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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE  
AND RECONCILIATION COMMISSION ON MONDAY,  
24<sup>TH</sup> NOVEMBER, 2011 AT ST. PETER'S CHURCH HALL,  
MAKINDU**

**PRESENT**

**Margaret Wambui Shava** - **The Presiding Chair, Kenya**

**Berhanu Dinka** - **Commissioner, Ethiopia**

*(The Commission commenced at 10.15 a.m.)*

*(Opening prayers)*

**The Presiding Chair** (Commissioner Shava): Good morning and welcome to our hearings today. We were expecting to be joined by Commissioner Prof. Tom Ojienda but unfortunately he has just arrived in the country and is unable to make it. We shall continue despite the fact that we are two and not three Commissioners as has been our practice and our proceedings will be valid under Section 29 of our Act, which gives us the authority to regulate our internal procedures. We are simultaneously having hearings in Machakos with three Commissioners. Today, we will continue with the witnesses present here. I would like to ask everybody to switch off the mobile phones to avoid interrupting proceedings and avoid people moving back and forth as they answer phone calls. I will just give you a minute to do that.

We welcome any media here present and ask that they avoid moving around the room while the hearings are in progress and avoid the use of flash photography while the witness is speaking. In the way we will now proceed, the Session Clerk will administer oath to the first witness after which the Leader of Evidence will adduce the evidence of the witness through asking questions and then the Commissioners may ask the witness questions for clarifications. Next to the witness all the time is a professional counsellor, who is there to assist the witness should any moments of difficulty occur because some testimonies are sometimes very difficult to recall and recount. So, without any further ado, I will call on the Session Clerk to administer the oath of the first witness and ask the Leader of Evidence to give guidance.

**Mr. Tom Chavangi:** Commissioners, we are on flap No.11, Councillor Bernard Musau. The first witness is supposed to be Agnes Ndeti but she is held up in court. She requested that she becomes the second witness.

*(Mr. Bernard Muthoka Musau took the oath)*

**Mr. Tom Chavangi:** For record, councillor could you state your name?

**Mr. Bernard Musau:** My name is Cllr. Bernard Muthoka Musau.

**Mr. Tom Chavangi:** Councillor, where do you live?

**Mr. Bernard Musau:** I live in Savani village, Manyatta Sub-location, Makindu Location, Makindu Division, Makindu District and Makueni County.

**Mr. Tom Chavangi:** Cllr, you presented a statement before this Commission on issues touching on economic marginalization, squatter problem, town planning and allocation of title deeds. Is that the position?

**Mr. Bernard Musau:** Yes.

**Mr. Tom Chavangi:** Kindly proceed and present your testimony.

**Mr. Bernard Musau:** Thank you very much. I wish to present a statement and the matters of interest in this case would be the economic marginalization, town planning and allocation of title deeds, squatter problems and then later on I will give my own recommendations.

I will start with economic marginalization. In 1992, several evictions were done. Some of those evictions included Chyulu evictions, Mikululu evictions, Kisayani evictions, Kitya evictions, King'eleti and we now have Dua Estate. Due to these evictions we have several problems. Our people were evicted by the Government because they inhabited catchment areas like the Chyulu Hills. The ones who were evicted from Mikululu had been classified by the Government as living in Game Reserves and National Parks. Due to these evictions, our people lost all their animals. The evictions were not even done in a humane way. Our people were not given adequate notice; they were just evicted like that and houses were burnt. This led to serious problems. Most of these evictions have caused a serious problem in this area. The communities that lived in those areas were there even in the days of colonialism. When they were evicted, they were not shown alternative land. They were not compensated and the Government did not even consider taking care of them. We do not see any direct benefit from the areas that were set aside as game reserves and national parks. We are now living near the borders of the national parks and the animals come to the areas inhabited by people. When the wild animals damage crops there is no compensation. This is a serious problem and I wish to stop there on the issue of economic marginalization.

I wish to talk about the issue of town planning and allocation of title deeds. Most of the towns that are within these regions and the environs fall under unsurveyed land. It is Government land. It is either crown land or trust land. As for the unsurveyed land within town, there is a problem of expansion due to lack of necessary documents like title deeds. It has been impossible to access facilities like loans. If someone has a title deed, he could use it as collateral to get finances to expand business. Due to lack of title deeds, there is insecurity in land ownership. Let me give an example, there are people who have been living here because this is their ancestral land. Initially, we had Government structures like the District Development Committees (DDCs) that used to make decisions over the

land within the town and could allocate it to any development without considering the inhabitants of the town. We have a witness here who is going to present his case and I wish to present her as an example. She is called Mwanaisha Ndila Kilonzi and she has been denied her right to live in her ancestral land simply because leaders decided to allocate her land to a certain developer without necessarily considering her or getting consent from her. She was not even notified that the land was required for certain development that the committee had decided.

The other issue that I wanted to talk about is the county boundary. We border Taita Taveta and Makueni County. That is the area where Eastern Province borders with Coast Province. The boundary is Tsavo River. We have had problems with that boundary with the Taita. This is an issue that the Government has not given due consideration. It is a sensitive issue because it is touching on two communities. We have eight provinces in Kenya and I have never heard that a provincial boundary review is being carried out. If this boundary was changed, when was it changed? What made the change? Who were involved in the change and who represented us in that sitting? If you look at some of the resources that are within our county, especially in that area, you will get Mzima Springs, where we have big hotels. There is also a big water resource. The Mzima Springs does not benefit our people in that region. Instead, it benefits people from Coast Province.

Our people do not benefit from the resource and I think it is unfair. That water could be used to irrigate the land around that place and change this part of the lower county so that our people can stop relying on relief food. This is an issue that to the best of my knowledge should be given due consideration. I forgot to introduce myself. I am also the former chairman of Makueni County Council. I had taken a sign post to the boundary but it was interfered with. To me as a local leader I saw that it is a very sensitive issue that needs to be resolved immediately. I wish to stop there and probably talk about the squatter problems.

This is a major issue in this area. The issue of squatters here needs to be addressed with a lot of seriousness. Currently, we are in Manyatta Sub-location. We neighbour Kiu Sub-location and the people who live here are squatters. They are squatters because they do not have any document to show that they own the land. The political leaders who have been there before have been championing the ownership of land for these people. The Government settled people in about three settlement schemes, that is, Kiboko A, Kiboko B and Kiboko C. The people who were squatters did not benefit simply because during the actual identification, when a list is given of the genuine squatters, it is other people who benefit when the Government gives out the land. These people are either politically correct or very senior officers. There is another settlement scheme called Masongaleni Settlement Scheme, where people from Kisayani were supposed to be settled. If you go there right now, the big tracks of land that were given were awarded to very senior Government officers. In that settlement scheme, you will find that there are people who own about 50, 100 or 200 acres. This is at the expense of the real squatters, who either never got the land or were given little land. Let me go back to Kiboko A and Kiboko B, where we have a serious problem. The people who were allocated land in this settlement scheme were supposed to pay a certain percentage. Most of the people who were given

land were so poor that they could not afford to pay any money. The Government requirement is that that percentage should be paid within 90 days. Since they could not afford it they failed to beat the deadline. There are people who took advantage of that in collusion with Government officers and the people who had occupied the land without paying the 10 per cent were termed as squatters. The rich people who colluded with land officers went ahead and paid the 10 per cent and were given allotment letters. So, you can find two people with two letters of offer of the same piece of land. That led to a lot of problems. To solve those problems, the people had to seek redress from the Provincial Administration. When they go to those offices, the person who is recognized is the person who paid the 10 per cent. There is also another problem attributed to this. Since these evictees and squatters were very poor people, they could not pay the money required as they were told that there were no Government receipts. So, they keep on going to the lands office and they are not given a chance to pay. This is an issue that was mishandled by the lands officers to make sure that the 90 days period lapsed so that land would be given to the rich. Again, the people who succeeded to get ten acres later on the land was down-sized. You find that your letter of offer reads ten acres but after some time you find that someone comes with a letter of offer and has paid for five acres out of your ten acres. This led to many conflicts amongst our people. These things were done by the Government that is supposed to solve problems for our people. There has been persistent land allocation by the lands officers. We wonder whether land is supposed to be allocated by junior officers at the division and district levels or the Commissioner of Lands. This is sheer corruption. The land that was set aside for public utility was allocated to rich men and women by the lands officers. This has been a serious problem.

I mentioned about Kiu and Manyatta. The communities that are there have been living there since the colonial time. Any allocation that is done by the Government to settle squatters is done in Manyatta and Kiu. At the end of the day, those people do not benefit. There is also a lot of politics on the issue of squatters. We have political squatters where a politician would settle them to get votes. I think that is misusing our people and should not be condoned at all. As we talk here, there are people who are living in very funny structures called *mikumbo*. If you go to those areas, you will find that those people are getting serious health problems because of the way they live. I wish the Commissioners can find time and visit these squatters wherever they are. They are there and are languishing in poverty. When you go there you will see the actual problem on the ground.

The other issue that I wanted to talk about is of the people who benefitted from the settlement schemes which are catchment areas. This can lead to pollution of the catchment areas and it might become a health hazard to the community. This issue needs to be looked at by the Government so that we can save our people. Just to mention something in this town, touching on the squatters also, the people who lived in the areas where there is the District Commissioner's (DC) office, the court and the weather station namely, Ndululu Mutie and Kanali Mutie, used to mine and had a licence from the Government. They were evicted from that place without compensation. To me, that is quite unfair. I do not want to talk much on this issue.

I wish to give my recommendations now, especially regarding the people who lost their animals. These people lost their livelihoods and so need to be compensated. Those who were displaced need to be settled. The areas where our people were evicted and the Government termed the areas as national reserves and national parks, the community around should get direct benefit so that we can co-exist with the wildlife. Title deeds should be given to persons who occupy the land, especially in Manyatta and Kiu. If these people are given title deeds and settled where they are, it will solve all the problems. The other issue is reinstating the boundary between Makueni County and Taita Taveta near Tsavo River. The corrupt officers should be prosecuted. Resources such as water should be provided by the Government at subsidized costs. Lastly, proper identification of real squatters should be done. Thank you very much.

**Mr. Tom Chavangi:** Thank you, Councillor. Commissioners, I have no question for this witness because by way of recommendations, he has actually answered my questions. I would request your direction in terms of having this witness in private so that he can mention some of these corrupt officials so that we can be in a position to notify them and give them a chance to hear or respond to the allegations that have been articulated before this Commission.

**The Presiding Chair** (Commissioner Shava): Thank you, Leader of Evidence. That would be in order if the witness is willing to proceed in that manner then that information will be valuable to us and we will assist in our recommendations.

**Mr. Tom Chavangi:** That is something we can do after the public hearings.

**The Presiding Chair** (Commissioner Shava): Please, ensure that it is done.

**Commissioner Dinka:** Thank you very much, Councillor for your testimony which was very clear, straight forward and very systematic. Therefore, I do not have real questions but only one concern. How serious is this issue of the boundary between your people and the Taita?

**Mr. Bernard Musau:** To me, this is a very sensitive issue. This is a boundary that touches two communities. Where issues of land arise, there can be conflict between the communities. I did state that I am a former chairman of Makueni County. I said that I had taken the sign post to that area. Less than a month later, people whom I believe came from that community erased it. To me, that was a sign of conflict. I believe that the Government has its own structures that can come up with the actual boundary between Makueni County and Taita Taveta County.

Just to give you more information, sometime back in 2005 and 2006, we had sittings which were attended by leaders from Eastern Province and Coast Province. At the lower levels, the meeting started at the DC's level. The two DCs called the local leaders but we could not agree. The surveyors from Makueni County and those from Taita Taveta County could not read from the same script while identifying the boundary. At a high-level, the meetings were convened by the two PCs from Eastern and Coast Provinces.

Again, there was disagreement. The two PCs agreed to take up the matter with senior Government officers.

This is an issue that has been kept pending and I think it should be resolved once and for all.

Thank you.

**Commissioner Dinka:** Thank you very much. You have actually answered my question. I was going to ask you whether you think it will be easier for the two county governors to handle this issue once the county governments come into operation. You have already answered that question by saying that the PCs have tried and nothing came out. So, the matter might have to go to the Central Government. Before going to the Central Government, did you discuss the matter with the Ligale Commission on boundaries review? If “yes”, what was the result?

**Mr. Bernard Musau:** Thank you very much. When the Ligale Commission came to this county, the leaders in this county presented the issue to the Commissioners. I believe that when the same Commission went to Taita Taveta County, the leaders in that county presented the matter to the Commissioners as well. However, from the outcome of the Ligale Commission, it is not clear to us where the boundary is. What appeared in the newspapers touched on the constituency boundaries. So, it did not touch on the county or provincial boundaries. I do not know whether it was shelved intentionally.

**Commissioner Dinka:** Thank you very much. I have no further questions for you.

**The Presiding Chair** (Commissioner Shava): Councillor Musau, I have two questions for you. You have spoken at length about the shifting border, as you said, between Taita Taveta and Makueni counties, and you have defined the boundary as properly being along the Tsavo River. I would like to ask you where the boundary now is. Where is it that you want to move the boundary from?

**Mr. Bernard Musau:** The boundary is at Tsavo River. Our neighbours from Taita Taveta claim that the boundary is at Mtito Andei. In fact, in their claims they say that Mtito Andei Town is within their county.

**The Presiding Chair** (Commissioner Shava): Why is this to your disadvantage?

**Mr. Bernard Musau:** There is a bit of history on this land. Some of the names of the hotels that are in that area have Kamba names. Examples are Longya. We have the Tsavo River. The word “tsavo” is derived from the Kamba name “suvu”, which means ‘beef stew.’ Again, from some of the resources that are there, like the water from Mzima Springs, our people do not benefit. Thank you.

**The Presiding Chair** (Commissioner Shava): That is very clear. Thank you for those examples. My final question is to do with the water catchment areas. Initially, you

mentioned two evictions from areas that were supposed to be water catchment areas in the Chyulu Hills. Later, you said to us that people have been settled on water catchment areas and that this is a concern because of the potential for water pollution. In which catchment area have people been settled? Was this done through the normal channels, including issuance of letters of allocation?

**Mr. Bernard Musau:** The water catchment area that I mentioned, Chyulu Hills, when people were evicted from there, no one was settled there. I was talking of a different catchment area, namely Makindu River catchment area. Kiboko B and Kiboko C settlement schemes touch the catchment area. Part of these two settlement schemes touch on the water catchment area. There are about 80 households that were settled there through proper Government channels. My recommendation was that these people can be settled elsewhere so that we can conserve this vital resource- the water catchment area. Thank you.

**The Presiding Chair** (Commissioner Shava): Thank you very much, Councillor Musau. I have no further questions for you. The Commissioners have no further questions for you.

I would like to say that it has been a pleasure listening to your exposition, which has been very clear and which has brought out very clearly, or as Commissioner Dinka has said, very systematically what the issues are in this area. We thank you for giving us that ground work for our understanding. We are also encouraged to see the calibre of leadership in this country. We thank you for coming.

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

*(Ms. Ndetei took the oath)*

**Mr. Tom Chavangi:** Presiding Chair, next is Witness Makindu 10, Ms. Agnes Ndetei, who is going to present a memorandum on issues facing women, children and the disabled in this county.

**Mr. Tom Chavangi:** Ms. Ndetei, for the record, kindly state your names.

**Hon. Agnes Mutindi Ndetei:** My names are Hon. Agnes Mutindi Ndetei.

**Mr. Tom Chavangi:** Ms. Ndetei, what do you do at the moment?

**Hon. Agnes Mutindi Ndetei:** I am currently a farmer. I am also the chairperson of the Centre for Irrigation Schemes Farmers in Kenya. I am also the chairperson of Solace Community Based Organisation and a stakeholder in Makueni County.

**Mr. Tom Chavangi:** Thank you very much. You presented a memorandum on issues facing women, children and the disabled from this county.

**Hon. Agnes Mutindi Ndetei:** Yes.

**Mr. Tom Chavangi:** Can you kindly articulate those issues before this Commission?

**Hon. Agnes Mutindi Ndetei:** First of all, I will give the justification as to why I think I am the person suited to talk on behalf of these minority groups. I have lived most of my life in the rural villages. I went to primary school in the local schools and secondary schools. I went to Alliance Girls High School, which is also a rural school. I graduated from the University of Nairobi in 1972. Some of my studies were in social sciences. While at the university, I majored in Sociology and Geography. I also did political science in the first year. I have worked with the Government. I have worked with the Federation of Kenya Employers, which deals with trade unions. I have also been a Member of Parliament (MP) for this area for ten years.

In the course of my work in those years, I gathered a lot of experience as to how the rural poor or the marginalised groups live and the kind of problems they deal with when accessing justice in our Government system. For eight years, I went out to the USA, where I lived and worked. I came back to the country and have continued to live in the rural villages and to interact with people living with the same problems that they were living with even when I was an MP.

Most of those affected are women and men, both going through domestic violence or abuse and divorce. Others are victims who have gone through rape and defilement, the disabled and the poor people living on less than one US Dollar per day. The justice system that we have at the moment is not okay. Just like in the rest of the country, we have police stations in Kibwezi and Makindu. I am sure that we have police stations in other areas within Makueni County.

We also have administration posts for chiefs, where we have Administration Police officers. We have two magistrate courts in Makindu and Wote and they are all functioning. However, I still find the justice system quite inaccessible to the categories of the people I have mentioned. Just to get a glimpse, I am just going to scratch the surface by giving you stories of a few individuals who the paralegals have come into contact with and who have also contacted me. I will give you a brief story of a lady called Cecilia Mwikali Musyoka. Cecilia was severally raped by a person who is well known to her, and infected with HIV/Aids. It has been almost impossible for Cecilia to access justice due to the persons involved and her financial status. She is a domestic violence victim. She was brutalised by her own husband and ran away from home. She went and bought a small piece of land somewhere else. When she did that, she joined a church that is close to her new residence.

She thought that she would get refuge and protection from the church leaders and the congregation. At that point, somebody from the church offered to be taking her to hospital and paying the bills. While they were in the process of getting medical attention in Nairobi, the person started to rape her. Subsequently, he followed her to her home and raped her. He threatened that he would kill her if she mentioned him.

She has continued to be violated. The person violating her is placed properly in that church. She has not gotten justice from the police. So, she has continued to be violated. After getting in touch with the paralegals, who have been very helpful to her, just recently, on 22<sup>nd</sup> November, 2011, the day before yesterday, she went to Mtito Andei Police Station to get a P3 Form and have the matter recorded in the OB. However, the police denied her a chance to have the matter recorded and said that her case was too old and that it could not be taken up by the police.

This shows ignorance on the part of the police officers. It does not appear as if they know that this kind of wrong against humanity is ageless. So, she is out there. She still continues to struggle. She is a poor woman. Maybe, if she were to be given the P3 Form, she would probably have to look for a lawyer. She cannot afford a lawyer and the suffering cycle goes on for this lady. In my memorandum, I have attached some of her documents.

Another case at hand which I would like to present to this Commission is that of Bernice Mumo. Bernice is a 20-year-old girl. She completed her schooling and a relative came and picked her from home after convincing her parents that he was actually going to help her get a job. He moved her from home and they went to where he works. When they reached there, he started to rape this girl and she conceived. He forced her to procure an abortion, which caused a very severe infection in her uterus.

To make sure that he condemned her to never reporting the matter to anyone; he physically assaulted her and broke her arm. She came home later and reported the matter to her mother. Of course, her mother told this to the father of the girl. The mother has been threatened by this relative that he will kill her if she reports the matter. The father of the girl, on the other hand, is pressuring the mother to get justice for the daughter. So, the mother finds herself between a rock and a hard place. The matter has been reported to the paralegals as well and they are trying to assist. Again, the issue of poverty comes up. The family is very poor. They cannot do anything on their own. They face harassment and intimidation. This family continues to suffer from that trauma. The girl requires a lot of money to go for proper treatment of her uterus and the cycle continues.

The other case I am bringing to you is that of a little girl of four years called Bahati Museng'a, who has been defiled by people who are well known to her. These are people who go to their house purporting to be good friends and visiting. They put her on their laps and violate her. They penetrated her and she started bleeding. Her pelvis has been destroyed. The child was rescued and taken to Nairobi Women's Hospital, where she was treated and discharged. The mother has not processed the case due to lack of funds. She has no money to even take a *matatu* to go to simple places to get help but the paralegals reached them on hearing the story.

I am giving these simple stories to show the amount of silent suffering that goes on in the rural areas by the minority groups who are not even visible from out there yet are there.

They are suffering and we pretend that we have a peaceful country. There is no peace amongst these poor communities.

Mercy Inoa is another case. The suspect was taken to court and released due to the doctor's failure to go to court to testify. The rapist is free and Mercy continues to have no justice in her life.

Another case is that of two little boys who have continuously been abused by their father. The two young boys were seriously assaulted by their father and the case was taken to court. In the first instance, the father was given a bond. Since he has been very violent on his wife as he has been out on bond; he has continued violating the children at home. The mother can do nothing but she talked about it out there. It was known that he was continuing. The police tried to arrest the man again. While he was running away, he broke his leg. He was brought to Makindu Hospital. But he escaped from the hospital and went home and took the two boys and disappeared with them.

Rumour has it that he is somewhere in Mombasa. God knows what is happening to those two little boys. The mother continues to agonise at home about her boys and the cycle of suffering continues.

The last case I am raising here is that of Martha, whose parents happen to be my neighbours. She used to go to the church that I go to. For some time she disappeared and I did not know what was happening to her. Later this year, around August, I heard that Martha was pregnant. Martha is 15 years old. She is physically and mentally challenged. In October, she went to Makindu Hospital, where a caesarean section was done on her. Her parents could not afford the hospital bill. We organised and had the bill paid. She was released from hospital. The rapist is a neighbour and continues to threaten the family that should he be reported to the police, he would ensure the family faces some consequences. This is a very poor family. In fact, unless one of us goes to their home with a kilogramme of maize flour, they will not eat.

There is the poverty cycle, again, depriving people of justice. I spoke to Martha's mother yesterday and she told me that she reported the matter to the village elder and that the village elder has done nothing. He has not mentioned this matter to anyone up to now. Ignorance! She told me that she did not know that she could go to the police and report. With the threat that has been issued to the family, she is very scared. There is no safety for the family.

Regarding the challenges that have been faced by the victims of the stories that I have just narrated, you will appreciate that poverty is one of the major issues for these marginalised groups. Others are fear of repercussions and insecurity, custom and culture, where family matters are supposed to be kept secret yet somebody continues to suffer; there is also ignorance in our population; they do not know where to go and report when something happens and the suffering cycle continues.

There is lack of a well structured system to take care of the victims at the grassroots level. Generally, rape victims are afraid of reporting to the police because sometimes insensitive police officers ridicule the victims. They tell the victim, for instance: “You should have enjoyed it. Why have you come to report to us?” These are stories you hear often when a report takes place.

I strongly believe that many rape cases at the grassroots level go unreported because the victims are highly stigmatised and cannot dare reveal the circumstances for fear of repercussions. The media is not present in the rural areas where such cases happen. We sometimes get some reporting here and there but I find that to be inadequate because rapists and paedophiles need to be exposed more aggressively so that people in every neighbourhood know who is a rapist and who is a paedophile. In some countries, such people are labelled and registered. They are known.

Women who work as bar attendants usually get abused by the customers and, generally, they put up with it. This is due to the common belief that only morally loose women go to work in bars. People forget that the rate of unemployment in this country is very high and that young people are ready to take up any job available. We need to change this way of thinking and have these women treated with dignity. The Government needs to come out very strongly in defence of all the citizens of this country. These women are a minority at their work places. They are our children. They are future wives of our sons. Some of them are even currently married to our sons. Why deny them their dignity at their places of work? People going to drink in bars should go there for a bottle of beer and go home but not to display their bad manners at the bar. That is a different place. When a girl gets mistreated in a bar, can she afford to hire a lawyer every time someone uses abusive language on her or touches her in an inappropriate manner? Something is seriously wrong with society.

If there was a gender desk manned carefully and by well trained personnel and preferably by women, these complaints can be taken forward through the justice system without subjecting the complainants to ridicule as is the case in the current situation.

I personally remember that at one time when I was going through my divorce case in Nairobi, almost all the cases were normally massed together in the law courts in this country but I have seen that in Nairobi things have changed a little. The case of somebody who had been accused of murder was called ahead of my case. After my case was called, the case of somebody who had been accused of carrying out robbery with violence was called. I went home feeling like I was a criminal.

Having family matters massed together with criminal offences in the law courts takes something away from the aggrieved party. Psychologically, it is very destructive. Family matters need to be handled with the dignity they deserve. They need to be handled in separate courts in this country. I have just come from Makindu Magistrate’s Court. A divorce case was called out immediately after a land case. The Government needs to get down and sort out that confusion in our justice system. This has made my resolve to be a

leader so that I can fight for the rights of people going through difficulties and for whom accessing the justice system in a fair manner has been next to impossible.

Let me come back to my brief recommendations. This is not everything. A lot more can still be recommended.

## **RECOMMENDATIONS**

1. The Government needs to introduce separate courts for all cases involving family matters. This should be done within our justice system and such courts should have well trained judges, prosecutors and all the other necessary personnel.
2. The Government of Kenya, in conjunction with human rights groups, donors and paralegals, could easily introduce what we call “safe houses” in various parts of the country to be run by well trained women or personnel to be used as refuge or stop points for victims who seek justice. As you have just heard, people cannot seek justice because they are afraid of the repercussions. They are threatened. So, they cannot step forward to seek justice. Just as the witnesses at the ICC have been put in safe areas to keep them away from danger, there is need for this all the way down to village level to protect the victims of these abuses
3. In the Police Department, there is need to introduce what is called “Gender Desk” so that when somebody is sexually abused or assaulted, or is going through domestic violence, they go to this desk to report. The people, preferably women, working at such desks need to be properly trained so that they can act as the first hope for the victims. At these desks, we need to have lawyers fully paid by the Government who will be there to take up such cases and push them through the justice system for the victims as fast as possible.

We have seen in Kenya’s judicial system divorce and separation cases dragging in courts. Some children have lost their education for a lifetime because of the delay in concluding those cases and deciding whether they should be assisted. The father is the custodian of the property until the cases are determined. Some years ago, there was a case in Nairobi which took seven years before it could be decided for the woman to be given a share of the property so that she could continue to educate her children. Those children lost seven years of education. Children can easily fall by the way side if they are not properly taken care of within the matrimonial system.

There is also need to sensitize our communities because some of the failures are also coming from lack of knowledge by our own people. The human rights section which can deal with those matters needs to get funding and do a lot of work in the grassroots. They should reach the villages so that people can come out and be open. That will inform people how, where and when they can go and seek for justice should that happen. Domestic abuse happens both ways. Sometimes, men get abusive treatment in their own homes and there is no recourse for them. That is because our customs and culture do not want to show men as people who can suffer in their own homes. But they do suffer. I once saw a man who was being battered by his wife until he went to report to FIDA. So, I am not just speaking on behalf of women but people who are going through domestic issues which are very negative in their own lives.

The last one is assuring the community of the continuity of family life when marital issues arise and involve separation and eventual divorce by parents. The lives and education of the children should not be affected negatively. The majority of the married couples in Kenya live in the rural areas. So, when things are changing in Nairobi, we are only touching like 10 per cent of the population of this country. We need these things to be replicated in every county as quickly as it can happen.

In conclusion, justice delayed is justice denied. We have been losing lives that we could have saved if some of the issues that I have raised could be addressed. I have seen women who have been threatened with death by their spouses repeatedly for many years. Eventually, they actually kill them. Our women do not know that once somebody threatens you with death, he has already planned how he is going to kill you. It is high time you started to take steps and know exactly what your recourse is. What can I do to get myself helped from this situation? It is rampant, especially here in our rural area. But each day gone is time lost forever. We need to have some meaning in those people's lives. It is not easy to eliminate those abuses altogether. But the way we deal with each individual case each day can make a huge difference in our communities. This is because some of them will act as learning lessons for others. There is a lot of work that can be done to help minorities access our justice system. When I was a Member of Parliament, I remember at one time I interacted with a very serious complaint from some girls from the University of Nairobi. They confided in me as a Member of Parliament that the lecturers were threatening to fail them if they did not accede to their sexual advances. This has not ended; I still continue to hear those stories even from parents. So, what is lacking here? Either our people do not know or there is no facilitation for them to go and be assisted out there. There are a lot of sexual abuse issues that go on even in the work place. When I was working with the trade unions, although I was on the employers' side, women in the floor of factories used to hide and come to talk to me. They confided in me that they were facing sexual abuse issues on the shop floor, either from the employers for promotion or shop stewards for representation. Even when they go to report their grievances to the trade unions, the trade union officials would like to have sex with them before they can take up their cases. Surely, there is something wrong with Kenyan women. This kind of thing does not happen elsewhere as much as it is happening here in Kenya.

I think the Kenyan women need to stand up and defend their cause. This is because we shall never stop being women and carrying that sweet thing that every man is chasing. So, we really need to stand up for our own rights. With the new political dispensation, it is high time women became sensitized in this country. Even when you look at this hall, the majority of the people present are men and this was a very crucial forum for Kenyan women. Although I know that we are meeting tomorrow to speak about women issues, women need to be present everywhere. They need to be heard. I think we suffer so much because our voices are hardly ever heard.

Thank you so much.

**Mr. Tom Chavangi:** Thank you, Hon. Ndeti for that short and precise presentation, and for bringing out the ills in the criminal justice system; Judiciary, police, provincial administration, institutions of learning, work place and generally issues touching on

women and children. I am glad to say that there are two women today who are going to present, you being one of them. That is a strong indication that there is representation in this hall in terms of representation.

Commissioners, I would request that we also contact Hon Ndetei later after the public hearings so that probably she can bring out some of these issues clearly.

**The Presiding Chair** (Commissioner Shava): That would be in order.

**Mr. Tom Chavangi:** Most obliged.

Hon. Ndetei, I have two questions for you. For how long have you done this community work, which is a noble job anyway?

**Hon. Agnes Mutindi Ndetei:** I think, having lived in the rural areas, it is like I am doing community work almost every day of my life. When I was a Member of Parliament, most of these are things that I was dealing with. Even today, I am still doing a lot of community work.

**Mr. Tom Chavangi:** Are there any other organizations that are doing this kind of work besides yours?

**Hon. Agnes Mutindi Ndetei:** Yes, we have the paralegal unit and the human rights. They coordinate with organizations like FIDA and other organizations which are helping them out.

**Mr. Tom Chavangi:** Do you work in a cohesive situation?

**Hon. Agnes Mutindi Ndetei:** No. We are not working in a cohesive situation because there is lack of funds everywhere. Nobody has any money to do anything. I really congratulate the women who are doing most of this work out there and for bringing up these reports because they are spending their own resources. Very rarely do they get someone to assist them when they have to take someone to Nairobi Women's Hospital. They may get a donor to give them some little funds to go out there. But most of the time they work on their own and yet there is a lot of work in the rural areas that can actually be covered.

**Mr. Tom Chavangi:** The reason I asked that question is because there is always strength when you work in a cohesive manner. You can cover a lot of ground and reach a lot of people. But nevertheless, the work that you are doing with other members of your group is noble. In terms of these incidences that you have mentioned, for instance, rape and defilement, how rampant are they in this county?

**Hon. Agnes Mutindi Ndetei:** It is not easy to know each and every one of them because some of them do not ever report. Others are reported by the community and those parents who can reach out to someone to report to the chief, village elder or police. But I must say that our police force is really wanting when it comes to these cases. I am very

disappointed that we do not get the response that we should get from the police all the time and they know that we are helpless. If the police do not give us help, who else can? The chief also wants to go and report to the police because they know that that is the ultimate gate to accessing the justice system. So, when the police deny you that access, how else can you reach the justice system? It is very difficult. The people are generally living below the one dollar level per day. In Ukambani, there has been very severe famine. So, when your child is raped, you would rather not bother to go and get justice but go and look for a kilogramme of maize to have the family eat. So, I believe that whatever is happening, however little, needs to be known that it is happening in one way or another. So, I agree with you that we need to work as a cohesive team. But I believe that is happening not only here in Makueni County. Should you dig deeper in the other communities, you will find that it is also happening. What we need is a well structured Government system that will cover everyone in this country. Then our little organizations can be now substituting or working together with the properly set up Government system. That way, we are assured that even the most deprived of the community can actually access justice.

**Mr. Tom Chavangi:** Thank you, Hon. Ndeti. I think your call for more women has gone far and wide. I can see some women walking in. Commissioners, I have three directions that I would like to discuss with Hon. Ndeti. If you allow me to do that, then I can direct her on what to do on some of these issues that she has mentioned.

**The Presiding Chair** (Commissioner Shava): Perhaps, Leader of Evidence, you can do that in your session with Hon. Ndeti when you are taking further particulars from her.

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

**Commissioner Dinka: Hon.** Ndeti, thank you very much for your testimony. You have told us something that we have heard from a number of other witnesses in different regions of this country. But you have put it very lucidly and the story is truly horrendous. I think every society and government must take the issues of its children as a matter of priority. In Kenya, politics is a very vibrant activity in both formal and informal sectors. Although we read in the newspapers and hear about defilement of children, rape and violation of domestic tranquility by parents beating up their children and sometimes even killing them, at least, for me I have not seen any formal activity, whether in Parliament or Non-Governmental Organizations (NGOs), civil society seminars or workshops directed at coming up with some formulation of policy regarding the defilement and suffering of children. Why do you think that happens?

Secondly, as the Leader of Evidence said, cohesive and integrated activity by the civil society will definitely bear fruit. How are you intending to combine your forces and create some kind of civil society synergy to sell this policy on children, women and disabled people now that the 2012 elections are coming and politicians actually are going to come out and seek your support? How are you going to use that opportunity to bring

about some kind of real political action at the national level on children, women and the disabled?

**Hon. Agnes Mutindi Ndetei:** As you have said, there is a lot of politicking in Kenya about a lot of things. But we do not hear much about politicians or leaders talking about some of these things that are happening in terms of child defilement and violence. Either they do not know that those things are happening or they ignore them. Maybe to them, we are not a priority. Many leaders will come to us when they want votes and once we give them the votes, they engage in other things that they consider more serious or urgent. I also get surprised because when those violations happen, many people will not go to the area Member of Parliament to report them like they would go to an NGO or paralegal. It is like they do not think that the Member of Parliament is relevant in these things. I also do not think that the Member of Parliament cares to know what is happening.

I would just back up what you have said by mentioning an incident that I have noticed in our area. In my organization, we are also dealing with people living with HIV/Aids. What you hear commonly from those people is that they always invite the area Member of Parliament to come. They want to talk to him because they have special needs. But he has never shown up in any one of the groups. So, that is a forgotten minority. It is like it does not matter. They are there but who cares about them? That is why I am saying that it is very important now for us, as a country, to start focusing on minority groups in this country. They are there suffering and ignored. They are not given a lot of attention. I agree with you that at policy level there is nothing. Many things may come to Parliament but they are not given a lot of weight and yet the actual Kenyans continue to suffer.

I think my case here before the TJRC was a test case. I am testing the waters to see if together with the other areas where you have gotten reports, you can have something compiled and put to the Government as an area where the Government needs to pay attention and start coming up with policies. This is because more often we hear Commissions being set up for this and the other. For example, we have the Kazi Kwa Vijana Programme but we are not hearing of how to go deeper and find out the suffering among the youth. So, there is a lot of work that can be explored and done to correct the situations through policy formulation and creating the necessary institutions in our Government system. That is why I am loudly thinking that the Government must put money there to create special desks at the police stations and even Administration Police (AP) lines because the rural community is very diverse. You will find that there will be a police station here but the next police station is like ten miles away. A poor mother whose child has been raped or defiled will not afford to walk that long distance with a suffering child. So, we need this catered for and brought close to the chiefs' offices and then we have a system of coordinating activities from those desks in the police stations. Those desks could be empowered to issue P3 forms for rape victims in this country, instead of going to the police who have just been dealing with a murderer before they come to a rapist. That is because their mindset is different. So, we need people who are consistently hired by the Government to do this work so that they can help these groups. It is like a Judge handling a murder case and thereafter he is given a divorce case. His mind is still on the details of the murder yet you disengage that and bring in a divorce

case. Probably, he will be looking at one of the persons in the divorce matter also as a murderer. So, we need to have specialization in this country because that is where we should be heading to in order to deal effectively with these abuses in the communities.

On your second question, I blame many of our voters because they are also ignorant in many things. During this time of political campaigns, many voters may be just waiting for someone who walks along, gives them money and they exchange their votes with money. I think that is where voters have failed. We have elected mediocre leaders who do not even come back to us after we vote for them. They do not care about the problems that we are going through. They would rather try to recover the money that they gave you. So, those of you who are voters from Makueni Constituency or County, I think you need to go out as ambassadors and tell people to watch out. Those leaders who are coming to buy you are doing so to blind your mind from thinking about community issues and problems.

Having been a Member of Parliament in this country before, I have heard Members of Parliament who, when their constituents come to see them, tell them: "You gave me my votes but I bought you. So, why are you coming to me and yet I paid for the services?" We really need to think twice. This is a new political dispensation and Kenya has been split into 47 pieces. Those areas which are going to elect their leaders without using specific strong criteria for leadership shall be reading Kenya No.47. So, we need to be wise this time round when it comes to choosing the leaders who are going to represent us at the County, Senate, Governorship and Parliament level. We need to be a wise county. I will try to float this concept paper to all those who are going to run for office in this County and see how much they can explore and advocate further on it in our area.

Thank you.

**Commissioner Dinka:** Thank you very much. I think that is what I had in mind; the strategy of using this occasion and getting the people who are going to be elected. The other thing also is to convince the larger community about the fact that the minorities also have rights. The majority communities must respect and protect them. Otherwise, their own rights may not be protected and respected by others. I think that that is extremely important because small minorities are everywhere in Africa and unless they are protected, they can be violated left and right not only by people with power but also even by neighbours like what you have mentioned. So, that is absolutely important.

Thank you very much. I have no further questions.

**Hon. Agnes Mutindi Ndeti:** In fact, the irony of the matter is that if today you are not a minority, tomorrow you may be a minority. Maybe, today, your daughter has not been raped by someone but tomorrow you might find yourself in that very situation that you really did not care about. We need to sensitize ourselves that we can be the majority today but tomorrow be in the minority bracket. That is true of human life.

**The Presiding Chair** (Commissioner Shava): Thank you, Hon. Ndeti. I think what you have said is very true. I have done a lot of work with refugees and we tend to think that refugees are other people until we find ourselves in Kiryandongo Refugee Camp in Uganda, where we were a few weeks ago talking to people who are Kenyan refugees.

Your presentation brings out so many issues. I do not have any questions but I would just like to make some observations.

You spoke about legal representation for victims. You described instances like rape and domestic violence. Violent behaviour and speech are crimes and they are supposed to be investigated by the police and in our current dispensation, prosecuted by the Office of the Director of Public Prosecutions. So, I would just like to clarify that for that process to happen, one does not need to have a lawyer. If you are going to prosecute it through civil law--- For example, if one was seeking damages or compensation for a beating, then you will need a lawyer, although there is nothing stopping you from representing yourself. But sexual offences are now prosecuted under the Sexual Offences Act, which has got very clear provisions and directions on what constitutes sexual assault and what the penalties are when one is found guilty for sexual assault. So, I think that probably for organizations such as yours, the way that you link with paralegals--- they will be very helpful in assisting people to prosecute such cases. On issues to do with the Sexual Offences Act and how to use it successfully, I think your Community Based Organization (CBO) would be very helpful in letting people know how to, for example, preserve evidence. This is because I see it in the bundle of documents that you have given us, which we will later be admitting into the record of our Commission. There is a person who has gone to report to the police but the police said that the clothes were not presented at the time that they had gone to the police doctor to get the report. Those are the kind of things that when we are the victims also do and which do not help our case. So, maybe, you can also help with the sensitization in those kinds of issues. I have listened to you talk about the gender desk and must say that I am a bit surprised because that is an issue which the women's movement in this country has worked very hard to address. We have been assured that this programme is rolling out in terms of having a gender and children desk in every police station. So, probably that is still work in progress and the information you have given is very important. This is because what you are telling us is that you do not have those desks in this area. You do not also have police officers who are trained not to ridicule people who come to report. That is supposed to have been a thing of the past. So, we have taken that into account and that is very useful information to us.

With regard to the way in which our court cases roll out in the administration of justice, I would first like to personally commiserate with your terrible experience of having your case sandwiched between criminal matters. But there are reforms that are currently going on. If you look even in today's newspapers there are people being recruited into the Judiciary. So, the number of courts is expanding. Also, the divisions of the courts are expanding. We now even have a constitutional division and the judicial officers coming on board are more. So, hopefully, this will bring the administration of justice closer to the people. So, just to encourage you in that, the Chief Justice has also given direction on

how to speed up and catch up on the backlog of cases in the Court of Appeal, which is something we have never seen published in the newspapers. The wheels of justice sometimes turn slowly, but I think what we are seeing is a trend towards justice actually being dispensed in a way that satisfies us. So, be encouraged.

There are police reforms, of course, also underway. Even the name of the police institution is changing from Police Force to the Police Service. So, we hope and expect to see a change in attitude and efficiency from the police who sometimes do the best they can under difficult circumstances but as you have pointed out, there are circumstances where certainly we would expect them to do better.

We will be having, as you said, a women's hearing tomorrow but this will be in Machakos. Our Regional Coordinator will be giving more details on that at the end of the day. Women from this area are very much encouraged to travel to Machakos tomorrow so that we can discuss the issues that affect women. This is because landlessness is landlessness but women and men experience it in different ways, in terms of how they have access to finances and what culture permits them to do and not to do. Those are very important issues.

There are issues that you have raised regarding people living with disability, HIV/Aids and other minority and marginalized people. I would like to assure you that we will be having a special focus on them in our Report, which is going to be very much policy-based. So, the kinds of things that you have said resonate with the ethos of this Commission.

With those remarks, I would like to thank you for speaking out and sharing with us your broad understanding of the issues. We will, at the beginning of the second quarter of next year, have what we call thematic hearings which will be looking at institutions. There are issues such as how women have experienced universities in Kenya and security service. We will be going deeper into those issues, having got the information from around the country as we have been travelling. We have listened to how in Narok the community views persons with disability, which may be different from here and people will experience it differently. So, we will be looking at those issues and it is important that people speak out because the TJRC represents the opportunity for us to re-write our own history and the way that we understand it and not for other people to write it for us.

There are issues of injustices with us all the time and we cannot build a strong society unless we talk about these issues. This is because injustice thrives in the dark. So, the kinds of things that you have come here to tell us are very important not only for the Commission but for all Kenyans at large. So, the examples that you have given us are pretty terrible, but I am encouraged that a person of your calibre has chosen to live and work with the community so that the power to determine what happens in our lives rises from the bottom to the top and not the other way round. So, we hope that the experiences that you have shared are going to be important not only for this area but for Kenya at large.

I have no questions for you. I just want to thank you very much for coming to talk to us today.

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

**Mr. Tom Chavangi:** Presiding Chair, kindly admit the documents.

**The Presiding Chair** (Commissioner Shava): The memorandum of Ms. Ndeti is admitted onto the records of the Commission.

**Mr. Tom Chavangi:** Presiding Chair, the next witness is Witness No.12. He will present his testimony in Kamba.

*(Mr. John Kikuthi Ndambuki took the oath)*

**Mr. Tom Chavangi:** Thank you very much. Please, state your name again for the record.

**Mr. John Kikuthi Ndambuki:** My name is John Kikuthi Ndambuki.

**Mr. Tom Chavangi:** Commissioners, my clerk had indicated that it is not Witness No.12, but it is Witness No.15. I apologize for that.

Mr. Ndambuki, thank you very much for coming before the Commission. You presented a memo touching on issues of the Mau Mau veterans.

**Mr. John Kikuthi Ndambuki:** I came to talk about the Mau Mau.

**Presiding Chair** (Commissioner Shava): Leader of Evidence, please ensure you guide the witness.

**Mr. John. Kikuthi Ndambuki:** I want to proceed to give my evidence. My speech today is about the Mau Mau veterans. In 1950, we were staying in Kaa. The Kikuyu Community was administering oath among its people. When they stopped administering the oath we went back to Ukambani. We settled on Farm D4. We, Kenyans, took the oath to chase out the British from Kenya. We formed an association so as to chase the British from Kenya. The oath was given to make sure that nobody ran away from the association so that we could chase the British away.

We chased away the British Government with the hope that we would get back our land which they had grabbed from us. The Britons persecuted us, Africans, and killed most of us. Up to now, most of us remain incapacitated because of the problems we encountered.

The late President Mzee Jomo Kenyatta promised to give us our land back, provide our children with education, health and other goodies. Why did he not honour his promise to us? We are still suffering and yet we sacrificed our lives so that Kenya can be a better country for all of us.

We, the Mau Mau veterans, just wonder why we are still suffering. It is like we sacrificed for nothing because successive Governments have never respected us. Up to now, they have not paid us our dues. In short, we Africans who were referred to as the Mau Mau did very good work of liberating this country. We fought for *Uhuru*, justice and the Constitution. Without these three, we could not get what we wanted.

**Mr. Tom Chavangi:** Translator, I think you are not giving us the right translation. The old man is saying a lot of things but you are saying only a few. So, I think we are losing what he is saying. Being a Bantu speaker, I can actually understand some of the things that he is saying but they are not coming out of you.

**The Presiding Chair** (Commissioner Shava): Leader of Evidence, please control the witness so that the interpreter can follow the interpretation. He seems to be experiencing some difficulty.

**Mr. John Kikuthi Ndambuki:** The Mau Mau Veterans want to be given land and respect by this Government. Since we fought for Independence of this country, we need to be taken care of and respected just like any other Kenyans.

The other thing is that we tried so much although we could not read nor write. When somebody was shot dead, we would put soil in his mouth. That was a sign that he died fighting for the land so that whoever is left behind or their children will benefit.

After we had done that we were not respected. It is a shame. During that time, our people suffered and some ran away from home. I went to Tanzania, Arusha in 1954. I feared for my life.

**Mr. Tom Chavangi:** Again, I would like to intervene at this particular moment. Let him stop shifting between the history of the Mau Mau and the recommendations. I would like you to go directly to the recommendations because you have brought out the history which is also well known to us. What do you want this Government to do for you now or the Mau Mau freedom fighters?

**Mr. John Kikuthi Ndambuki:** If it is possible, those who were fighting for Mau Mau should be given a piece of land. They fought for this land. The Government should tell us what they are doing to compensate us. There is no son who will tell the father what he should do for him. It is the Government that knows what is good for us.

**Mr. Tom Chavangi:** What else?

**Mr. John Kikuthi Ndambuki:** The other thing is that the children of the Mau Mau fighters should be given free education. Most of them are now engaged in menial jobs because they never went to school. We could not educate them. Their fathers who are alive are not able to do anything. They could not educate their children up to Form Four level. They do not have land of their own. They cannot sustain themselves. Since this Government is ours and the land is ours, then it should look for ways of solving that

problem. They should reward the Mau Mau fighters so that they know that they did something good.

**Mr. Tom Chavangi:** At this juncture, I feel again Mr. Ndambuki is repeating the recommendations in a different format. I would ask him, probably, to give us the last two recommendations then we wind up the session by asking the questions.

**Mr. John Kikuthi Ndambuki:** My recommendations are that if it is possible the Government should give us land so that we can grow crops and keep animals. This is the only way we will feel appreciated and rewarded for the good work we did for this country.

**Mr. Tom Chavangi:** Probably, you could give us your last recommendation.

**Mr. John Kikuthi Ndambuki:** If it is possible, hospitals should not charge us so much because we do not have a lot of money. We need free medical care because we fought so hard for this nation.

**Mr. Tom Chavangi:** I will ask you a few questions. Do you have land at the moment?

**Mr. John Kikuthi Ndambuki:** I have no land. When you come to my place you will sympathize with me because my land is rocky. There are many people in this situation. We are suffering although we gave our best for this country.

**Mr. Tom Chavangi:** How big is the land that you occupy?

**Mr. John Kikuthi Ndambuki:** It is very small. It is like three and a quarter acres. It is full of rocks and stones.

**Mr. Tom Chavangi:** How many children do you have?

**Mr. John Kikuthi Ndambuki:** I have six sons and three daughters.

**Mr. Tom Chavangi:** Are they living with you at the moment?

**Mr. John Kikuthi Ndambuki:** I stay with all of them. It is only one daughter who is married.

**Mr. Tom Chavangi:** Thank you very much. I will hand you over to the commissioners who will ask you a few questions.

**Commissioner Dinka:** Thank you very much for your testimony and for taking time to come and explain to us the difficulties that are faced by the former independence veterans. We have listened to other witnesses who have been ex-Mau Mau fighters and who have told us the same story. The Commission has taken very serious note of the matter. We will reflect on it and will come to the appropriate conclusion and

recommendation in our final Report. Thank you very much for coming. I have no questions for you.

**The Presiding Chair** (Commissioner Shava): I would like to echo the statement of my fellow commissioner. We have just come from Embu and Kirinyaga. We met your contemporaries there. They have told us of the same stories of suffering.

For me, a nation that does not honour its heroes is a nation that is going on the wrong path. It is sad that we did not honour our freedom fighters that liberated us from colonialism. In fact, we started on a wrong foot. We have never even honoured even those who fought for the Second Liberation, culminating in the new Constitution you talked about. You correctly observed that the path to the Constitution started with the struggle and the fight that heroes like yourself waged. We are in situation where we also do not remember, acknowledge or respect those who fought for the Second Liberation. This Commission will write the truth about the things that have happened so that they do not continue to happen or happen again to other Kenyans. So, we consider what you have told us today to be very important.

*(Technical hitch/no recording was done)*

They followed the others to settle on the roadside. While on the roadside, the Government thought that it was not right for us to stay on the road reserve. So, we were brought to a place near the chief's office. After that, they thought that it would be better for the Government to allocate us some land. So, the Government took the responsibility of identifying the genuine squatters. Officers moved from house to house and registered everyone. They did not involve the community leaders. They registered people and left. We could not verify who was who or what was going on. Later, in 2000, we saw papers which said that we had been allocated land at Kiboko B Settlement Scheme. We were surprised to see that only half the number of those of us who were in the camp was on the list of beneficiaries. Those who got the letter took possession of the land. Those of us who were left there thought that it was not okay for us to stay on. So, we followed those who had taken possession of the land they were allocated. We went there without any documentation with the intention of ensuring that we were also assisted.

When we went to Kiboko B Settlement Scheme, we found that there was a lot of land that did not have any owner. We understood that there had been corruption in the allocation. That was why some of our names were not on the list of beneficiaries. We found a lot of unoccupied land. We continued to stay on it. Those who did not manage to get any land moved into slums. They are still there. Those of us who were lucky to possess some of the land are still there, even though in some cases, we see some rich people come in and evict us without notice. There is no system of being moved out. One comes and tells you: "Pack up and leave. This is my property." We believe such people. We know that there are some politicians who interfered with the allocation leading to us being denied our rights.

We wonder when we see people who were not in the scheme. When we were in Mikululo and Metawa, they came in and acquired land. We did not have the tiniest of pieces of land. Those who were lucky to be allocated land were given letters which indicated that they should be given ten acres each but later, some people came back and declared that their land was five acres and not ten acres. Some people had already paid the 10 per cent that the Government had demanded, despite the fact that the size of the land was still reduced. Some people would be moved from the land they had paid for to other pieces of land they had not paid for. I would like to give an example of a lady called Veronica Mule. She was allocated ten acres. She paid everything that was due to the Government, but later people from the Government told her: "This is not your place. Let us go we show you your land." She was shown land belonging to somebody else, and it was five acres.

When she was being moved from the first piece of land she was not consulted. She was forcefully evicted. The house she had built was demolished. Even now, she has tried to follow up without success. She even went to the Kenya Anti-Corruption Commission (KACC) but she did not succeed. We have tried to help her without any success. Every office we went to we were told that they would deal with the matter but nothing has happened so far. The reduction of the acreage of land was done to a few people. We realised that the Government targeted the land of those people who did not have ability to protest. In Kiboko B Settlement Scheme, there are farms measuring five and ten acres. The ten acre ones belong to the rich people and those who have positions in Government, who grabbed the land. We know them very well but we could not mention their names. We are asking the Government that if it decided to reduce the acreage of the land, it should have downsized all the farms.

When we went to ask them why they were reducing some of farms, we were told that there were so many squatters. The surprising thing is that we did not know who these many squatters were. When they were registering the squatters, they did not involve the local community leaders. We noticed that all the land that was reduced was for the benefit of the rich. There were some people who were allocated more than three parcels of land each. So, we are urging the Government that if it is concerned about our welfare, let it look into the issue of those who are in the slums and those who are living on land for which they do not have any documents so that they can be allocated the land.

I would also like to say that the process of identifying the squatters is still going on. We know that at the moment, the Government is still trying to register the squatters in Kibwezi. We are wondering why this is being done secretly. We know that in future this will cause problems because they are indicating the names of the people they know. This is what happens every time when the Government wants to allocate some land to squatters. Those who are in the slums are remnants of the squatters settled in Kiboko A, Kiboko B and Kiboko C Settlement Schemes. When you look at Kiboko C Settlement Scheme, because of not involving the local leaders, there was double allocation. There are some people who were allocated land in Kiboko B Settlement Scheme and also in Kiboko C Settlement Scheme. This makes us to continue living like orphans.

Those who are in the slums face very many problems. The situation still continues because there is no sufficient security. Two years ago, research on HIV/Aids prevalence in the slums was conducted and it was established that the slums are leading in Kibwezi District. So, we would like to ask the Government to take this as an urgent issue to save its citizens.

Another issue is that when we left Mikululo so many people were tortured. They were arrested and detained and up to now, they have not been given any land. Some are women and some are old people. Their children still continue to live like squatters. Besides all that, we see that the situation is getting worse because children are not going to school. They can be in school this year and in the coming year, they will have to be moved to another place. This leads to the education standards getting worse and worse. So, we urge the Government to involve the people from the local communities in identifying the genuine squatters.

A lot of property was destroyed when we were being evicted from Mikululo. We lost cattle that were scared off by aeroplanes. We do not know where they ran to. Our stores had maize, beans and other foodstuffs. They were all torched. We incurred huge losses.

As a recommendation to this Commission, I would like to say that we have seen people suffering. We have seen them continue to live as if they are not in their country. In the coming years, this area will be of no use to us and there will be nobody to assist us. So, we are urging the Government to involve people from the local community and also inform us whenever they want to do something. Also, these people should be given security, instead of being evicted all the time because this just adds to their losses. We have tried to talk to the chief and the DC. I have tried to take them to the places where those people live, not once or twice, but we have not got any resolution.

I would like to urge the Government to look into our matters and compensate those who were assaulted and injured by the police. Some people were killed. An example is John Philip Nguthu. However, the Government does not seem to be interested in the matter. If the Government will do that, we will not have any squatters in the years to come. I urge the Government to look into this issue.

**Mr. Tom Chavangi:** Thank you, Douglas, for the history you have given us and for the recommendations that you have given to the Commission. Commissioners, do you have questions for the witness?

**Commissioner Dinka:** Douglas, we thank you very much for your testimony. You have represented the views of your organisation very ably. I think you support the position of Witness No.1, whom we heard this morning, Councillor Musau. Therefore, I have no more questions for you except to thank you for coming to share your story with us.

**The Presiding Chair (Commissioner Shava):** Douglas, the story that you have told us is a very painful one. It is a story of people living in their own country as if they do not belong to it and as if they have no rights. No explanations are given to you about why the

things that are happening are happening. When people identify the genuine squatters, you are not notified about the exercise. People just arrive and take decisions on which you are not consulted. We understand that when property and livestock are lost, it leads to a cycle of poverty. This affects the way families live. It affects the way children go to school or do not go to school. You have said that even if they go to school, they do so for short periods of time. They have to drop out because they have no fees and find another school. So, their education is interrupted. Education is the key to progress. When this happens, then the future looks bleak.

We want to assure you that we have heard your story. We have understood what you were saying on behalf of yourself and on behalf of the people you so ably represented. I have no questions for you. I just want to add to Commissioner Dinka's thanks to you for coming here today and giving us this information.

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

*(Ms. Mwanaisha Ndila Kilonzi took the oath)*

**Mr. Tom Chavangi:** Please, for the record, state your name.

**Ms. Mwanaisha Ndila Kilonzi:** My name is Mwanaisha Ndila Kilonzi.

**Mr. Tom Chavangi:** Mwanaisha, you presented a statement before this Commission on issues of land grabbing. Is that the position?

**Ms. Mwanaisha Ndila Kilonzi:** Yes.

**Mr. Tom Chavangi:** Proceed and tell the Commission what happened.

**Ms. Mwanaisha Ndila Kilonzi:** What happened was that people came and surrounded my home, which stood on two acres of land. I asked them: "Why have you surrounded my home? This is not your place. It is my place." They got into a car and drove away. They were people from the Government. I sat there and waited for them but they did not return on that day. They came back after a week. I went to the office and inquired as to what was happening but I was told that nobody had surrounded my house. I told them that I had seen people with my own eyes. I stayed there. After one week, they came and started to divide the land that I had ploughed. As they divided my land, I and my children wailed a lot.

*(Ms. Mwanaisha Ndila Kilonzo experienced an emotional breakdown)*

**The Presiding Chair** (Commissioner Shava): Mwanaisha, we know that it is very distressing to remember the things that you went through. We want to assure you that we will go at your pace. When you are ready to speak, you may speak. Please, take a few minutes to compose yourself. When you are ready, we will continue.

**Ms. Mwanaisha Ndila Kilonzi:** We were then persecuted so much and beaten. We were arrested and taken to several places and then the land was fenced. There was food crop that I had planted. They cleared a half an acre of the crop and said that they would build a school and a church, which was called “Church of the Rock”. They used force. I and my husband went to ask about it. When my husband asked about it, he was arrested and taken to a police station. He was kept in custody for hours after which he was released. After some time, we went back to the office, where we were told that we had no land. That land of ours was ancestral land, which had been passed on to us for generations by our fore-parents.

When I was married in 1966, I was married on that land. Before then, whenever I passed by, I would see my mother-in-law on that land. So, the land belonged to my husband’s family from the colonial era. It was subdivided by all the people who came to it. I was worried when my land was grabbed and the land of other people was left intact. Whenever I went to the office to take a letter, I would be told not to take the letter. So, I decided to go to higher offices. When I went to Nairobi, I was given some letters of allotment and told that my matter would be looked into. I stayed for some time but nothing happened. Up to now, I am worried as to where I should take my case. Now that this Commission has come here to assist us, I have come to you for you to see how you can help me so that I can get my land back. That parcel of land is mine. The parcel was sub-divided into 11 plots. The person who was sub-dividing the land is a councillor, who is here. He was the one who confirmed them to be 16 plots. I am worried. How can someone’s property be grabbed from him forcefully?

When I heard that you have come to here, I decided to come to see how you can help me. The problem is that I have suffered so much. Even sleeping is a problem for me. Whenever I see those people, I do not feel good. I have problems sleeping. Up to now, they are seen as corrupt people. Somebody took my children and placed them---. When the children are sent money from abroad, he uses it. He has already built a house whereas I do not have one yet the land belongs to me. If you go to the pastor, you will find that he has a storey building. He has flats for guests. When guests come, they sleep at his place. Before he came there, he had absolutely nothing. I have grown old on that land from the time when I was young. Even my children have grown up on it. Up to now, I am worried. Somebody came and grabbed my land and I let him do so. How did he come to that land? I pray that this Commission evicts that person from that land of mine. That is the land on which I have buried my father, my mother and all our children who have died. We do not know any other place.

I do not know what I can do to him. The matron of that place is his mother and the cooks his sisters. So, he has opened up opportunities for his extended family. I do not know anything about that person. Therefore, I request that you evict him from that place. If you evict him, I will be contented. I have no more to say.

**Mr. Tom Chavangi:** Thank you very much, Mwanaisha. Those were not easy moments for you but I will ask you two questions. For how long has this issue persisted?

**Ms. Mwanaisha Ndila Kilonzi:** The land was grabbed in 1999.

**Mr. Tom Chavangi:** Thank you very much. Within that locality, was it only your land that was grabbed?

**Ms. Mwanaisha Ndila Kilonzi:** Yes, it was only my land.

**Mr. Tom Chavangi:** The land of the other people who were living there was not grabbed?

**Ms. Mwanaisha Ndila Kilonzi:** No; it was not.

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

**The Presiding Chair** (Commissioner Shava): Mwanaisha, I really empathize with the situation that you are going through. I recognise that it is not easy because you are feeling tortured. Your family is not well because of the things that happened to you. Just to help me understand the situation better, I will ask you a few questions. In many of our cultures, it is unusual for a woman to be coming to a place like this to speak about the family land; so it is very brave of you to have done so. You spoke about your husband earlier. Is your husband also here with you? Is he also helping you to pursue this matter?

**Ms. Mwanaisha Ndila Kilonzi:** My husband is not here. He is sick. He has high blood pressure and diabetes.

**The Presiding Chair** (Commissioner Shava): How many children do you have? Do they go to school?

**Ms. Mwanaisha Ndila Kilonzi:** I have nine children and they do not attend school. The last one has gone up to Standard Eight but I have no money to take him to secondary school.

**The Presiding Chair** (Commissioner Shava): You said that if the land is restored to you, your heart will be at peace?

**Ms. Mwanaisha Ndila Kilonzi:** Yes, because everyone deserves to farm on his own land. Everyone has his plot there.

**The Presiding Chair** (Commissioner Shava): What you have said is right. Everybody has a right to their own property. I do not have any more questions for you. Thank you for coming and sharing with us your unique perspective on the way your land has been taken from you. As a family, it has affected your progress. We really empathise with the situation and we thank you for speaking to us.

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

**Mr. Tom Chavangi:** Presiding Chair, our last witness is Salim Nguli. The Commission came to know about him today morning. He was not listed on our cause list. I beg that I proceed with this witness.

**The Presiding Chair** (Commissioner Shava): We will hear the witness. Please, proceed.

*(Mr. Salim Nguli Nzuki took the oath)*

**Mr. Tom Chavangi:** Salim, for the record, please state your names.

**Mr. Salim Nguli Nzuki:** My names are Salim Nguli Nzuki. These are the names on my Identity card. Everything that I possess is registered in the name of Samuel Nguli wa Nzuki.

I am talking about land which is ours because when the colonialists came, they found our ancestors there. It was before I had been born. When I was born, I found my parents on this land. That was in 1919. The colonialists came to that place in 1946 after the Second World War. They came to that place and we lived with him there. By 1948, we were had a manager then, a Mr. Simmit. He migrated to another place and Benedict remained there. The chair on which Benedict used to sit was the one that his predecessor used to sit on. He was the head of the chiefs, the sub-chiefs, game rangers and the police.

In 1950, he started to disturb us on the land we were occupying. He started telling people to move away. He started to chase people from that place and planted sisal on it. Due to that disturbance, we went and talked to the DC. The DC asked the person why he had grabbed the land and why the place had no boundary. He said that there was no boundary and he continued grabbing the land. At that time, the Minister for Lands got burnt in an aircraft accident in Ngong Forest. He was called Bruce Mackenzie. He had sons and there were friends from that family.

In 1953, we saw GSU personnel. We were chased from house to house. When we went out, our goats were chased away. They were taken to where people could not reach them. Our houses were burnt down. We were collected at night. Nobody was left behind in the village. I used to work as a mason and was building houses at the police camp. When I heard that my people had been taken away, I reported the matter at Mukuyuni Police Station. The inspector of Mukuyuni said that we should be set free to go and look for our goats.

We, the parents from that place, went to the village where we found nothing. Our children had been taken away. You understand how the Government was at that time. You would be tortured by Government security agencies and you could not take somebody anywhere. So, I came back to Kibwezi Town with my people. An inspector called Karani gave me a house and I lived in it with my family.

**Mr. Tom Chavangi:** Salim, I would like to assist you in presenting your views. Is that okay?

**Mr. Salim Nguli Nzuki:** Yes.

**Mr. Tom Chavangi:** How much land was taken away from you?

**Mr. Salim Nguli Nzuki:** We owned over 100 acres. We were staying and grazing our cattle there.

**Mr. Tom Chavangi:** That is a big chunk of land. Who took the land from you?

**Mr. Salim Nguli Nzuki:** We were not staying in demarcated land of one acre or two acres.

**Mr. Tom Chavangi:** My question is: “Who took the land from them or from you?”

**Mr. Salim Nguli Nzuki:** It was taken by a white man called Capt. Bennett in 1953. That was the time we were driven away from our land, and we could not go back.

**Mr. Tom Chavangi:** So, where does Mzee Salim live?

**Mr. Salim Nguli Nzuki:** ... (*Inaudible*) When I was chased away from my land, I came to town. In May 1955, I was given a plot in town by the District Officer, Mr. Gitwanga, and I built a house there. The plots you see here in Kibwezi were allocated by me to all the people whose land had been taken away.

**Mr. Tom Chavangi:** That was very kind of him. How much property did you lose in the process of being evicted from this land?

**Mr. Salim Nguli Nzuki:** I had over 150 goats, 200 chickens and a lot of property in the house; valued over Kshs35, 000. They were destroyed in the three houses that I had. There were 16 bags of maize, three of peas and three of sorghum respectively, and all were burnt down.

**Mr. Tom Chavangi:** All these were valued at how much?

**Mr. Salim Nguli Nzuki:** You are the ones who can calculate for me. You had not told me to calculate in advance. I will do the calculations and bring the value to you.

**Mr. Tom Chavangi:** What recommendations would you like to make? You have been evicted from your land and your property has been destroyed and your family chased away from this land. What recommendations do you have?

**Mr. Salim Nguli Nzuki:** If possible, the Government should ensure the boundaries erected in 1663 are respected. We have never gone beyond that boundary because we

were not allowed to. Our property got destroyed in our shambas. In short, I would like this Commission to come to my land at the border, even if it is January next year, so that I show you what I am talking about.

I was born in 1919 and I am 92 years. We do not have to miss our land, and our children and grandchildren should benefit from the land. If it is possible, talk to the Government so that when you come in January to see how the border was demarcated by the District Commissioner; we can show you the shamba of Thuo and the land that was added.

**Mr. Tom Chavangi:** Thank you very much. Is that all you have in terms of recommendations?

**Mr. Salim Nguli Nzuki:** The other question is whether I am going to calculate the value of the property that was destroyed?

**Mr. Tom Chavangi:** You can calculate and then share the same with us. We have statement takers here. You can be introduced to the statement takers.

**Mr. Salim Nguli Nzuki:** Give us your number and if you want to read the letter that was given to us by the one who was allocating land, I can give it to you. I have the letter from the one who was allocating land, including years of the lease that were added. The lease was supposed to be 90 years and then it was extended to 99 years. The letter, the title deed and the lease had expired. They have taken all the other land that was left by the white settlers and Thuo's company took the land. I want you to make an effort to come and see the border of the land so that our children will not have problems any more. I do not know when I will die as my days are few.

**Mr. Tom Chavangi:** Thank you very much, Mzee Salim. Commissioners, I hand over the witness to you.

**The Presiding Chair** (Commissioner Shava): Mzee Salim, I thought I heard you say that you were born in 1919. Then I did not believe my ears because you look to be at a remarkable age.

**Mr. Salim Nguli Nzuki:** You can take my photograph and I can also show you my Identification card. Those are my years.

**The Presiding Chair** (Commissioner Shava): I am sure that is the truth. You look remarkably well for it. Surely, you had a position of responsibility.

**Mr. Salim Nguli Nzuki:** ... *(Inaudible)* I look at myself well. In 1940--- *(Inaudible)*

**The Presiding Chair** (Commissioner Shava): That is not what I said. I said that is good advice which we will also try to follow. I think the story you have told us demonstrates how injustices follow individuals. Unless and until it is resolved, it will continue to plague families and the nation at a large.

**Mr. Salim Nguli Nzuki:** I have taken my story everywhere. I have been to the Attorney-General's office, Machakos and Nairobi, and my complaints are there. I am the one who has signed those letters. If you go to Makindu, Court Case file No.33, you will find that my file is there although I am aware it has been thrown away because somebody has been corrupted.

**The Presiding Chair** (Commissioner Shava): We will help you to take your case forward because this information about your case only came to us this morning. We are asking, perhaps, if you would have a little more time to spare, when you finish this hearing in order to see how we can assist you by getting documentation from you, then we will be in a position to make the correct finding and recommendation.

We thank you very much for coming here today and telling us your story.  
Leader of evidence!

**Mr. Tom Chavangi:** Presiding Chair and your Commissioner, we have exhausted our witnesses. We do not have any witness at the moment. I now seek guidance from you.

**The Presiding Chair** (Commissioner Shava): That being the case, Leader of Evidence, I would thank the people who have come to speak to us today. I thank members of the audience for being attentive and patient in listening to your fellow citizens as they were telling the stories. I would like to thank the following: Councillor Bernard Musau; Hon. Agnes Ndeti, John Kikuthi Ndambuki, Wilson Ndolo Kyangi, Mwanisha Ndila Kilonzi, Douglas Musembi and Mzee Salim Nguli Nzuki for coming and sharing their stories with us.

These stories will enrich the record of the Commission and will help other Kenyans to know what it is that has been happening in these areas from the pre-colonial era right until the present date.

We thank you all.

As I had said earlier, we will be having a women's forum at Machakos. Our Assistant Regional Co-ordinator is in the room and I would ask him to stand so that he can identify himself to all those of you who would wish to come. He is in the room.

Does our Regional Co-ordinator understand the language in which we are broadcasting?  
The Assistant Regional Co-ordinator, please stand up.

**The Assistant Regional Coordinator:** (*Inaudible*).

**The Presiding Chair** (Commissioner Shava): That is okay. The gentleman who is walking out can just serve for that purpose. That gentleman who is walking out is the person that you can speak to in the event that you would like to know more details for tomorrow's forum, which will be a session for women, facilitated with women

commissioners who are currently sitting in Machakos. We encourage you to attend in large numbers.

There being no further witnesses, the proceedings are now closed.

*(Closing Prayer)*

*(The Commission adjourned at 1.55 p.m.)*