muema: Yes.

Mr. Patrick Njue: Presiding Chair, I pray that the said documents be admitted as part of the record of the Commission.

The Presiding Chair (Commissioner Chawatama): They are admitted as prayed.

Mr. Patrick Njue: That is all from me, Presiding Chair.

The Acting Chair (Commissioner Namachanja): When did the community get the Machakos Commonage Farm back?

Mr. Danson Mutuku Muema: They have been on the land since time immemorial. We were using the land even before colonialism. My father was one of the people who adduced evidence before Sir Morris Land Commission in 1932.

The Acting Chair (Commissioner Namachanja): I know a lot of lobbying has been going on over the same land. Were some of the supporters members of the Release Political Prisoners (RPP)?

Mr. Danson Mutuku Muema: Yes.

The Acting Chair (Commissioner Namachanja): After that lobbying, when were community members given back the land?

Mr. Danson Mutuku Muema: We were not given back the land; we just moved in.

The Acting Chair (Commissioner Namachanja): That is where the community members live now?

Mr. Danson Mutuku Muema: Yes.

The Acting Chair (Commissioner Namachanja): So, what is the current problem concerning this land?

Mr. Danson Mutuku Muema: The security agents keep on chasing our people while they are farming on the land. They destroy our crops and they say that it is Government land. We wonder how it is Government land; they have been asked by the court to bring a document showing that it is Government land and they were unable to do so. We are utilizing the land and they have not shown any evidence to prove that it is Government land. That is a native reserve which was used by clans and communities. At Independence, it was just called “Ukambani”. The Akamba Community knew the areas the families were using. That was how the Africans were utilizing the land.

The Acting Chair (Commissioner Namachanja): Which teams of security officers come to chase the people?

Mr. Danson Mutuku Muema: Both the regular police and the Administrative Police do that.

The Acting Chair (Commissioner Namachanja): Do they say who has sent them?

Mr. Danson Mutuku Mwema: They say their bosses?

The Acting Chair (Commissioner Namachanja): Who are their bosses?

Mr. Danson Mutuku Muema: Now, they say it is Kobia *wa* Kamaa, the DC or Kerich, the OCPD.

The Acting Chair (Commissioner Namachanja): Before you moved into this land, was the Government utilizing it in any way?

Mr. Danson Mutuku Muema: There are some institutions there. There is Machakos Farmers Training Centre and a veterinary farm. However, nothing really goes on there.

The Acting Chair (Commissioner Namachanja): The institutions have buildings and staff there. Is that so?

Mr. Danson Mutuku Muema: Yes. They stay there. They do not go to the field because they are trainers.

The Acting Chair (Commissioner Namachanja): Does training take place in the institutions?

Mr. Danson Mutuku Muema: Rarely do they train farmers.

The Acting Chair (Commissioner Namachanja): How regularly do they conduct their training sessions?

Mr. Danson Mutuku Muema: I do not know how often they do that.

The Acting Chair (Commissioner Namachanja): What is your recommendation? What do you want this Commission to do?

Mr. Danson Mutuku Muema: I request the Commission to advise the security agents to stop harassing the occupiers of the land until the case is finalized by the courts.

The Acting Chair (Commissioner Namachanja): Thank you.

Commissioner Farah: Mr. Muema, I see a letter here which you wrote to somebody and they wrote back to say that they could not interfere because there was already a case in court. It is a letter from one of the Government offices. Do you not show the DC and OCPD that letter?

Mr. Danson Mutuku Mwema: They have a letter from the Office of the President. It was written by the Njonjo Land Commission to the PS in charge of Internal Security. They wrote to the PC, Eastern Province, and copied the letter to the DC, Machakos, and the Municipal Council of Machakos. I have shown the security agents all those letters, but they seem to ignore them.

Commissioner Farah: When recently did they come to the land?

Mr. Danson Mutuku Muema: In fact, today, I heard that the DC, Mr. Kobia, had sent the Chief, the Assistant Chief and APs to go and destroy crops.

Commissioner Farah: That is illegal. Anyway, why can you not go to court now that the Judiciary is a bit good? You could go to court to seek an injunction to stop the Provincial Administration from interfering with the residents and their land until the court disposes off the case?

Mr. Danson Mutuku Muema: You can see there is a case we filed, that is Case No.81/2011, under a certificate of urgency because we wanted a stay. Up to now we have not succeeded to get that stay from Machakos High Court and we are wondering why?

Commissioner Farah: Perhaps, the Machakos High Court has been compromised. Why do you not go to Nairobi and cite your reasons?

Mr. Danson Mutuku Muema: We will consult our counsel and see how we will handle our situation.

The Presiding Chair (Commissioner Chawatama): Looking at your documents you first went to court on 8th December, 1998 at the Nairobi High Court and then the matter was transferred to Machakos High Court.

Mr. Danson Mutuku Muema: That is correct.

The Presiding Chair (Commissioner Chawatama): This is the matter that you say is still pending in court.

Mr. Danson Mutuku Muema: Yes, commissioners.

The Presiding Chair (Commissioner Chawatama): At what stage are you?

Mr. Danson Mutuku Muema: They have ordered production of authentic documents before the court. We are still waiting.

The Presiding Chair (Commissioner Chawatama): When was this direction given by the court?

Mr. Danson Mutuku Muema: I cannot remember the date, but it was this year, 2011.

The Presiding Chair (Commissioner Chawatama): So, from 1998, an order for directing that the lawyers exchange documents was only given this year?

Mr. Danson Mutuku Muema: Before that, the Minister for Lands had cleared the land as Kiima Kimwe Settlement Scheme. I attached the document to the certificate of urgency application. We also attached the map.

The Presiding Chair (Commissioner Chawatama): What do you think about the justice system in as far as your matter is concerned?

Mr. Danson Mutuku Muema: It is poor administration of justice and prolonged court proceedings. We wonder whether the legal system in this country is really working.

The Presiding Chair (Commissioner Chawatama): When did you file the certificate of urgency? Is it this month?

Mr. Danson Mutuku Mwema: I have to find out from the advocate.

The Presiding Chair (Commissioner Chawatama): Indeed, it is so easy to see why you should feel so frustrated. In matters of land we have seen the mess that there is in the Ministry of Lands. We have also seen the delays that have occurred in the Judiciary in the handling of matters of land which are sensitive and need to be dealt with quickly so that people are settled.

We thank you for bringing these issues to light once more. They will help strengthen our report when we make our recommendations, which will be based on the testimonies that people like you have submitted to us. On behalf of the Commission, I want to thank you for making yourself available.

We are going to have an opportunity to speak to those who are running the Judiciary, and we are going to point out what we have heard so that we get some commitment from them. Thank you.

Mr. Danson Mutuku Muema: I also wish to take this opportunity to thank you for having decided to see us as a community, and allowed us to present our problems to you. We hope that your recommendations will go towards solving this problem that has been with us for the last 14 years. We believe that without truth and justice, peace cannot prevail. We thank the Government for having formed this TJRC. We pray God to give you strength and clear minds to assist our people who are suffering in the hands of security agents and the courts.

Thank you.

Mr. Patrick Njue: Presiding Chair, we do not have any further business.

The Presiding Chair (Commissioner Chawatama): Then I declare this session closed.

(The Commission adjourned at 5.15 p.m.)