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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION ON WEDNESDAY, 4<sup>TH</sup> MAY,  
2011 AT CAVALLERA PASTORAL CENTRE, MARSABIT**

**PRESENT**

<b>Berhanu Dinka</b>	-	<b>The Presiding Chair</b>
Ronald Slye	-	Commissioner, USA
Tom Ojienda	-	Commissioner, Kenya
Getrude Chawatama	-	Commissioner, Zambia
Nancy Kanyago	-	Leader of Evidence
Patrick Njue	-	Leader of Evidence
Presiding Clerk	-	Simon Njenga
Mohammed Abdinoor Dahir	-	Regional Co-ordinator

*(The Commission commenced at 9.30 a.m.)*

*(The National Anthem was sung)*

*(Opening Prayers)*

*(The Presiding Chair (Commissioner Dinka) introduced himself  
and other TJRC Commissioners)*

**The Presiding Chair** (Commissioner Dinka): I would like to welcome the public. Today, we have a very interesting group of presentations. We will listen to a number of elders who will be presenting the cases of particular communities. We will also hear individual cases of human rights violations and violation to the right to property. So, we have a very interesting range of issues that will be raised. I would like to ask everybody to be very attentive and to respect the witnesses who appear to give testimonies and their narrations of sufferings.

In order to do that in peace and tranquility, I will ask everyone to switch off their mobile telephones and also to keep calm. Whether you happen to agree or disagree with the witness, be tolerant and allow the witness to give his side of the story with the dignity he or she deserves. Anyone who would want to disturb the process will be, unfortunately and regrettably, asked to leave the hall. The message to the media is that you can take as many photographs as you like before the testimony begins and after the testimony ends. But do not disrupt the witness by creating unnecessary movements and commotion in the hall.

Just to explain how we are going to conduct the process, the witness will be asked to swear an oath to tell the truth and the oath will be conducted by the hearing clerk. Once that is done, the evidence leader will take over to guide the witness in his or her presentation of testimony. Once the leader of evidence completes, the panel of Commissioners may want to ask a few questions where they feel there is a gap that has not been answered adequately and, hopefully, this will lead to the compilation of the historical injustices, gross human rights violations, corruption and loss of the right to property that the Commission is mandated to compile and present to the people of

Kenya at the end of its mandate. This will be, of course, historical reference material for generations of Kenyans. So, what we are doing here is quite important for the people and the country and the Commission hopes that we will get your total support in the process. I will now ask if there is any counsel present to identify themselves and whom they are representing. I see no one and, therefore, I will ask the hearing clerk to call the first witness of the day.

*(Mr. Abdikadir Kaaru Gullet took the oath)*

**Mr. Patrick Njue:** Very well. How are you sir?

**Mr. Abdikadir Kaaru Gullet:** I am okay.

**Mr. Patrick Njue:** I will lead you so that you may begin and I will first start by asking you to state your names for record purposes.

**Mr. Abdikadir Kaaru Gullet:** My names are Abdikadir Kaaru Gullet.

**Mr. Patrick Njue:** Where do you live at the moment?

**Mr. Abdikadir Kaaru Gullet:** I live in Marsabit Town.

**Mr. Patrick Njue:** Abdikadir, you are here because you have been given an opportunity to present a memorandum on behalf of your community, the people of Marsabit. We do not have an advance copy of your memorandum but I note that you have indicated your willingness to present the same after the presentation. So, I will request that as much as you will be giving us the copy, you will give us a summary of what it is that is detailed in the memorandum.

**Mr. Abdikadir Kaaru Gullet:** I have already handed a copy to one of your clerks. What I am going to talk about is marginalization and gross violation of human rights and illegitimacy under the law. The story behind illegitimate and gross violation of human rights suffered by the people of Northern Kenya under the seal of the law is best captured by an American writer called Negland Paragon in her book called *The Last Dance in Africa* where she stated that "There is one half of Kenya of which the other half does not know nothing and even seems to care less." The author further stated that "It is god forsaken devil neglect country of stone, shrubs and acacia where wildlife abodes and wild people compete with one another to exterminate one another over pasture and water." The said sentiments expressed by Paragon about Northern Kenya are true today even as they were 62 years ago. The legislation which led to this life of marginalization and gross violation of human rights under the seal of the law is explained here. In other words, the independent Government of Kenya subjected its citizens to retrogressive colonial legislation that was inherited by our independent Government of Kenya just to punish the citizens of Northern Kenya. The colonial legislation eventually became the Kenyan law which is mentioned here. The outlined Restricted Districts Ordinance of 1992 became Cap.103 of the Laws of Kenya. This Act declared Northern Kenya a closed district. That is, movement in and out of the district was prohibited and was only possible with a special permit. It is only in this part of the country that one needs a visa to travel in and out as if we are in a separate country rather than Kenya. This naturally shows the attitude of isolation and

separation *vis-a-vis* with the rest of the Kenyans. The former Northern Frontier Districts were administered under a regime of law that rendered them distinct from the rest of the Kenya colony. That had the effect of encouraging separateness of identity and nurtured a Kenyan outlook and attitude which turned out to be costly to Northern Kenya at the time of the emergency.

The second legislation is the Stock Theft and Produce Ordinance of 1953, Cap.355 which gave the colonial administrator excessive power to arrest, detain, retain and seek the property of hostile tribes. The definition of what constituted hostile tribes was left to the discretion of the provincial administration, in their minds. The ordinance effectively legitimized collective punishment of tribes or clans for offences committed by an individual once that tribe was considered hostile by the provincial administration. The Borana, Somali, Maasai, Kalenjin, Turkana, Samburu were declared hostile tribes by the colonial administration.

The third is the Special Districts Administration Ordinance of 1934 This was the law of Kenya which regulated pastoral systems based on the powers contained in the ordinance which defined areas of grazing and water that is allocated to specific tribes. The best feature of significance of tribal grazing area is the Galla-Somali line where the British moved all the Galla-speaking communities. This line literally starts from South to North; starting from Tana River and terminating at the Ethiopian border, 80 kilometers to the west of Mandera. By order made under the ordinance, this area constitutes a boundary between the Galla and Somali tribes. Neither was allowed to cross the line. That is the Gallas are not supposed to cross the East of the Galla-Somali line and the Somali are not allowed to cross to the West of the line. If the animals of either tribe - that is either Galla or Somali - crossed either of the line, that livestock was seized and auctioned. Generally, what this means in practice was economic and political marginalization of the people of Northern Kenya. The Kenya system of governance is based on the concept of 1965, a Government application popularly known as Sessional Paper no.10 of 1965 on African socialism and its application of development in Kenya. The Sessional Paper No. 10 of Kenya of 1965 clearly distributed the resources of Kenya to regions considered to be high potential areas. The benchmark for high potential areas is agricultural land producing coffee, tea or pyrethrum or cash crops. That is where Kenya distributed its resources. Northern Kenya was not considered as one of the high potential areas in terms of livestock and livestock production. In other words, areas that do not produce coffee, tea or pyrethrum are considered to be low potential areas with no much benefit to the Government. Therefore, there is no much need to invest in them in terms of education, water and other infrastructure.

The instrument that granted independence to Kenya was contained in the extraordinary issue of the *Kenya Gazette* under Legal Notice No.69 of 10<sup>th</sup> December, 1963. Kenya became independent on 12<sup>th</sup> December, 1963. A fortnight later when the rest of Kenya was in a celebratory mood, unfortunately, the Northern Frontier District which was composed of Garissa, Wajir, Mandera of North Eastern and Moyale, Marsabit, Isiolo of Upper Eastern was declared to be under a state of emergency on 26<sup>th</sup> December, 1963. This legal notice was signed by the Governor-General, Sir Michael McDonald without approval of 65 per cent of parliamentary majority of both houses – lower and upper - on the grounds that *shiftas* were attacking all military bases and police posts all over Kenya. Instances of violence in the *Shifita* War were

misrepresented by the Government resulting to criminalization of the community of Northern Kenya based on social, economical and cultural values that were deemed to be unKenyan. Anne Whittaker in 1968---

Parliament was on recess when the state of emergency was declared. It was recalled back on 31<sup>st</sup> December, 1963 to approve the declaration of emergency by the Governor before the expiry of seven days granted to a governor by the Constitution. But only the House of Representatives gave a full approval while the Senate withheld the approval which later led to the abolition of the Senate among other organs.

In Kenya, there were two sets of emergency laws. That is, one for general application and the other one specifically for Northern Frontier districts. The former Northern Frontier District is where this emergency law was applied. It was provided under the North Eastern and Contingency Measures of 1966 which, because of the short time, I do not want to go into details of what it meant and all that. On the other hand, with regard to the violation of fundamental human rights and the freedom of the people of Kenya, the chief executive of the country used his power constitutionally to abrogate the fundamental rights of the people of Northern Kenya. While it is true that fundamental rights and freedom might not be abrogated so easily for the rest of the country, this is not the case for the North Frontier Districts right from the time of independence. That state of emergency in operation for the former Northern Frontier Districts expressed power at an instant at the discretion of the President. He abrogated the application of fundamental rights and freedom of the area any time he wished. The president became the sole determinant of what law may be applied to the North Frontier Districts and other contentious districts of Marsabit, Moyale, Isiolo, Tana River and Lamu. The declared state of emergency on Northern Kenya, 14 days after attainment of independence double marked the beginning of the darkest era of my generation and gross violation of human rights in the history of the nation. The Constitution of Kenya allowed the Governor-General or the President to abrogate the fundamental rights and freedoms of the people of Northern Kenya. That opened an era of security operations and perpetration of atrocities.

Kenya became a Republic in 1964. The powers bestowed upon the Governor under Section 19 of the Constitution were subsequently transferred to the President under Section 137 although repealed in 1992. It also gave the President immense power to determine the fate of the people of Northern Kenya at any time he feels appropriate and necessary. There was a constitutional emergency provision which was specifically for Northern Frontier Districts which also allowed suspension of fundamental rights in Kenya as a matter of course.

The third amendment of the Constitution was made vide *Kenya Gazette* Legal Notice of 14<sup>th</sup> of 1965 which altered the requirement of parliamentary majority of 65 to approve a state of emergency to just a mere simple majority. In the same third amendment, the constitutional requirement had to go to Parliament for resolution as authorized in the use of emergency power within seven days after declaration of emergency was extended to 28 days. At the same time, the valid period of the state of emergency once approved, was extended to three months instead of the two months.

The fourth and the worst amendment that was somewhat analogous to the last straw that broke the camel's back was made under *Kenya Gazette* Legal Notice No.16 of

1966 hence enactment of Preservation of Public Security Act, Cap.57 of the Laws of Kenya. The issuance of powers conferred upon the President by Sections 11 and 16 of the Preservation of Public Security Act, the President published a security Act for the whole country vide *Kenya Gazette* Legal Notice No.263 of Cap.66. This was immediately followed by the official promulgation of arbitration of Part II of the Preservation of Public Security Act in line with Sections 4,5,6, 8 and 16 – the use of North Eastern and Contentious Districts regulation vide a *Kenya Gazette* Legal Notice. The North Eastern Province and Contingency Act of 1966 was made superior to the Constitution. The regulation was said to have been, notwithstanding any provision in the Constitution of Kenya or any other law, inconsistent therein with the Constitution. The powers set out in the North Eastern Contingency Act of 1966 allowed a greater deviation from the protection of fundamental human rights and freedom than ever and were used to suppress the fundamental rights and freedom and further perpetrated atrocities in Northern Kenya. Therefore, what was intended to be special powers only to be used for emergency became a resolution power for administration.

The sixth amendment was made vide *Kenya Gazette* Legal Notice No.16 of 1966. The section that allowed Parliament to declare the state of emergency by a simple majority was removed and replaced with the one which gave the President a blank cheque to declare emergency any time he wants. This time, restriction was removed all together so that the power became available to the Government indefinitely. In essence, Kenya had two separate regimes; one exclusively for North Eastern and the other for the rest of the country. The reputation of emergency law in Kenya is said to have been crowned in 1970 with the passing of the Indemnity Act, Cap.44 of the Laws of Kenya. The Act which came into force on 5<sup>th</sup> July, 1970 was made to indemnify government agents, members of the security forces against any claim or account or any loss or damage occasioned by the acts of the people of Northern Kenya. Section 3 of the Indemnity Act states:

“No proceedings or claim or compensation or injuries shall be entertained by any court, authority or tribunal court established under any law in respect of any matter to the prescribed area after 25<sup>th</sup> December, 1963, when we were under the state of emergency on the first day and up to 1<sup>st</sup> December, 1967.”

What a gross violation of human rights and absolute abuse of democracy that has been legitimized under the law! It was this period between 25<sup>th</sup> December, 1963 to 1<sup>st</sup> December, 1967 that gross human rights violations and atrocities were meted out on the residents of Northern Kenya. It is something so strange that Section 3(b) says if it is done in good faith--- I wonder whether the killing of our people, raping of our wives, killing our animals were done in good faith.

Lastly, those sections were repealed recently. They were repealed in 1967 at the start of multi-party democracy when the then Ordinance District of 1973 was imposed for 95 years. When the Anti-Stock Theft and District Ordinance was imposed for 64 years, the Special Districts Ordinance was imposed for 63 years. When North Eastern and Contentious Districts Regulations were imposed for 31 years, the Indemnity Act is still in force because it was not repealed by the President.

With those few remarks, that is why I said that the marginalization and human rights violations of northern Kenya were done under the law.

Thank you very much.

*(Applause)*

**Mr. Patrick Njue:** Indeed, I want to thank you, Mr. Abdikadir, for taking us through that historical journey that gives us or shows us the laws that affected these parts of the country, the Northern Frontier District (NFD). Indeed, this has been said by many people in the regions we are coming from prior to coming to Marsabit and your voice or your presentation just goes on to add to what they said. I note that yours was a detailed memorandum, a copy of which I now have. I also note from it that you have expressed a lot of optimism in terms of the new Constitution. You have also mentioned that most of these laws actually have since been repealed. Now, my only question to you would be, you have been presenting this memorandum to this Commission; do you confirm that?

**Mr. Abdikadir Kaaru Gullet:** Yes.

**Mr. Patrick Njue:** If that is the case, Commissioners, he will be giving us a copy of that. I will now ask that you hold on as the Commissioners may want to clarify a thing or two from you. But I thank you for your time.

**The Presiding Chair** (Commissioner Dinka): Thank you very much for your testimony. I would like to ask my colleagues if they have any questions for the witness.

**Commissioner Chawatama:** I join the presiding Chair and the Leader of Evidence in thanking you most sincerely for your presentation. As you spoke, based on some of the testimonies that we have heard, whether it is Garissa, Wajir, Mandera, I began to have a better understanding why certain things happened. What you have outlined makes it clear how laws can be used for both good and evil. There are a few more pieces of the jigsaw and the picture on my mind is a lot clearer based on your testimony this morning.

I thank you.

**Commissioner Slye:** Mr. Abdikadir, I also want to thank you for what was a very detailed and thorough analysis of the legal structure that led to the marginalization of NFD. As you know part of our job is not just to document historical injustices, but to understand the causes, the antecedents and the structure that allowed these injustices to occur. Your presentation very nicely sets out the legal structure that led to many of the historical injustices the way I have heard in the NFD. I apologize that I have not been able to read your memorandum and, so, I do not have any specific questions for you. But I very much look forward to reading and studying it in future.

Thank you.

**The Presiding Chair** (Commissioner Dinka): Okay, we have exhausted our questions. I would, again, add my voice to my colleagues to thank the witness for giving us this very comprehensive report on the background of the marginalization and injustices that have been committed in the NFD.

May I now ask the Clerk to lead the witness to his seat and bring the second witness of the day? While he does that, I would like to apologize because I forgot to introduce myself when I introduced the panel of Commissioners. I am Amb. Berhanu Dinka; I am one of the international Commissioners from Ethiopia.

I am sorry for that.

**Mr. Patrick Njue:** Commissioners, our next witness will also be presenting a memorandum, which is what is being availed to you.

*(Mr. James Forole Jarso took the oath)*

**Ms. Nancy Kanyago:** Dear Commissioners, this witness, James Forole Jarso, is here to present a memorandum on behalf of the Marsabit County Inter-Ethnic Consultative Group. I will lead the witness through his evidence, requesting him to pay particular attention to the issues that have, perhaps, so far not been previously covered in the previous memorandum. I believe that you have copies of the memorandum, but with your permission, I would like to guide the witness to just cover those issues that were previously not covered.

Please, state your names for the record?

**Mr. James Forole Jarso:** My names are James Forole Jarso.

**Ms. Nancy Kanyago:** Do you present a memorandum on behalf of the Inter-Ethnic Consultative Group?

**Mr. James Forole Jarso:** I do affirm that.

**Ms. Nancy Kanyago:** Okay. Please, proceed to go through your memorandum, paying attention to those things which have not previously been covered.

**Mr. James Forole Jarso:** Maybe, just as a point of departure, it would be imperative for us to appreciate the nature of this group which is presenting this memorandum. This is a non-registered entity which was purposely formed to consult on the historical injustices that were faced by the people in this county with a view to comprehensively presenting them before the Commission. The idea of establishing this group surfaced after it emerged that there was some gap in the presentation of the common county level issues. So, the group represents largely all the ethnic groups that are based in the county as attested to by the appended signatures. But, unfortunately, owing to logistical difficulties, we could not incorporate membership from the Moyale section of the county.

So, our memorandum basically covers four thematic areas; first and foremost, it will touch on gross violations and abuses. Secondly, it will touch on socio-economic



disenfranchisement, marginalization. It will also touch on irregular and illegal allocation and acquisition of public land. Finally, it touches on the misuse of public institutions for political objectives.

Just to start on the gross violations and abuses, we will start on a note of looking at the violations that were committed between 1964 and 1967 in the context of the so-called “Shifta” War. So, it is within the public domain that between January, 1964 and December, 1967, there was a secessionist insurgency in the so-called NDF. I do not want to go into the details of the insurgency, but I would just highlight the violations and abuses that were committed during that era. Violations were committed by both belligerent parties; both the Government forces and the so-called rebels and secessionists. First and foremost, we had murders and extra-judicial killings; we also had thousands of innocent civilians who were forcibly uprooted from their habitual residences and were subsequently subjected to the indignity of living in squalid conditions.

We also had violations of property rights where the local people lost various kinds of property like houses, business premises, livestock, crops in the field and food that was in the stores or granaries. In addition, the people faced forcible confiscation of their property and this ultimately shattered the livelihoods of thousands of people.

We also had abductions and enforced disappearances of young men and women. We had torture, cruel and inhuman or degrading treatment and punishment. We had incidents of slavery and servitude and finally, we had rape and related violations. Maybe this point that I am going to make will be very critical in appreciating the whole issue surrounding the NFD in the realm of provision of peace and security services by the Government.

So, it is unfortunate to note that during the insurgency, the Government forces were overwhelmed by the secessionists and the only response that the Government took was to disguise its presence. So, the so-called “home guards” or the Kenya Police Reservists (KPR) units were established because the Government felt that, that minimized presence would act like a soft spot for the secessionists. This left a vacuum in terms of peace and security, provision of services and, unfortunately, even after the war, the Government practically ratified these institutional arrangements and, indeed, even today, this is the arrangement that subsists on the ground. Matters of peace and security have been left almost entirely to the KPRs. We have very minimal Government presence in the county. I would say that the presence of the Government is only felt in convenient centres and if you venture off the road, you will realize that the people only know the Government for its brutality. What broke the camel’s back was the enactment of the Indemnity Act in 1972. This Act at Section 3 effectively immunized all Government security forces from civil and criminal liability for all the violations that were committed during that period. I do not want to go into the details of the Act, but it puzzles me. Even in my advanced reading of International Human Rights Law, I am yet to understand whether human rights can be grossly and systematically violated and abused in good faith and whether such violations and abuses further any known public interest.

The second incidence of gross violations is in respect of purported oil exploration activities. These were committed in Kargi and its environs, particularly between 1986

and 1988. Sometime in 1986, the former President Moi commissioned the exploration project.

It would be very imperative for us to mention the fact that these alleged explorations were carried out by AMOCO Kenya Petroleum Company. This is a subsidiary of the Chicago-based AMOCO Corporation. The purported explorations were concluded in May, 1988. Our concern is not that; what concerns us is the aftermath. Immediately after the said explorations were concluded, the local people started encountering problems that had hitherto been unknown to them; livestock started dying *en masse* and humans started encountering cases of esophageal cancer. These problems initially started in a location called Kurkum; this is in Kargi and has since spread to very many other areas, especially where the water tables are ordinarily high during the rainy seasons. This issue has been tabled a number of times in Parliament and one particular incident was on 2<sup>nd</sup> July, 2008. So, according to living witnesses, the exploration activities were carried out in a very suspicious manner. For instance, the explorers were fully masked and no locals were allowed at the exploration site, especially at the conclusion stages. So, in light of all these living testimonies, we have un-relented suspicion that the purported exploration was designed to dump some imported radioactive waste. The said exploration has violated a number of rights including the right to an adequate standard of health, the right to a healthy environment and the right to adequate food. Many people still live with the scars of losing hundreds of livestock even in a single day and despite the efforts of various advocacy organizations, the Government is yet to give any convincing or even acceptable explanation for the health problems.

For instance, Mr. Acting Chair, Sir, recently as I said, on 22<sup>nd</sup> July, 2008, when the Question was brought before the National Assembly, the Ministry responsible for answering that Question merely sunk into denial. They even went to the extent of treating the issue so casually, even doubting whether the numerous cancer cases that have been reported in the area actually exist. May be the only time that we can say the Government did something was in 2003. It may have been out of the political euphoria that prevailed at that time. Amidst this, the Ministry of Water and Irrigation collected samples which were taken to the Government laboratories in Nairobi and we are yet to get the results.

Mr. Acting Chair, Sir, our suspicion is not unfounded because in 2007, a private firm was consulted by a global advocacy organization called “Global Concern”. That firm carried out analysis of samples collected from the wells. So, the analysis revealed that the levels of a number of minerals like nitrates, nitrites and another one called “arsenic” were unreasonably high. The firm suggested that the unexplainably high levels of these minerals could be the cause of these cancer cases. Indeed, similar sentiments have been expressed by medics who have examined the patients from time to time.

Mr. Acting Chair, Sir, the third incidence of the violations is one which may even bring a lot of emotion in this room. These were violations and abuses which were committed in the context of ethnic violence. For purposes of this memorandum, we are dwelling on the periods between 1992 and 2007. From the chronology that has been highlighted in the memorandum, you will realize that virtually every ethnic

group in this county has suffered one or more episodes of these conflicts. The causes are yet to be conclusively established, but it is commonly cited that these conflicts have been caused by competition for dwindling resources, especially for those who are predominantly nomadic. It cannot be denied also that we have some harmful cultural practices like cattle rustling and, indeed, our local politics have also not been any clean. So, in the context of the various episodes, the people have suffered various forms of untold violations and abuses, specifically committed by Government security forces with the knowledge and sanction of senior Government officials. We had murders, extra-judicial killings, arbitrary arrests, illegal detentions, torture, rape, denial of medical care and attention for the injured, abductions and forced disappearances. Many lost their property. We also had displacements and much more worrying was denial of effective remedies for those who directly suffered these violations and abuses. So, these violations and abuses have been ably documented by various human rights organizations and a good example is given of the Kenya Human Rights Commission in a publication called “The Forgotten People” which was first published in 1997 and subsequently revised in 2000.

Mr. Acting Chair, Sir, it pains to mention that among those who heavily bore the brunt of this brutality are women, children, the elderly and young men. Indeed, in this forum, we have very many people who have suffered such violations and abuses. In particular in 1992, and by then I was a young primary school boy, I was subjected to the indignity of witnessing what my own mother had to go through at that particular time. Very many of our mothers suffered the same fate. This brutality was not confined to a particular region or community. From Jaldesa or Shura in the south all the way to Inderet in the north and diagonally across all the corners of this county, virtually all the county residents have suffered these violations. It is sad that to date, none of the perpetrators have been mentioned, let alone being brought to book. The administration of justice has also been skewed in favour of the Government of the day and it was really difficult to get justice for these violations and abuses.

The second thematic area is on the socio-economic disenfranchisement or marginalization of this region. I beg the indulgence of the Commission to make use of this phrase: “The Kenya of the North” because we believe that we are having a picture of two Kenyas. Sometime in 1949, in a sentiment that is akin to that of Charles Dickens in his book, *A Tale of Two Cities*, a lady called Leslie Farson described the Northern Frontier District (NFD) in words that are so relevant as if they are being spoken right now. She said: “There is one half of Kenya about which the other half knows nothing and seems even to care less.” It is a lengthy quote and I do not want to go into that, but no words can better describe the NFD than the word of Farson.

So, Mr. Acting Chair, Sir, in light of that, it is hardly surprising---

*(The witness broke down in tears)*

**The Presiding Chair** (Commissioner Dinka): You can take a few minutes off.

**Mr. James Forole Jarso:** So, it is hardly surprising that you will hear the locals say that this area is not in Kenya. The clearest of examples is when we are travelling. You will hear someone saying; I am travelling to Kenya or so and so is travelling to Kenya. This is simply because according to them, Kenya ends in Isiolo. The most

worrying part of this is because we are facing a dilemma in terms of citizenship. We are suffering. We feel as if we are third class citizens of Kenya. It is as if we do not have equal rights with other Kenyans in terms of citizenship and instructions. We face constant scrutiny in terms of national registration. I remember that I could not join the university simply because I did not have an identity card. I got that identity card in a manner which I ought not to have followed. I had to bribe an official at the registration bureau to have my identity card issued at Kibera Location. I had applied for the identity card more than two years before that date. But my application would be rejected because there was no conclusive proof that I was a Kenyan. We cannot deny that the people of northern Kenya and southern Ethiopia are but one people who are merely separated by the artificial political borders. We do not deny that most of us have our kin on the other side. However, this does not mean that we are not Kenyans. We have our fellow Kenyans from western Kenyan and our fellow Maasais who live in border areas but they are not subjected to the same scrutiny.

As we travel to Kenya, we face the strict burden of proof that we are, indeed, Kenyans. If the four of us were to travel in the same vehicle, the presumption would be that the rest are all Kenyans, but I am a foreigner. So, at the numerous road blocks which are lined up all the way from here to Isiolo where Kenya starts, I have to produce my identity card, in default of which I would face severe consequences. This scenario does not stop in Isiolo. In our own country, I feel the indignity of being stopped at a public office and being subjected to security and other checks simply because from my looks, I am a dangerous person or a terrorist. This is the kind of pain we have been living in since Kenya attained its Independence. This dilemma is documented by the Kenya Human Rights Commission in a report that was published in 2009, titled, *Foreigners at Home; the Dilemma of Citizenship in Northern Kenya*.

Immediately after Independence, the Kenyatta Government was bitter about the secession idea. Therefore, marginalization of this region was institutionalized. Very many repressive laws were enacted including emergency laws that allowed collective punishment. I am yet to learn of this concept regarded as collective responsibility. At the end of the day, if a particular wrong is committed, responsibility should lie with the individuals. Violations and abuses which I have talked about were perpetrated in the name of collective responsibility of those people such that when a son is suspected of wrongdoing, the whole clan is held responsible. If this son runs into hiding, the family members are subjected to torture to produce the person who has gone into hiding lest they suffer consequences.

What evidence do we have for being marginalized? I am sure that for those who have travelled by road, after crossing Merile River, you must have had a feeling of what we have been feeling since 1963. We have our road to this area. Unfortunately, this is a road classified as A2 and runs all the way from Cairo right through Addis Ababa all the way to Cape Town. Until recently, there is one section of that road which had no single piece of tarmac. This is the section before you get to Moyale, about 500 kilometers. We are told that there was a time when funds were kept aside to reconstruct that road but due to the influence of some individuals in the Government, the funds were diverted to other areas. It is recently that the Government decided to do something. We are yet to see the job being completed. We have very few public health facilities. The existing ones are not fully equipped and, at the same time, they are understaffed. We also have very limited maternal and child health services.

Sadly, we do not have any facilities in a county that spans over 15 per cent of the total land mass of Kenya. For instance, if you take the southern part of Laisamis Constituency, you will see that there is no single health facility that has been established by the Government. We have very few that were established by missionaries. If this is not marginalization, then what is it? Illiteracy levels are very high. For instance, close to five decades after Independence, there are statistics which show that Moyale has 10 secondary schools. Those schools serve an area which takes up 15 per cent of the country's land mass. There is no school that gives proper education to secondary school going children. This is a county that started in 1920. It was established by the colonialists. However, compared to counties which were established recently, you will see that we are highly marginalized. Take an example of Makueni. We only have 10 secondary schools but Makueni County which was established in the late 1990s has more than 230 public secondary schools. I do not want to go further into that.

Access to safe water is a luxury for us. Most of the facilities we have were established during the colonial period to serve the population that existed during that time. For instance, in Marsabit, we have the Bakuli water supply which was established to meet the demands of just about 2,000 people. Today, we have gone beyond the 60,000 mark. So, while other Kenyans turn around and turn on a tap to have clean water, in Marsabit, people have to travel more than 80 kilometers to look for water. If you were to travel 80 kilometers a day to look for water, would you have time to do things to gain economically? We have been complaining about chronic poverty. However, in my considered opinion, one of the factors that have greatly contributed to the continued poverty is the water crisis. If a 20 liter jerrican goes for almost a dollar, Kshs70, and we are talking about a poor person who lives below a dollar a day, what picture are we trying to portray?

I have vast experience working in the humanitarian field and going by the CF Standards, even in a humanitarian situation, a person needs at least 15 liters of water a day. Just think how much money does a household need to meet the daily requirement? So, as much as we are facing water problems, we are cheating ourselves when we say that we are fighting poverty in Marsabit.

More worrying is the situation of our children. The World Health Organization has established a threshold to determine the nutritional standards among children below five years of age. One of these standards is the so called acute global malnutrition rate which the WHO worries about when it goes to 15 per cent. For the children of Marsabit, statistics tell it all. Our global malnutrition rate has always remained at 15 per cent always. At times, it goes as high as 30 per cent. You can paint the picture of what the local child goes through.

In a nutshell, I would like to make reference to the Millennium Development Goals. Every year, Kenya conducts a review of its progress. If we were to conduct that review in Marsabit, we would not know for sure if we are on the right track towards achieving those eight goals. This is a largely livestock based economy. Our expectation is to have services just like our colleagues who are farmers. While our Kenyan Government has established special funds and subsidies for farmers in Kenya, we are yet to have any action taken in our favour. We have the Coffee Board of

Kenya, Pyrethrum Board of Kenya and a sisal board and a sugar board. I am yet to hear of a board that addresses the needs of pastoralists. The only industry that is there to serve our interests is based in Nairobi; the Kenya Meat Commission.

Food security is also a major problem here and we have evidence of it. If you look through the window or as you were coming from Isiolo, you must have seen some huge silos, less than a kilometer from where we are.

The silos were established in the 1990s to receive local produce from this area. During that period, Marsabit was second after Kitale in terms of cereals production. The need for additional silos was felt because there was a lot of produce. Similar structures were erected along the way. At that time, we were self-sufficient in terms of food production. However, today, there is no grain from the local area that can be traced in those silos. Instead of having local produce, today, it is housing humanitarian aid. That has led us to claim that the State provides us with food. In fact, at this moment, if you go off the road, you will encounter very serious humanitarian situations of emaciated lactating mothers, chronically malnourished children and people queuing at food distribution centers on a daily basis. What steps has the Government put in place? We were not assisted by the Moi Government and even the current Government. It is the Moi Government that killed food security of this region and marginalized the region further. In early 2008, the Grand Coalition Government established the Ministry of State for Development of Northern Kenya and other Arid Lands. Unfortunately, it is not just northern Kenya that is catered for by this Ministry but other arid lands which include some sections of central Kenya.

First and foremost, the Government merely established the Ministry as a political gimmick because in the absence of adequate budgetary allocations, we cannot expect any meaningful fast tracking of our projects. Secondly, inclusion of other arid lands has only watered down the establishment of the Ministry. Since the advent of the Coalition Government, and to date, we have been receiving various devolved funds. However, corruption is one of the biggest challenges we are facing. Instead of these projects solving the local problems, they have merely lined the pockets of a few economically well to do people. The worst affected area is the water sector projects in respect of which we call for further investigations. We have also had illegal and irregular acquisition of public land. This has been rampant in Marsabit. We have a lot of public land, both developed and undeveloped. The land has been illegally allocated or has been acquired by the wealthy influential individuals. In the history of Kenya's colonial struggle, Marsabit had a forest. We had the Harry Thuku Forest. Unfortunately for you who have come here today, the Harry Thuku Forest is no more.

Today, it is home to the wealthy individuals who acquired those vital public assets through dubious ways in conjunction with the Marsabit County Council. Nearly all Government houses have also been grabbed. Today, we have Government officials who are renting houses in town. The land itself has not also been spared. Today, we are sitting on an ecological time bomb because of the continued degradation and destruction of the sensitive Mount Marsabit Forest Eco-system. We believe that we are living in an oasis in the dessert. A section of the forest has already been hived off and has been allocated to the wealthy individuals. We say this without fear of any contradiction. Virtually, every District Commissioner and every clerk to the council who has served in this Council is to some extent culpable. We would like to point out

one individual who should shoulder all the blame. This is a former Clerk to the council. His name is Mohammed Bashid alias Bush. He is the official who oversaw all the evil which was committed. On the District Commissioners and other Government officials, the situation poses a threat. Those individuals have not acquired this land for any development purpose. They irregularly acquired this land and upon transfer to other parts of Kenya, they sell the plots to the economic elites and pocket the cash. That is the intricacy surrounding the District Commissioners.

A more disturbing issue is on the realm of climate change projects. Since 2005, we have witnessed an influx of foreign investors. This is because we are living in a corridor which has strong winds. Those who are investing in renewable energy have targeted various parts of this county. We have a corridor at a place called Bobisa and at Turkana, Loyangalani. Sometimes in 2006, the County Council purportedly entered into an agreement with those foreign investors. We did not have any authentic participation by the local people. For those of us who understand that economic potential which is wielded by the carbon trading regime, we feel that we have been cheated. So far, what has been brought in the limelight for public consumption is that the county council got only Kshs20 million out of the deal. That is hardly adequate let alone being sufficient. So, in the absence of authentic participation by people, we feel that their right to participate has been violated. We understand that such agreements ought to have been carried out within some boundaries of human rights. It is sad to note that the free consent of the local people was not sought. Worse still, the local people have lost their ancestral grazing land.

In 1974, the Government gazetted the Sibiloi National Park. Our investigations have revealed that there was no authentic participation of the local people who have lost their ancestral land and cannot venture into the vicinity of the park lest they suffer various forms of abuses. For those who have defied and ventured into the park, they have been tortured; they have faced arbitrary arrests, detentions, murder, extra-judicial killings and loss of property. All these violations have been perpetrated by KWS soldiers.

Our last thematic area will be on misuse of public institutions. There are very many incidences to be cited. However, I will concentrate on two. During the elections campaigns, the Provincial Administration has been used by the governing parties. They have been carrying food to areas where they want to campaign and tell locals that if they vote against a candidate who is being fronted by the Government, they would be in trouble. This has been common. A clear demonstration was during the July 2006 by-elections. Those by-elections were conducted in the four constituencies of this county. This was after the untimely death of the respective MPs who died in a plane crash. The second instance to show that public institutions have been misused is clear. It is the way politics have penetrated our schools.

To hand pick nominees to fill positions in the Board of Governors in public schools is not for public good, but a way of ensuring that they have a political grip in those institutions. This has highly politicized an otherwise apolitical sector of the economy.

Those are the issues but what are our expectations of the Commission? Sometimes in 1922, a celebrated judicial officer in the US who is Justice Oliver Wendell Holmes Junior had this to say and this is in a commonly cited case called the Western Maid.

He said the following: “Legal obligations that exist, but cannot be enforced are ghosts that are seen in the law but are elusive to grasp.” In a nutshell, these sentiments underscore the value of the right for an effective remedy and, in this premise, the surviving victims and members of their families expect the Commission to facilitate enforcement of their rights.

It may not be possible to replace or even repair the injuries that were suffered or even to fully restore the dignity of the people, but we expect effective remedies. To wipe out our injuries and to satisfy us, you should effectively and adequately address the various incidences that we have.

In particular, we give the following general and specific recommendations. In cases of gross and systematic violations, can the Commission investigate further? Let the Commission investigate further with a view to establishing the individual perpetrators. We may be talking about the state, but it is individuals who commit crimes. Secondly, we recommend that the Commission recommends prosecution of these individuals, including those who have illegally or irregularly benefited from allocation or acquisition of public land.

Thirdly, the Commission should recommend effective remedies for the victims. We would be glad if you recommend the following; compensation, rehabilitation, satisfaction and guarantees of non repetition. In the realm of marginalization, we recommend effective affirmative action, especially in the fields of education, health, water, and sanitation and food security. In particular we recommend the following:-

1. That the Government lowers the university or college entry marks for students graduating from the county’s public secondary schools.
2. We equally pray that the Government establishes special fees subsidies for college and university students from the county. At the moment, we are aware that the Government has waived fees in the context of the current drought, but we need something more sustainable than that.
3. We pray for intensive investment in health, education, and water and road infrastructure.
4. We need the Government to adopt policies that are favourable to our local needs, especially in the realm of our lifestyle as nomadic pastoralists.
5. Where public land has been illegally or irregularly acquired or allocated, we urge the Commission to recommend repossession.
6. In the realm of the climate change adaptation projects, we urge the Commission to recommend renegotiations of any irregular agreements made with a view to ensuring effective participation by the local people.
7. In respect of Sibiloi Park, we urge the Commission to recommend de-gazettement because we believe that it is not serving any known purpose in protecting our wildlife. Indeed, we believe that the gazettement was made to



protect foreign investors in archeological work and we would wish to point out that there could be Fora Archeological site which falls within the Park.

That is where we rest our case.

**Ms. Nancy Kanyago:** Thank you very much James Forole for that elaborate, but well articulated memorandum in which you spoke on behalf of the Inter-Ethnic Consultative Group and also gave your own personal experiences.

I would point out one or two issues for clarification. Thereafter, I will hand it over to the Commissioners in case they have any questions.

Please, state for the record what communities are represented in this Inter- Ethnic Consultative Group.

**Mr. James Forole Jarso:** We have the following communities represented by about 14 individuals coming from more than eight ethnic groups. These are the Borana, Burji, Gabra, Rendille, Samburu, Turkana, El Molo, Somali and others.

**Ms. Nancy Kanyago:** I have two other questions. The first is in regard to the forest that you mentioned and illegally acquired public land. Are you aware of any investigation into those illegal allocations whether by example the Ndungu Commission or by the Kenya Anti-Corruption Commission?

**Mr. James Forole Jarso:** We are not aware of any past or ongoing investigations, but we can confirm that the issue has severally been raised by the National Environment Management Authority and one case being during the recent visit by the incumbent National Management Board Chairman, Hon. Kaparo.

**Ms. Nancy Kanyago:** My last question is in regard to one Mohammed Rashid that you mentioned. Do you know if he is still alive? If so, is he still serving in Government?

**Mr. James Forole Jarso:** I can confirm that he is alive and kicking, but I cannot conclusively state that he is still in service though I suspect he could be.

**Ms. Nancy Kanyago:** I have no further questions. I will now hand you over to the Presiding Chair to ask you any questions that he may have for you.

**The Presiding Chair** (Commissioner Dinka): I would like to take this opportunity to thank the witness for this very detailed, coherent and organized presentation. I may have one or two questions later. However, I will first give the floor to my colleagues if they have any questions to ask you.

**Commissioner Chawatama:** The questions that I had have been adequately addressed by the leader of evidence, but on behalf of the Commission, I would like to join the Presiding Chair in thanking you. Could you, please, also thank your colleagues for a job well done? In our other life, I could have said that your submissions are very persuasive and would be of great benefit.

**Commissioner Ojienda:** Thank you James Forole for the brilliant expose' that is your presentation. I guess as the Judge has said, your team must be thanked for the effort that went into this piece.

On page five of the presentation, you quote the Assistant Minister, Mr. Mohamud, in his response on the cases of cancer. Are you aware if any other step has been taken to ascertain what was actually the chain and whether this was an exploration as stated by Government? Are you also aware if any legal measures have been taken by any group to compel such an investigation?

**Mr. James Forole Jarso:** We are not aware of any measures that have been taken by the Government neither are we aware of any representative action that has been taken to establish the truth surrounding the purported exploration or even to enforce the rights of the local people.

**Commissioner Ojienda:** My second question is on Paragraph 19. You refer to one of the causes of conflict within the NFD as enumerated in Paragraph 18, as conflict in water and pastures, harmful cultural practices and dirty politics. I just wanted to demystify the last reference, what do you mean by dirty politics? Are there any particular incidences that you refer to or are there any particular politicians that you think contributed to any of the conflicts that you have enumerated?

**Mr. James Forole Jarso:** Our reference to dirty politics is not without foundation because there is a common perception that behind every episode of ethnic conflict there has been a political hand. We may not be in a position to name any particular individual at this particular time, but we humbly urge the Commission to investigate.

**Commissioner Ojienda:** Thank you very much. The last question is from Paragraph 32 of your presentation. You have referred to the A2 Highway from Cairo to Cape Town and the lethargy on the part of Government that seems to have led to continued marginalization of this area for non- tarmacking of this area by Government. Are you aware precisely when these funds were allocated and where they were diverted to?

**Mr. James Forole Jarso:** It is quite a tricky question and we cannot conclusively say that the funds were diverted by so and so to this and that area. Be that as it may, we strongly believe that with further investigations, the Commission can unearth the truth.

**Commissioner Ojienda:** Finally, thank you for your excellent presentation and for the leadership of this group that you have represented.

**Commissioner Slye:** I also want to thank you for your presentation and the memorandum you have submitted to the Commission. Our first speaker had set out the legal framework for the historical injustices that have been suffered in this region. In addition to that, you have given us very specific instances and indicators that will immensely help us in starting to quantify and document the effect of that legal framework.

I had one area that I wanted to explore briefly with you and that concerns the oil exploration issue. I understand that you and your colleagues have collected this information from other people, so you may not know the answer to some of these

questions. You indicated that it was Amaco Kenya that was involved. Do you know whether there are individuals that saw equipment with Amaco logo on it and were able to identify them as on the site during the period of the so called exploration?

**Mr. James Forole Jarso:** With regard to whether we can authenticate our assertions that the exploration was carried out by Amaco Kenya, we would wish to refer you to the Kenya National Assembly's Hansard of 22<sup>nd</sup> July 2008.

**Commissioner Slye:** In that Hansard, what will we find? Were there any other individuals that saw Amaco there because I do not see anything in the excerpt in your memo referring to them specifically?

**Mr. James Forole Jarso:** The excerpt refers only to that section that was relevant to us in showing that the Government merely sank into denial every other time the issue was floated. If you read Hansard extensively, you will come across sections where it was eluded that this particular company carried out the exploration.

**Commissioner Slye:** You speak about various tests that were done in the area and in the water. Do you know whether there have been any specific tests done on the place where people believe radioactive or toxic materials were buried or have the test mostly been looking at the effects of whatever might have been deposited there?

**Mr. James Forole Jarso:** In response, I wish to refer you to Paragraph 17 where we mentioned the fact that in 2007 a US based consulting firm called William Consulting Incorporated, carried out an analysis of samples collected from the affected well. Unfortunately, there has been fierce resistance by the Government to anything being done or said about that particular project. It is only after the expansion of our political space and maybe with the advent of the new Constitution that we are openly talking about these things and carrying out investigations. Indeed, it is hardly surprising that the William Consulting Inc analysis was done in 2007. This was more than a decade after the alleged exploration.

**Commissioner Slye:** Do you know whether that report was able to pinpoint the source of the chemicals and do you have a copy of that report or do you know how we can get a copy of that report?

**Mr. James Forole Jarso:** We do not have a copy of the report because we could not get it from the net owing to connectivity problems, but we believe that the report is with this client organization which is Global Concern Incorporated also from the US.

On whether the analysis revealed the source of the contamination, we wish to put it on record that from the scanty information on the report that we had, the analysis was largely restricted to establishing the chemical composition of the water samples. Global Concern's concern was not about establishing who did what, but to establish the situation as at that time.

**Commissioner Slye:** Those are all of my questions and I want to thank you on behalf of the Commission for taking the leadership role that you have with this organization in bringing these matters to our attention. There are many other things that I would love to discuss with you that are in this memo like the ethnic conflict issue. I take great comfort in the fact that you and the representatives of wide variety of ethnic groups came together to put together this memo for us. To me, that indicates the start

of a process and maybe it is even the middle of a process that I hope will effectively start to address some of those issues that you addressed there.

**The Presiding Chair** (Commissioner Dinka): I also want to thank you for your testimony which was very coherent, well organized and brilliantly presented. From the point of view of the Commission, the first presenter gave us a whole range of issues affecting the northern region and you have come up with a specific issue called Marsabit County and they really dovetailed into each other perfectly. It would greatly assist us in our further investigations in the reports that we are going to present and the recommendations that we are going to make.

I hope that when we present our report, the people in the rest of Kenya will begin to understand the situation in northern region well. As well informed population and compatriots will begin to be concerned about the situation. It will not be what you quoted earlier that they do not know anything that is going on and they care even less. That I think will be put to an end with the coming out of our report which will be available to the entire people of Kenya.

One question that I have for you, as my colleague Ronald Slye just said, this is a very promising beginning that you have started with the whole community. We have heard throughout our trip that there is tension among different ethnic groups from time to time and you have very well pointed out the causes of the tension. Do you think that your group that has presented this memorandum to us will also begin to work together as one and create some kind of mechanism which will lead to the resolution of some of these problems and for timely interventions into problems before they become violent? My personal view is that I hope it will develop into that kind of thing by having the elders of all communities that are represented here do that kind of intervention work and if it goes into conflict, mediation work among the ethnic communities will do. My question to you is, is it developing into that direction?

**Mr. James Forole Jarso:** When we drafted this memorandum, we appreciated the fact that the Commission is not just a Truth and Justice Commission, but a Truth, Justice and Reconciliation Commission. We valued the inherent good in doing a collective memo because we cannot cheat ourselves. If every community were to stand here and present its separate memorandum, especially on issues relating to ethnic conflict, there would be accusations and counter accusations which may give us the truth and justice, but defeat the object of reconciliation. By coming together, we have diffused that tension and we believe that our efforts will crystallize towards that object which you have just mentioned.

**The Presiding Chair** (Commissioner Dinka): I am very happy to hear that and before we call the next witness, the Commissioners want to take a fifteen minutes' break but before we do so, I want to do some very important task and that is to recognize the presence of the Honourable J. J Falana, former MP for Saku. When I came to Marsabit a few weeks ago on civic education programme, he was with us for the entire programme of three days and before we came in, he was sitting there.

I really want to recognize his commitment and support for the TJRC work, and welcome him among us. Thank you very much, Sir,

*[The Commission took a short break at 12.12 p.m.]*

*[The Commission resumed at 12.27 p.m.]*

*(Ms. Chukullisa Kuyua took the oath)*

**Ms. Nancy Kanyago:** Ms. Chukullisa welcome. For the record, please state your full names.

**Ms. Chukullisa Kuyua:** My names are Chukullisa Kuyua.

**Ms. Kanyago:** Please tell us where you are currently living.

**Ms. Chukullisa Kuyua:** I live in Turbi.

**Ms. Nancy Kanyago:** You have been invited to present a memorandum on behalf of women from Turbi.

**Ms. Chukullisa Kuyua:** Yes, that is right.

**Ms. Nancy Kanyago:** I will lead you through your evidence, and I would like you to please tell the Commission and the public the issues that you wanted to present before the commission.

**Ms. Chukullisa Tuyua:** I want to talk about the Turbi Massacre, and how it took place. It took place at 5.00 a.m., in the morning, and I can say women and children were killed. All the animals were taken. All the women and children who were killed were not buried for three days and their bodies lay strewn all over. The Government was not available to help us.

After all the animals were taken, we had a lot of problems supporting the poor people, and the orphans we had. The children who were left had no caretakers as their parents were killed. From that day there were a lot of people who came and took information from us, but none has helped us. Whenever they come and ask us about the experience I feel a lot of pain inside me. We do not have water, hence we have a lot of problems, especially with our animals. We do not have clean water; so, we suffer a lot. We use rain water together with our animals and wild animals too. We are not in the Government of Kenya because we are a marginalized minority. We hear a lot about the Government, but we hear and see nothing concerning development. About development and education, we are so backward. Since the animals were taken away, we are so poor and have a lot of problems. I have only that and that is what I can say.

We still live in Turbi and we urge that peace should prevail for us to live happily. They always come to Turbi to ask some things, but they do not help us after that. We do not know why the Turbi Massacre took place. If I talk about development in Turbi, I can say that it is on our way to Moyale but its roads are not in a good condition. We can say we want to take animals to the market, but we cannot do so because there is no road. When we take animals to the market they die on the way because of the poor state of roads. Sometimes we take the animals to Nairobi but they die on the way, and then other people have to give us funds to come back here, because we lose everything. We are citizens of Kenya but that is what we go through.

**Ms. Nancy Kanyago:** Ms. Chukullisa, thank you so much. I am just going to ask you a few questions for clarification. Commissioners, according to the memo she is speaking on behalf eight members of their group. I notice your input and appreciate your coming to talk to us. If you can, please tell the Commission, do you remember when that incident in Turbi took place? What were you doing on that particular day?

**Ms. Chukullisa Kuyua:** We were still sleeping because it was 5.00 a.m. but the kids were up. We heard gun shots and then we tried to put our children under the beds, so that they could hide. I took the kids under the bed. However, as I was fearing that they might torch the house, I took the kids outside later. We ran out and they tried to shoot us, but they were not successful. At 9.00 a.m. we were able to come back.

**Ms. Nancy Kanyago:** Was any member of your family killed or injured?

**Ms. Chukullisa Kuyua:** There were so many who were killed.

**Ms. Nancy Kanyago:** You mentioned that there were people who were taking information; do you remember how they identified themselves? Did they say where they were from and where they were taking that information?

**Ms. Chukullisa Kuyua:** We did not know where they were taking it, but sometimes they came to the graveyard, asked us some questions, wrote and went away. They gave us some questionnaires, which we filled in.

**Ms. Nancy Kanyago:** I am asking this because I know the statement takers of the TJRC approached you with questions. I understand you said there were other people who had taken information from you. You do not have to remember, but if you can, did they say where they were from? Were they from an NGO or a Government organization? I am talking about those people who were giving questionnaires.

**Ms. Chukullisa Kuyua:** The first person I can remember was called Lucy; she came with a questionnaire and told us to fill it.

**Ms. Nancy Kanyago:** You mentioned that there are orphans who were left behind and whom people are now taking care of; do you know how many they are?

**Ms. Chukullisa Kuyua:** No. No. I have not counted them, but I can say they are not less than 150.

**Ms. Nancy Kanyago:** Thank you. In conclusion I would like to ask, what would you want this Commission to do, especially for the people who suffered; the women and orphans? What would you like the Commission to do with regard to those issues.

**Ms. Chukullisa Kuyua:** All that I can say is that the Government should give us water, education and ensure that the orphans go to school.

**Ms. Nancy Kanyago:** There are no more questions from me, but now the Commissioners may ask you some questions for clarification.

**The Presiding Chair** (Commissioner Dinka): Thank you very much Madam Chukullisa. I thank you for your testimony, and I will now ask my colleagues if they have any questions for you.

**Commissioner Chawatama:** Thank you for giving your statement to the Commission and for making yourself available for today's hearing. It is a known fact that where conflicts occur it is mostly women and children who suffer; from your testimony this is evident. I would just like to ask a few questions. The first one relates to education; would you know how many secondary and primary schools there are in Turbi?

**Ms. Chukullisa Kuyua:** We do not have any secondary, but we have primary schools, whose classes are so congested that the kids suffocate. We do not have teachers.

**Commissioner Chawatama:** What happens to the children when they complete their primary school? Where do they go?

**Ms. Chukullisa Kuyua:** They go to Machakos, Meru and other far away places to look for secondary schools. The nearest is Machakos.

**Commissioner Chawatama:** How many health centres do you have in Turbi?

**Ms. Chukullisa Kuyua:** We only have one dispensary in Turbi.

**Commissioner Chawatama:** How many doctors or nurses do you have? You do not know?

**Ms. Chukullisa Kuyua:** We have one doctor.

**Commissioner Chawatama:** How far do you have to travel to get to the nearest hospital?

**Ms. Chukullisa Kuyua:** 15 kilometres.

**Commissioner Chawatama:** Have you had any experience maybe as a woman even after the massacre? Did any of you go to hospital? How were you received?

**Ms. Chukullisa Kuyua:** We went to the dispensary. The hospitals we go to are in Sololo and Marsabit, but we go to a nearby dispensary where they give us pain killers. There is not much medical attention; we go to Sololo or Marsabit.

**Commissioner Chawatama:** My last question relates to water: How many boreholes do you have in Turbi?

**Ms. Chukullisa Kuyua:** We have one borehole which can give us only 50 litres in a day, but it is so salty that I can say we do not really have a borehole.

**Commissioner Chawatama:** Thank you very much for your testimony. One of the things that you mentioned is the fact that you will have to live in peace, and with

peace comes a lot of benefits. It is my prayer that people from the community who are present embrace peace at all times.

**Commissioner Ojienda:** Let me join my colleague, Commissioner Chawatama in thanking you for the testimony that you have given. We had the advantage to get yours, and we had presentations from three elders and two women representatives. I hope that the Commission will in the end make recommendations that will improve the lives of this community, and that will also ensure that there is continuity amongst communities in the region. I have no question for you.

**The Presiding Chair** (Commissioner Dinka): Thank you very much for your testimony and also for sharing with us your pain and the pain of your friends, as Commissioner Ojienda has said. We visited Turbi yesterday and had a long discussion with your people. I was there also about four or five weeks ago, and I had a discussion with them. So the Commission has quite sufficient information on Turbi. We thank you very much for supporting this process by helping us, and for coming out and sharing your story with us. Now may I ask the Clerk to escort the witness to her seat. I am afraid that this will be the last witness before lunch, because we have to let the audience go for prayer at 1.00 p.m.; they will be back at 2.00 O'clock sharp. Thank you very much.

*[The Commission adjourned for lunch at 1.00 p.m.]*

*[The Commission resumed at 2.00 p.m.]*

**The Presiding Chair** (Commissioner Dinka): Good afternoon again. I would like to introduce to you now to a colleague who has just joined us. On my extreme right is Commissioner Margaret Shava from Kenya.

*(Mr. Mare Yero Mare took the oath)*

**Ms. Nancy Kanyago:** You have confirmed you can hear? You wrote a statement that was given to the Commission about a violation. So, I will give you the opportunity to tell that story to the Commissioners. If you can, please start by telling us your full names.

**Mr. Mare Yero Mare:** My name is Mare Yero Mare. I live in Dar es Saalam in Marsabit.

**Ms. Nancy Kanyago:** You submitted a statement to the Commission with regard to torture; please tell the Commission what and when that happened.

**Mr. Mare Yero Mare:** What happened to me was that as I was in the shop police came and took me away on 26<sup>th</sup> March, 1981. I was taken out of the shop and taken to the police station, where I was put in the cells. I spent three nights and then I was taken to court. I was taken to Lake Paradise. I asked them why they had taken me to the place and they said I had rhinoceros horns. I told them I did not know what they were talking about, and they started beating me after tying my hands, legs and my private parts. They took a big plank of a tree and beat me up. I asked them why they were beating me and they said I had rhinoceros horns.



One of the men who were beating me was called Mboya; he was a driver; the other was called Muriithi, and the other one was Muradi. These were the people who beat me up. They beat me up and then took me to the police station again. I asked for a P3 Form but they refused to give me. Later we went to the police station and took a P3 Form. I took the Form and returned it to them after I had it filled, but they said nobody had beaten me up; they wondered who had beaten me. The head of the police then was called Murama. After that they were transferred to another place. I was then a prisoner and all my things were stolen as I had left behind all my valuables. I did not know where I was going, or where to start from, as I was left to live in misery. I have a lot of scars and my body aches so much.

**Ms. Nancy Kanyago:** Thank you for sharing your pain with the Commission. I have some questions to ask and when I finish with my questions the Commissioners might have some questions they might want to ask you. You said that you were picked up by police officers. How were you able to know that they were police officers?

**Mr. Mare Yero Mare:** I knew them before. They were the crime officers; they did not wear uniform.

**Ms. Nancy Kanyago:** So you were picked up by crime officers, and you previously had known them?

**Ms. Mare Yero Mare:** Yes, I knew them.

**Ms. Nancy Kanyago:** Where did they take you to?

**Ms. Mare Yero Mare:** Marsabit Police Station. I knew their crime office but I did not know their residential houses.

**Ms. Nancy Kanyago:** Did they tell you at the time they were picking you up why they were picking you up?

**Mr. Mare Yero Mare:** They told me that I was in possession of rhinoceros horns and that was why they had picked me. They told me I was in possession of rhinoceros horns and got hold of me.

**Ms. Nancy Kanyago:** When you got to the police station, do you know if they wrote any record, or if they wrote in the Occurrence Book (OB) that they had arrested you?

**Mr. Mare Yero Mare:** They told me I was in possession of rhinoceros horns and arrested me.

**Ms. Nancy Kanyago:** You mentioned that thereafter they tortured you; was it at that police station?

**Mr. Mare Yero Mare:** They took me from the police station to the bush and beat me up.

**Ms. Nancy Kanyago:** Thereafter, were you able to file a complaint or take any action against the police?

**Mr. Mare Yero Mare:** I still have all the documents in my pocket.

**Ms. Nancy Kanyago:** Please, explain which documents.

**Mr. Mare Yero Mare:** Shall I give them to you?

**Ms. Nancy Kanyago:** Commissioners, I am looking at documents that I know are in the files. There is a complaint against the police by the witness.

I am looking at records that the witness has produced which include a complaint against the police addressed to the Officer Commanding Police Division (OCPD), Marsabit. There are two separate letters, one in March, 1981 and another in April, 1981. I am also looking at the medical examination report which is also known as the Police Form 3 (P3). There is also a response from the Office the President acknowledging that an investigation had been instituted into the matter that the witness complained about. That was in June 1981.

I also have a second correspondence from the Office of the President informing the witness that they had carried out investigations into the matter, and forwarded the case to the CID Headquarters for legal advice.

I think I have no further questions for the witness. Perhaps it will be for the commissioners to guide him through the testimony. But in his statement, which I think you have a copy of, he does mention that he was coerced into making a confession; in that way he confessed being in possession of what he was accused of. He was coerced to identify a particular officer as the one he had bought the alleged rhino horns from. After that, he was taken back to the police station to record a statement.

I will hand you over to the panel.

**The Presiding Chair** (Commissioner Dinka): Thank you very much Mr. Mare for your testimony. I now ask my colleagues if they have any questions for you.

**Commissioner Chawatama:** Thank you for your testimony. My first question is related to: What work did you do before this incident took place?

**Mr. Mare Yero Mare:** I was a businessman. I did not have another job.

**Commissioner Chawatama:** That was what you are involved in?

**Mr. Mare Yero Mare:** I am a shopkeeper; I sell clothes, tea leaves and other things.

**Commissioner Chawatama:** When the police came and took you away, for how long did they keep you in custody?

**Mr. Mare Yero Mare:** I was kept in custody for three days at the station.

**Commissioner Chawatama:** Where else did they take you apart from the police station?

**Mr. Mare Yero Mare:** They took me to the bush where they beat me up.

**Commissioner Chawatama:** Were you taken to court?

**Mr. Mare Yero Mare:** Yes. I was told I was selling rhinoceros horns.

**Commissioner Chawatama:** What happened at the court?

**Mr. Mare Yero Mare:** I was not taken to the court; I was taken to the bush and beaten.

**Commissioner Chawatama:** According to your statement, apart from torture, you mentioned that your detention was long.

**Mr. Mare Yero Mare:** I told you that my hands and legs were tied up.

**Commissioner Chawatama:** Thank you.

**Commissioner Ojienda:** Thank you very much, Mr. Mare, for your testimony. It is unfortunate that you went through the unfortunate incident of 1981. I just want you to clarify one or two points.

The first question is, did you sustain any permanent injuries to your body as a result of the beatings?

**Mr. Mare Yero Mare:** I have a big scar on my body.

**Commissioner Ojienda:** Secondly, you said that when you were taken to the bush, you were beaten and then asked to identify two rangers, who had sold to you the rhinoceros horns that you were implicated in.

**Mr. Mare Yero Mare:** Those people beat me up. I was very bitter and did not have any more strength; so, I told them I would tell them what had happened.

**Commissioner Ojienda:** What happened to the two people you implicated in crime?

**Ms. Nancy Kanyago:** Interpreters, please, repeat the question to him. He mentioned two officers who were beating him. He is being asked if he knows what happened to those officers.

**The Presiding Chair (Mr. Dinka):** No! No! No! That is not the question. The question was that, after being beaten up, he mentioned two rangers who had allegedly sold him the rhino horns; what happened to those two rangers whom he mentioned.

**Mr. Mare Yero Mare:** The people were sick and they died.

**The Presiding Chair** (Commissioner Dinka): Interpreters, please, interpret what you hear. Do not make up other stories.

**Commissioner Ojienda:** Thank you.

**Commissioner Slye:** Mr. Mare, thank you for your testimony. I just want to make sure that I am clear in my mind regarding the sequence of events. My understanding is that on Tuesday, February 7<sup>th</sup>, you were taken by the police and brought to the police station. Is that right?

**Mr. Mare Yero Mare:** Yes; that is right.

**Commissioner Slye:** Then you were in the police station for three days until, I guess, February 10<sup>th</sup>, is that right?

**Mr. Mare Yero Mare:** Yes; I was put in remand.

**Commissioner Slye:** After those three days, you were then taken out to Lake Paradise where you were tortured; is that right?

**Mr. Mare Yero Mare:** Yes, it was that way.

**Commissioner Slye:** How long were you out at Lake Paradise where you were being tortured?

**Mr. Mare Yero Mare:** It was only one day. I was beaten and returned to the police station.

**Commissioner Slye:** After you were returned to the police station, you were held there until March 5<sup>th</sup>. Is that right?

**Mr. Mare Yero Mare:** Yes.

**Commissioner Slye:** Your detention was from February 7<sup>th</sup> until March 5<sup>th</sup>; is that right? After March 5<sup>th</sup>, you were released?

**Mr. Mare Yero Mare:** I was released.

**Commissioner Slye:** *(Inaudible)*.

**Mr. Mare Yero Mare:** Yes.

**Commissioner Slye:** *(Inaudible)*

**Mr. Mare Yero Mare:** I am not educated and do not know the exact date I was arrested.

**Commissioner Slye:** Just so that I have this correct, the people who arrested you and tortured you, you have identified them by name? Is that correct?

**Mr. Mare Yero Mare:** Yes, those are the names I know. I do not know whether they have other names. Those are the names I know.

**Commissioner Slye:** So those were Mr. Boy, Mr. Miriti and Mr. Mugambi?

**Mr. Mare Yero Mare:** Yes.

**Commissioner Slye:** Had you ever seen those individuals before this incident?

**Mr. Mare Yero Mare:** I knew those people worked in the crimes department of the police.

**Commissioner Slye:** So, you had met them before they came to take you away?

**Mr. Mare Yero Mare:** Yes.

**Commissioner Slye:** Did you have a good relationship with them, no relationship with them, or a bad relationship with them?

**Mr. Mare Yero Mare:** I had never been friends with them.

**Commissioner Slye:** So you just knew them, but never really became friends with them?

**Mr. Mare Yero Mare:** I did not know them, but I knew they are working in the crimes department.

**Commissioner Slye:** But had you seen them before, or was this the first time you were seeing them?

**Mr. Mare Yero Mare:** I had known them before.

**Commissioner Slye:** Did you ever see them after your release from the police station?

**Mr. Mare Yero Mare:** I have not seen them since then.

**Commissioner Slye:** Just to be clear, the torture resulted in you saying that you were in possession of rhino horns, but you were not, in fact, in possession of rhino horns. Is that correct?

**Mr. Mare Yero Mare:** I do not have them, and I have never seen a rhino horn.

**Commissioner Slye:** Then you were told to identify two individuals whom the police wanted you to say had given you those rhino horns.

**Mr. Mare Yero Mare:** When they beat me up, I had no otherwise but to tell them I would show them the men.

**Commissioner Slye:** You were able to remember the names of those two men whom they asked you to identify. Are you able to remember their names?

**Mr. Mare Yero Mare:** One of them is called Jera.

**Commissioner Slye:** And do you remember the name of the other one?

**Mr. Mare Yero Mare:** I have forgotten the name of the other, because it is a long time ago.

**Commissioner Slye:** And do you know why they wanted you to identify them?

**Mr. Mare Yero Mare:** Those people were the wildlife soldiers.

**Commissioner Slye:** Do you know why the CID officers wanted you to identify the wildlife rangers when they, in fact, had not done anything wrong?

**Mr. Mare Yero Mare:** I do not know why they said so. When they beat me up, to avoid dying I gave them the names.

**Commissioner Slye:** We appreciate that and it is clear that the police forced you to do something that you did not want to do. We appreciate your coming here and sharing the story with us.

My last question is just to make clear that the two individuals that you identified, one of whom you could name and the other, whom you cannot remember--- Those two have since died. Is that correct?

**Mr. Mare Yero Mare:** Both of them are dead.

**Commissioner Slye:** Thank you very much.

**The Presiding Chair** (Commissioner Dinka): Thank you very much for your testimony. My colleague wants to ask you something.

**Commissioner Shava:** Thank you, Mr. Mare, for coming here today to speak to us along with your fellow Kenyans. The question I have for you is about your livelihood. You say that this incident has caused you to become impoverished, and that before this terrible thing happened to you, you were a businessman, who had a shop. How have you been living since that time? What have you been doing to earn a living?

**Mr. Mare Yero Mare:** I do not have a job. There is nothing I am doing right now.

**Commissioner Shava:** Thank you.

**The Presiding Chair** (Mr. Dinka): Did the CID officers, who arrested and beat you up, ask you to produce the rhino horns?

**Mr. Mare Yero Mare:** No.

**The Presiding Chair** (Mr. Dinka): That sounds odd. The two rangers, whom you implicated, did you know them before you implicated them?

**Mr. Mare Yero Mare:** I knew them.

**The Presiding Chair** (Commissioner Dinka): So, you implicated two people whom you knew?

**Mr. Mare Yero Mare:** Yes; instead of dying, I mentioned their names.

**The Presiding Chair** (Commissioner Dinka): Were those two rangers imprisoned after your testimony?

**Mr. Mare Yero Mare:** They were not arrested.

**The Presiding Chair** (Commissioner Dinka): You are saying they were not arrested; do you mean they left the country or what do you mean?

**Mr. Mare Yero Mare:** Those people were sick and died.

**The Presiding Chair** (Mr. Dinka): You mean the CID officers never arrested them after your testimony?

**Mr. Mare Yero Mare:** They were not arrested.

**The Presiding Chair** (Commissioner Dinka): The other thing is, you said you had a shop. You also said in your statement that when the CID officers came to arrest you, you were in your brother's shop; were you working for him?

**Mr. Mare Yero Mare:** Yes; my brother is still here.

**The Presiding Chair** (Commissioner Dinka): No! No! My question is, were you working for him in his shop?

**Mr. Mare Yero Mare:** Yes.

**The Presiding Chair** (Commissioner Dinka): So, you did not have your own shop?

**Mr. Mare Yero Mare:** I was running the shop together with my brother.

**The Presiding Chair** (Mr. Dinka): Okay.

Do you have any other name?

**Mr. Mare Yero Mare:** I do not have another name. My name is "Mare Yero Mare", but they have written Omar.

**The Presiding Chair** (Commissioner Dinka): So the "Omar" is a mistake?

**Mr. Mare Yero Mare:** It is their mistake.

**The Presiding Chair** (Commissioner Dinka): That is all. Thank you very much. The Clerk can escort the witness to his seat and call another witness.

**Ms. Nancy Kanyago:** Commissioners, this is now Marsabit Witness No.10, Omar Boru Qutara.

*(Mr. Omar Boru Qutara took the oath)*

**Ms. Nancy Kanyago:** Thank you for appearing before the Commission. Please, state your names for the record.

**Mr. Omar Boru Qutara:** My names are Omar Boru Qutara, alias Boru Qutara Boru.

**Ms. Nancy Kanyago:** Thank you. You are invited to present about violations in relation to the coup attempt in 1982. Please, proceed.

**Mr. Omar Boru Qutara:** Thank you very much for allowing me to come here and present my case after 29 years. I just want to inform the Commission that there was a memorandum which was presented to the TJRC by Voka Welfare Association that I belong to. So, the scenario I am going to give will be related to me. However, the Commission has all the information as per this memorandum.

Secondly, I want to inform the Commission that during questioning, you should be aware that I only served in the armed forces for two years and three months. I was not so conversant with the armed forces. You should bear that in mind.

It was on Sunday 1<sup>st</sup> August, at about 2.30 a.m. when I was woken up by a siren which indicated that there was an issue, and all the soldiers were required to report to the Operation Room, where details and orders are given. It was total confusion and frightening being woken up in the middle of the night. So, I rushed to the Operation Room, where I was ordered to stop and raise up my hands and Appointment Card. Unfortunately, I had not even carried the Appointment Card. This earned me the first punishment of being kicked, slapped and sent back to go and get it.

I went back to my room and collected my Appointment Card. When I came back, I was allowed to join the others, who were already kneeling down. The number was so big that you could not know who was who, since it was in the middle of the night and the lights were off. We were told to stay there until morning, which we did.

In the morning, some groups were told to report to their respective places of work. Everybody did that. However, when some of us reported on duty, we found nobody at the place where we used to work. In the Kenya Air Force, I was working in the unit called "Air Defence Control Unit (ADCU)", that is giving police services. I had to hang on there until 10.00 a.m. As a human being, I had to look for something like tea to take. I went back to my mess, where we used to have breakfast. We were given breakfast. Some of us went back to the same place, because we had nowhere to go and there was total confusion.



At lunch time when we came back for lunch, there was no lunch. There were army personnel all over and they were asking us, "Where are you going?" We replied, "we are going for lunch". Then they asked us, "Which lunch?" We replied, "It is lunch time, is it not?" Somebody told me that I was under arrest. So, when I asked why I should be arrested; I was in the camp and I had nothing. Then orders were given, "Deal with him accordingly. This one seems not to have woken up; wake him up". They kicked and slapped me, and then we were taken to the football pitch.

At 3.00 p.m., it was raining. We were told to remove all our clothes, and were loaded onto trucks and taken to 1KA – another Army Camp. When we arrived at the camp, we were lined up. We were entering the gate one by one and receiving a reward of kicks, blows. Women and children were laughing at us. The children were saying, "Look at the way this one looks. Look at his buttocks". When children and women laugh at you--- I came across an old corporal, who happened to speak Borana Language. I told him, "Mzee Isaakh, are we not Muslims? Why are you treating us like this?" He told me that Islam was in the mosque; it was not in that place. He said, "Take these people and deal with them accordingly". We were divided into different groups. We slept in an open field and it rained the whole night until morning. In the morning, we were ferried back to the Kenya Air Force camp. We were taken to the runway, where aeroplanes land. We were told to lie on our backs, and then somebody came, stepped on our chests and asked, "Did you want to overthrow the Government?" I asked him, "Which Government? Why should you do this to me?" They then said, "This is your prayer time; tell your parents that, if you have any way of telling them; say your last prayer, and forget the world. There is no Kenya Air Force any more; even a dead body is more important than you".

We stayed there up to lunch time and we were given back some clothes to put on. We were then taken to Nanyuki Prison. There it was like hell. I have never seen hell but I saw hell on earth. We were beaten with chains, various sticks and iron rods of all sizes. From there, we were taken to King'ong'o Prison in Nyeri. We stayed in Nyeri for 17 days, and then we were taken back to Nanyuki. We were being interrogated by army officers, and some officers in civilian clothes. I did not know them and cannot tell their names.

I was put in a group called misprison group. I raised my hands and said, "Can I ask a question?" Then one of the senior officers from the Engineering Battalion called Lt-Col. Njoroge said that---

He said: "You are not a living person who can ask a question. You are a dead person. You do not deserve to ask a question. Follow what we tell you if you want to breathe the air of this world or else we shall terminate your life now". He was pulling the trigger at that time. He told me to open my mouth and he put it in. I was around 22 years and I cried. He then asked me: "Are you crying milk or honey?" He ordered: "Put him out!"

I was blindfolded and bundled into a Land Rover because that was the common vehicle for the Army and the Air Force. I was taken to the Air Force Base in Eastleigh and later taken to Kamiti Prison where I was kept for two days. I was then ferried to a destination where I later learnt was Naivasha Maximum Prison. I think Naivasha Maximum Prison is a place no human being should be taken. It is not worth any man

to live there. I do not know whether it has improved or not. When we first landed there, we were shaved. We were given the white *Kungur*; a short and shirt. The place is very cold. On the first day, I was put in an empty cell with no blanket. I complained not knowing that the worst was to come. The following day, I was taken into a dark room with no blanket or toilet facility. We were told to stay there naked. Imagine that, Commissioners.

We stayed there for 11 days while being fed with half a cup of porridge called *mururu* for the whole day. After the 11 days, I was taken for interrogation. I was taken into a stinking toilet and given the porridge to take. I am an inquisitive guy so I asked the prison warder why they should give me food in a toilet. He told me he had, in fact, felt mercy on me because I was a young man. Can somebody who feels mercy for you give you food in a stinking toilet? However, that was very little. When I was called for interrogation, I was stripped naked while being whipped with a telephone cord. I was told to speak out even with the nozzle of a gun in my nose. How do you speak out what you do not know? A man with a big beard told them to take me to the lodge to rest. He said: "Take him to the lodge and let him rest. He seems to be very worried and tired." I was taken back to the same cell I was before. That was the lodge.

We were again brought out after 10 days. At that time, you are emaciated and you do not have the strength to speak. When you say that you are sick, nobody listens to you. They would ask: "Have you rested enough now?" When you do not respond you are adjudged rude and taught a lesson. You are taken to a special room where there is a person to make sure that you speak by whipping you. I do not know how they were doing it, but if those wires come into contact with your body, you faint. I went through that ordeal for 70 days. On the seventh day, I had no option but to surrender to the will of those guys the way they wanted.

They prepared a statement and I was told to sign. "What have I written to sign?" I asked them. They said: "No, you will be trained on how to sign. There is no problem." The condition was hostile. When I asked them to give me the document to read and then see its contents, they told me that I did not have eyes and that there are special eyes for me to read. They asked me, again, whether I would sign the document or not. I said I will not sign it. I found myself on the ground. I did not know there was somebody behind me. I was only seeing the interrogators in front of me. I was kicked and dragged on the ground. I had no option, but to tell them that I was ready to sign the document the following day just to save my neck.

From the beatings, I developed a problem on my left hand. It is painful. I signed the document to save myself from being taken to the gas chamber – it is a sort of a gas chamber. I do not know if those people are really human beings. They are people with no mercy or reasoning power. They could not listen to you. I signed and then I was taken to Kamiti where I stayed for two days. I was then taken to Lang'ata. We were told that we were being taken for medical check-up. I found a local guy with whom I wanted to speak our vernacular language. He declined. I wanted him to assist me because I was feeling very bad. I told them that my hands were painful and my ribs were not okay as a result of the beatings. They said that they were just supposed to give us a tablet of Panadol and then we proceed to the next stage. I had no option. The people I had been with had already left. Somebody told me not to waste time. He told me there was no mercy within that compound.

I proceeded and met a group of Army officers who claimed that they had been sent by the higher authority to come and represent us in the process. I asked them how they were going to do that. They said that such a question could only be asked outside the camp. They said that no questions are asked inside there and issues there are conducted the way a drill parade is done. When a commander gives orders to march, you are expected to do so. They told me that I was to sign some forms and we were to be in groups of tens. They had blocked the top part of the form, but I managed to see what was written in. It said: "The Court Martial Trial Form". I signed it. We were in a group of ten and we marched into a room. Names were called out and we responded. I remember very well. There were senior officers seated in front. There was somebody in a judge's gown. On the left, there were army officers and on the right some men and women in civilian clothes. When our names were called out, somebody stood up and said that we are the guys from Nanyuki Base. We were the first in that room. There were several rooms where people were being tried. Our names were called out and then we were sentenced to six years imprisonment. One of our colleagues raised his hand but he was told speaking was not allowed there.

I was taken to Nairobi Remand Prison and then Kodiaga Prison in Kisumu. I served three years there. One day, they told me that I had been released. I said: "My sentence was six years and not three years." They said that I should not worry because the Government had pardoned me, but there were conditions. I was told to be reporting to my local chief and I should not attend any public rallies or any meetings. I was to report to the chief whenever I went somewhere. I was told to keep peace for the rest of my life. That is the brief story of the situation.

Allow me to speak about what that has done to my life. I was 22 years then and I had a love for my country. I had said that I was going to serve in the Armed Forces. That was my career and belief. I wanted to serve in the Air Force. That was ruptured. Secondly, I thought that after prison and all that suffering, if I went home, I would be a very free person and live peacefully. However, until today and even I think in the future, I still fear. I am suffering. They call me rebel, fugitive, *msaliti* in my community. I applied for the post of assistant chief, but I could not get. The same happened when I applied to be a Forest Guard. I applied for a teacher's training course, but I could not get. I tried several employment opportunities, but I did not get any. Even in the village, I had no peace because villagers were saying that I am the fugitive who has been disturbing Moi and he is now disturbing us here. Up to now, when there is Government relief, my family receives half the portion.

After prison, I married and then got nine children. One of my daughters is in college. The ratio I am given is for five persons and yet we are 11. I am still marginalized. My children are chased away from school on the grounds that "*Baba yao ni msaliti*". My child had to leave the first school and go to the second one because I had gone there to argue her case. She now attends a day school. We have already been branded traitors. There is no place that we feel comfortable expect our own room. The only people who have been close to us are our relatives – my father, mother, aunts and sisters. Nobody else comes to us, save for my Imam who normally comes to console me. After being released, I could not even access the courts. The applications were allowed in the High Court after 15 years. It is now 29 years and our cases have never been finalized.

Hon. Commissioners, during all these years there was no justice. Now we are approaching death. I am now 49 years. Many have died. Some of us God has helped us because we succumbed to our faith. We prayed to God. Humanity has discarded us. We pray to our God and that is why we are surviving. Had we been in the service, this would be our retiring age and expecting our benefits. We are, however, still suffering. What we are worried about is that this suffering will be extended to our children. We and our wives have suffered, but our children will still suffer. Already, there is segregation in the community with regard bursary, relief food and other opportunities.

My dear Commissioners, we have been law abiding citizens. Since we left prison, there is no time we have been charged with any offence. The oath of allegiance that we took when were recruited is still with us. That is why we have decided to abide by the law. Poverty is imposed on us and we fear our children will also inherit that poverty. If I cannot pay for my children's school fees are they not to inherit poverty? My child cannot go to university because it requires resources which I do not have.

I pray this Commission to look into the following: I demand for reinstatement and payment of all my pending dues. A reasonable retirement package should be included. I need to be cleared of names such as rebel, fugitive, or *msaliti*. A special economic programme in form of an affirmative action should be put in place so that our economic status is uplifted. That way, our children will get education. They have not committed any offence and they have a right to education. This Commission should consider the welfare of our children. All kind of discrimination against us and our families should be stopped. I served in the Armed Forces. I have a certificate of discharge from the same. I have a copy of the memorandum. We filed a case in the High Court, that is, Case No.548 of 1995 which has not been decided. I am seeking justice for the ill-treatment. This is for us and our families. The injustice has extended to our families. I think I explained that.

We are seeking justice for the suspended sentences; loss of employment; and compensation for the damages. I had no opportunity to be counseled. So, I want to be counseled. I also want to be taken for a special medical examination. My left hand still has a problem especially when it is cold as a result of the beatings I got. I need to be examined and my health status known. Also, this Commission should make a recommendation and declare that we are still in employment. We are also seeking all payments that have accrued since August, 1982, including penalties, interest, general and special damages as the Commission may deem fit.

**Ms. Nancy Kanyago:** Thank you for your testimony. I have a few questions for clarifications. In your statement, you said that you were able to identify some of the perpetrators. Can you recall those who arrested you?

**Mr. Omar Boru Qutara:** Well, those who arrested me were army officers. I am not able to identify them. They were in army uniform and they were wearing the crown of First Kenya Army Rifles and the 12 Engineers of Nanyuki.

**Ms. Nancy Kanyago:** Were you given any reasons for your arrest?

**Mr. Omar Boru Qutara:** No.

**Ms. Nancy Kanyago:** You stated that you were given army officers as your lawyers. Were you able to consult with them?

**Mr. Omar Boru Qutara:** No. We were taken to their place and they only ordered us to say yes to whatever they were reading to us. They forced us to sign those papers.

**Ms. Nancy Kanyago:** Do you recall who those lawyers were? Were they civilians or army officers?

**Mr. Omar Boru Qutara:** They were army officers. The one I can identify was called Major Kwimbe. At that time, he was a major. He is the one I can identify. I do not know if I can meet him now because it is 29 years since then.

**Ms. Nancy Kanyago:** So, he was appointed as your lawyer?

**Mr. Omar Boru Qutara:** I do not anybody who appointed him as my lawyer because there was no consultation. He was just an army officer being put there.

**Ms. Nancy Kanyago:** You also stated something about the presiding officer at the court martial. Do you recall who that was?

**Mr. Omar Boru Qutara:** I can remember. The one who was there at that time was Lt. Col. Kibwana. He was the Navy commander. I remember him because he was in the Navy uniform. One person that I cannot forget is the judge called Bosire. I do not know if he is now Justice Bosire.

One thing I wondered about lawyers, dear Commissioners, is that even in that Kangaroo court there were people with knowledge of law. I do not want to comment on that one, but it is something that made me not believe in what is called law.

**Ms. Nancy Kanyago:** In your statement, you have provided that one of those who arrested you was a Mr. Isaac Kijiba.

**Mr. Omar Boru Qutara:** That is the man we met at the army camp who we consulted. He did not arrest me, but we talked to him. He is the guy who told me, "*Uislamu uko katika msikiti siyo hapa.*" I was informed he died.

**Ms. Nancy Kanyago:** You also said that the Court before the Court Martial was appealed and that it was dismissed and that Justice Gicheru presided over that.

**Mr. Omar Boru Qutara:** Thank you for reminding me that. We were told that there was an appeal which we never did. First, we were taken to Kisumu High Court, but then we were told that we should go to Kakamega High Court. It was my first time to be there. We were told to enter the dock. I saw someone in spectacles. He asked me, "Are you Boru Qutara?" I answered in the affirmative. He told me that my appeal had been dismissed. That is what I heard. I was ferried back to Kodiaga Prison.

**Ms. Nancy Kanyago:** You said that you with others had filed a case No.548 of 1995 and it is still pending?

**Mr. Omar Boru Qutara:** Yes.

**Commissioner Chawatama:** Thank you for your testimony. We see your pain. We thank you for taking time to give us a statement and appearing before us today. My prayer is the fact that you have come today and that has brought some relief no matter how little. Just because you can speak before a legally constituted panel of commissioners, I hope that, that has brought you some comfort.

I take notice of all that you went through. I would like to focus my questioning on the Court Martial. You told us that ten of you went into a room and you were each asked your names.

**Mr. Omar Boru Qutara:** No, they called out our names and we responded.

**Commissioner Chawatama:** Was there a charge read out to you?

**Mr. Omar Boru Qutara:** The charge was not read individually. They just called out our names and then they ordered us to be marched back to our rooms.

**Commissioner Chawatama:** So, nobody told you that you were there because you tried to overthrow the Government of Kenya. You were not given an opportunity to accept or deny that charge.

**Mr. Omar Boru Qutara:** Yes.

**The Presiding Chair (Commissioner Dinka):** You said that there was a judge who sat with the military officers. Did you at any time see the judge confer with the officers who were presiding over the court martial?

**Mr. Omar Boru Qutara:** Madam Commissioner, one thing you have to understand is that this is a situation where we were held captive. We were under orders to say yes--- When you say conferring---

**Commissioner Chawatama:** I have asked that question because I have sat as a judge. I want the understanding of just what you went through. So, did you see the judge talk to the officers present as the proceedings were going on?

**Mr. Omar Boru Qutara:** At that time, I did not see. Time was very limited and we were marched out. Everything was systematically arranged.

**Commissioner Chawatama:** So, when you were brought back, was it to make the pronouncement that they had found you guilty?

**Mr. Omar Boru Qutara:** Yes, they said that. And they also said that so-and-so, you are given six years and another ten years. When we came to see the charges was after being taken to Kisumu, that is the time we came to learn that we had been charged with mutiny.

**Commissioner Chawatama:** You informed us that you were not aware that there was even an appeal. Nobody came to speak to you to find out if you wanted to appeal.

**Mr. Omar Boru Qutara:** Yeah.

**Commissioner Chawatama:** You did not even know the grounds of appeal and the court did not give you any opportunity to address them on that appeal.

**Mr. Omar Boru Qutara:** No, they did not.

**Commissioner Chawatama:** You were merely told that the appeal had been dismissed and you were taken back to serve your sentence.

**Mr. Omar Boru Qutara:** That is right.

**Commissioner Chawatama:** Thank you very much. The information you have given us is very useful. Thank you for the courage to relive all that you went through that time.

**Mr. Omar Boru Qutara:** Thank you, madam. I can sleep today. I am a little relieved. That was the major problem. I wanted many people to come here because many of them call us fugitives or rebels here in town. I am sure they have heard it today with their own ears.

**Commissioner Ojienda:** Thank you, Mr. Boru Qutara, for that testimony. You said that you identified Col. Njoroge who later became General Njoroge.

**Mr. Omar Boru Qutara:** I do not know whether it was him because since that time, I have never seen him, but he was in charge of the 12<sup>th</sup> Engineers in Nanyuki. He was the head of the operations.

**Commisisoner Ojienda:** What is your specific issues with Justice Bosire and the retired Judge Evans Gicheru?

**Mr. Omar Boru Qutara:** As a common man, I feel that these are most learned guys in terms of law. Others apart from being military officers maybe were well versed in the law. I felt they were the right people to advise them and give direction. To my shock, these are the guys who were just sitting there looking at us. For example, Justice Gicheru just pronounced two sentences. He called out my name and then told me that my appeal had been dismissed. I was never given an opportunity and yet that is where I felt I had all the hope and zeal to express my situation.

**Commissioner Ojienda:** You, therefore, raise concerns that you did not get justice in the court martial system and in the subsequent appeals.

**Mr. Omar Boru Qutara:** Yes.

**Commisisoner Ojienda:** Do you have any recommendations to make for the interest of those who would find themselves in the position you were in?

**Mr. Omar Boru Qutara:** I have given recommendations previously. However, it is important for the citizens of this country to understand the Constitution of this

country. If understands that he will be able to explain his position. With regard to the court martial, from my little paralegal knowledge, it is set up by an Act of Parliament. It is meant for military personnel, but it does not mean that procedures are not going to be adhered to. I expected the rule of law to be followed and respected. In our case, that was not there. So, even if court martial are going to be constituted, then the rule of law should be respected. Justice should be adhered to. The victim should be given a lawyer of his wish and understanding to represent him. The court martial should have people who are conversant with the law.

**Commissioner Ojienda:** You related your painful scenario in Naivasha. Were you able to identify any officer?

**Mr. Omar Boru Qutara:** My God! If I could identify them, I would have said already. I am unable to identify them. They were either in military uniform or suit and tie. I have never met those people in my life. I pray God or anybody not to make me meet such characters in future. Those guys did not have any element of humanity. They did not look like they came from the disciplined forces. They did not have courtesy for humanity. You would feel pain and they would say, "*Hapo hapo. Shika hapo ndipo pazuri.*"

Somebody can commit a crime but his rights are not supposed to be violated. They were merciless.

**Commissioner Ojienda:** Boru, I share your pain. Thank you.

**Commissioner Slye:** I too want to thank you for having the courage to come here and share an incredible painful story of a long period of detention. But you have described, as you have just said, what should not even happen to someone who is guilty of something. What you have described includes illegal arrest and detention, torture and human degrading treatment, lack of justice or lack of access to justice, failure to be provided with legal counsel or to be informed of the charges, if any that have been preferred against you. This is something that, in all legal systems should be a quick process, even within a military court system.

I just want to get one thing clear in my mind clear with regard to the individuals you have mentioned. The first one I wanted to recall is on Colonel Njoroge who was in charge of Nanyuki. Would you say whether he played some other role?

**Mr. Omar Boru Qutara:** Col. Njoroge was in charge of the operation but he belonged to the 12<sup>th</sup> Engineers which is a different military camp not with the Air Force. He was the head of the army operation that was to counter the Air Force.

**Commissioner Slye:** Did you see him at the time you were detained or you just later learnt that he was the one in charge of the operation?

**Mr. Omar Boru Qutara:** No. Even if you were a prisoner, you would have seen what was happening at the time. The last time I saw him is when he told me that I am very lucky to breathe, and that if I wanted to continue breathing the air, I have had to keep quiet. Then I was taken to Nairobi. That is the last time I saw him. I have never heard any interest looking for him because even up to now when I see an army



uniform, it gives me bad memories. I used to have a lot respect for the army because I thought they were patriotic and they loved their country. I never imagined them being merciless and committing such inhuman activities.

I have included this in my oral will. I have even told my children never to join the army come what may. This is because I never thought that people in uniform and with such respect could engage in such inhuman activities.

**Commissioner Slye:** Okay. Thank you. And on the second person; the late Corporal Isaac Kajiwe, what was his role again?

**Mr. Omar Boru Qutara:** He was in charge of the gate of the First KAR when we were taken there. He was the person who was in charge of the guardroom or the gate of the Army First Kenya Army Rifle.

**Commissioner Slye:** Did you see him doing anything besides just being there? Did you see him assault anyone or do anything like that?

**Mr. Omar Boru Qutara:** Yes, he assaulted, kicked and slapped us. He was the one who gave orders because he was the corporal in charge at that time.

**Commissioner Slye:** Okay. What about the last person; Maj-Gen Mohamud Mohamed?

**Mr. Omar Boru Qutara:** This is the man who was promoted by Moi to head the Armed Forces, but there was no time I had contact with him. I was a very junior man and he was such senior person. We did not interact so much. Our interaction was very limited. I was just two years and three months in the force. I had just finished my professional course in the army and I had not started working in the field.

**Commissioner Slye:** So, during your detention in the Court Martial, you did not see him personally?

**Mr. Omar Boru Qutara:** Maj-General Mohamud?

**Commissioner Slye:** Yes!

**Mr. Omar Boru Qutara:** I had not seen him personally, but at that time, he was the head of the army. He was promoted by the President to head the army. So, we believed that all the orders came from him as head of the armed forces.

**Commissioner Slye:** Lastly, are you able to remember the name of any other individual who was present during your court martial? Besides the ones you mentioned; Bosire and Kibwana?

**Mr. Omar Boru Qutara:** Bosire and Kibwana! Others I do not know, apart from my colleagues whom we had been sentenced together.

**Commissioner Slye:** Okay. Thank you very much.

**Mr. Omar Boru Qutara:** Thank you too.

**The Presiding Chair** (Commissioner Dinka ): Mr. Boru, thank you very much. I would like to join my colleagues in thanking you for taking your time to come here and share with us this very traumatic experience. You have gone through such horrific experience and again you are very courageous enough to come and relief it, at least, for one hour or so and explained to us exactly what had happened to you and to your colleagues. We empathize with you and your colleagues.

Hearing Clerk, can you please escort the witness and call in another.

*(Mr. Denge Recha took the oath)*

**Ms Nancy Kanyago:** Mr. Denge, thank you so much for coming before the Commission. Please, state your names for the record.

**Mr. Denge Recha:** My names are Denge Recha Oba, a resident of Marsabit District and I used to work as a police officer. I was employed in 1981 and sacked in September, 2005.

**Ms Nancy Kanyago:** You were a senior police officer. Please, tell us about that specific issue with regard to assault.

**Mr. Denge Recha:** On 25<sup>th</sup> May, 2005, when I was at my work station in Kilifi District, I got information on phone from my father, Mzee Recha, that my 400 goats had been taken away from Folole near Turbi area. They were among other goats totaling about 4,000 to 5,000.. The herdsman who was taking care of them was shot on the arm. My uncle who was also there; Mzee Barak Haraki, was killed.

When I got the information, I asked for an emergency leave and, on 17<sup>th</sup> June, 2005, my leave started. When I arrived in Marsabit after five days, I went to Folole the scene of war, at least to send condolences to my uncle's family who had died. I also took my herdsman to Marsabit Hospital for special treatment but in July, there was tension in that area.

One day, I went to the police station to report where I met the DCIO. I identified myself and I told him that I was a police officer from Kilifi District, Coast Province. I told him the problem which had taken me there. I also told him that there was tension and we were receiving threats in our residence near Maljamiyati in Kinda. So, I asked him if I could be given a firearm. At that time, he was the most senior officer at the station. And, he called an officer by the name Sergeant Makokha and another Sergeant whose name I cannot remember, but was in charge of the armory. He informed them about my request and I was given a G3 riffle and 40 rounds of ammunition. I was told to leave my emergency leave chit and my identification card which we usually use in the normal procedure in the police force. The firearm was recorded in the occurrence form and I signed. Then they instructed me that every morning, I should go to the police station so that they could check the firearm to ensure that it had not been used for criminal activities.

On 12<sup>th</sup> July, 2005, I got information that there was a massacre in Turbi. That information caused tension and clashes everywhere. So, on 20<sup>th</sup>, I was called by one old man who was also a Kenya Police reservist by the name Wario Raga. He told me that there is a vehicle that was ferrying goats and the registration number was KAD 445 W and it had 40 goats and sheep. He further told me that among the goats in the vehicles, there were those with marks indicating that they could be mine and that they could be the goats that were taken by rustlers. So, I rushed to the police station. When I reached at the police station, I got two goats which were tied in front of the police station office. When I checked them clearly, I found that they had my marks. Sergeant Makokhha told me to look inside the lorry to also see whether I could identify some. When I checked inside the lorry, there were some goats which had my marks.

So, the OCPD came out from the office accompanied by the late former Member of Parliament, Abdi Sasura, and as he was approaching me, he asked me who I was. I told him that I am Denge Recha, a police officer from Kilifi Police Station and I was on leave. I also told him what took me there; to search for my stolen property and I had got information that there was a vehicle that had been detained at the police station. So I had gone there to identify the goats.

If I can take you back, that lorry was brought there on the evening of 20<sup>th</sup> July, 2005 by policemen from Turbi. That was before the owners of the property that was stolen by rustlers came to identify them. The OCPD, Mr. Amos Cheboi, listened to my story and he was left with two goats. So, the homeguards, and some of the claimants who were following up those goats also got theirs. The vehicle that was used to carry the goats was from the World Vision. When I got information that the lorry had been released by the OCPD, we went to the Member of Parliament, Dr. Bonaya Godana, who gave his own car with a homeguard and his bodyguard to trace the vehicle which had been released towards Merile, 100 kilometres from Marsabit. That is when the lorry was brought back to Marsabit. When the lorry was brought, I identified the animals. I had no information that the lorry had been released. I came to know about it later. So, when I told the OCPD that I was a police officer from Kilifi District and I was on holiday because my property had been stolen and that I had gone there to check, he became so furious and asked me how I got the firearm. I told him that I got it formally from the police station and it was recorded in the Occurrence Book. So, he called Sergeant Makokha and ordered him to bring the papers so that I could go back home. So, I was a bit furious because the papers he was asking for were to get me sacked so that I go home. Then I told the OCPD that he was biased and maybe he had been bribed in order for us to lose our property like that. When I told him so, he boxed me on my shoulder. There is a video clip which I brought.

**Ms Nancy Kanyago:** Would you like to show it to the commissioners?

**Mr. Denge Recha:** Yes, I would.

*(Mr. D. Reche showed the clip to the commissioners)*

**Ms. Nancy Kanyago:** Thank you for the video which you have presented. Please, for the record, briefly explain what is in that video.

**Mr. Denge Recha:** So, when he boxed me, because of anger, I replied. So, it forced people to come between us. Some people who were there intervened and separated us. So, I went back to the report office so that I could file a case of assault against Mr. Amos Cheboi who was the then OCPD Marsabit.

**Ms. Nancy Kanyago:** The video that you showed the Commission was a video that captured the assault?

**Mr. Denge Recha:** That clip is only showing how the OCPD was beating me.

**Ms. Nancy Kanyago:** Okay. Thank you. You may proceed with the evidence.

**Mr. Denge Recha:** So, I went to write an assault report against the OCPD, Mr. Amos Cheboi. When I took the occurrence book, when I had just written one word; assault, I was arrested by Mr. Makokha who was then the senior sergeant of the station and I was locked in. I was arrested under the instructions of Mr. Mugo and the OCPD, Mr. Amos Cheboi. I was not given any opportunity to go for treatment in hospital. Also, they never recorded the assault report the way it is supposed to be done by the Kenya Police Standing Orders or by the Kenya Police Regulation which is a right to every person. So, I was locked in.

At 5.00 p.m. in the evening, I was called to the office of the Officer Commanding Police Division (OCPD), Mr. Amos Cheboi. There was one officer from the General Service Unit whose name I cannot remember and one Inspector who was also the court prosecutor in Marsabit District.

So, Mr. Mugo told me that they were going to do a search in my house because they had heard that I had a firearm. I told him that if I could be having a firearm, I could not have come to a police station for a firearm. How would that have helped me? Then Mr. Mugo asked me whether I knew what happened to the senior General Service Unit (GSU) in Kitale. I do not know whether it was 2004 or 2005. I told him that I heard that Mr. Cheruiyot was killed and some firearms were traced by the police. I asked him, whether he wanted to kill me or manipulate me so that I could implicate the police. There was a Land Rover of The GSU in front of the OCPD's house. About ten people boarded the Land Rover and I was also told to board it. We were with the Court Prosecutor of Marsabit whose name I cannot remember. I thought that those people were going to kill me or they would claim that I had a firearm so that I could be jailed. There was Dr. Godana Bonaya, the then Member of Parliament for North Horr who was also in that vehicle. I talked to him about my case. He was with another man called Mr. Keta Sako who I also listed as one of my witnesses. Unfortunately, he is not here. I told Dr. Godana Bonaya that I suspected that those people were going to kill me or frame me for possessing a firearm so that I get jailed and he told me not to mind.

He went to the office and he talked to them about the issue. Before we reached home, the vehicle was stopped and the officers alighted. I was also told to alight. So, they told me to go in front so that I could lead them. I thought they wanted to shoot me from behind. I thought so because when officers want to shoot you, they tell you to lead them. I did not refuse but I used my wisdom and decided not to go far away from them. By good luck, my two sons saw the police vehicle which had many police

officers. My sons who have been brought up in the police camp did not fear the police. They ran to me and welcomed and asked me what the problem was. They asked me: "Why are you coming with the police?" The police officers asked me whether they were my sons and I told them yes, they were. That was when they changed their attitude. I went with them to my home where they surrounded my house. They entered all rooms; to the kitchen, toilet and every corner of the house.

Then one inspector who was a court prosecutor entered into the house and asked me where I lived. I showed him the bedroom. He checked under the bed, removed the mattress, checked the dressing table and the wardrobe and then he told the rest to get out. When we went out, we boarded the vehicle and went back to the police station. That was the time Mr. Mugo told me: "I am going to leave you for now but tomorrow, make sure that you come here." I followed the instructions.

The next day on 21<sup>st</sup> July, those suspected to have stolen goats were taken to court. It was an open court. The Marsabit District Magistrate came to the police station and took all the evidence from complainants and then ordered us to take our property. It took us two days to transport our property home. However, goats which were used to hot areas were affected by pneumonia, since it was in July which was a cold season. So, we looked for a veterinary officer to treat the animals. Some animals were treated while others died. We took those that were treated to Bubisa which is a warm area. By bad luck, after three to four months, all the goats died because of drought and diseases. By that time, my leave was almost ending.

On 23<sup>rd</sup> July, 2005, Amos Cheboi instructed the Court Prosecutor of Marsabit Court to charge me with a disciplinary offence. He claimed that I did not show respect to the OCPD by telling him that he was bribed and was favoring some of the people who heard the case. I personally was angered because the OCPD assaulted me and put me in a cell and now he was claiming that I had assaulted him. So, it meant that I was not going to get a fair trial because he was the one who assaulted me and yet he was the one who was giving orders. I could not accept that because according to the Police Standing Orders and regulations, I had a right to deny such orders.

So, I went back to the Coast Province, and then I wrote a complaint against Mr. Amos Cheboi who was OCPD Marsabit through my immediate boss, police boss, CID director and then the Commissioner of Police. I did not get a reply to the complaint I filed against Mr. Amos Cheboi. I thought it was because he had high ranking people from his family or his community in charge of complaints at the police headquarters. The person who was in charge then was known as Bengdong who comes from his tribe. Mr. Chesmeti was the Deputy Commissioner in charge of complaints and he was a Kalenjin. Also the in charge of operations of the police headquarters was Mr. Kosgey who was from his tribe. So, I felt confused. If I were to raise a complaint to the police Commissioner, maybe, the furthest it would have gone would be Mr. Kosgey's office.

So, after one and half months, I received a dismissal letter which stated that: "Your service has been terminated because of disrespect to Mr. Amos Cheboi." So, I wrote an appeal and I was told that I should appeal through the office of Mr. Amos Cheboi who was the person who insulted me. He is the person who recommended that I should be sacked and locked me up without taking me to any court for trial. Up to

now, as I am speaking, I have never got any reply of my appeal. I was only told by other officers that my appeal had been rejected, although I did not receive that communication. So, I felt that I had been denied justice.

To add on that, because I am a person from Marsabit, I was born here and the problem came from the clashes that were at Marsabit; that I knew. There is a letter I wrote; it was just a paragraph which I wrote to the Commissioner Police. Hon. Commissioners, if you can allow me to read the letter, it reads:-

“Sir, I being a resident of the district understand fully the likely root cause of the trouble boiling in my own district. Indeed, the ammunitions used in attacking innocent villages and resulting into havoc are being channeled and distributed into wrong hands illegally by dishonest officers. I hereby kindly request the Police Commissioner to investigate on the issue of supply of excess ammunition to Marsabit Police Division and eventually the dangerous misuse by the area senior police officers; both the administration police and Marsabit Police Division.”

Without adding anything or lying, the problem of Marsabit people was caused by senior police officers. Mr. Amos Cheboi was amongst them. I have worked as a police officer for the last 23 years. I have never seen a police officer trading firearm at the rate Amos Cheboi was doing. Under the guise of giving guns to homeguards, G3 rifles or the AK47 were being sold out at Kshs25, 000 to Kshs30, 000.

*(Power interruption)*

**Ms. Nancy Kanyago:** Thank you. Sorry for the interruption. We apologize for the interruption. But I know you were concluding your evidence. So, if you can, please, proceed to conclude.

**Mr. Denge Recha:** I said that firearms were being sold out. The firearms were used to cause deaths in Marsabit District. Many people were killed, properties were looted and houses burnt. The Government should be blamed for this and particularly, Mr. Amos Cheboi who however did not act alone. He worked with a certain man from Eastern Province, a Provincial Police Officer (PPO) who is late.

**The Presiding Chair** (Commissioner Dinka): From what I see in your statement, this is not part of your statement. Is this a new statement or what is this?

**Ms. Nancy Kanyago:** Can you conclude with that?

**Mr. Denge Recha:** As I wind up my testimony, I would like to say that I personally was not given justice by the Kenya Police because nobody was there to listen to me. Mr. Cheboi blocked all my complaints and destroyed the video clips I had taken to the police headquarters. The only copy left is what I am giving out. The only request to the Commission as I wind up is that, Mr. Cheboi is not fit to handle any Government office.

**Ms. Nancy Kanyago:** Thank you very much for sharing your testimony. We will have a few questions pertaining to the statement that you gave us for clarification

purposes. Just to confirm that the assault you talked about was done by the Officer Commanding Police Division or the OCPD Marsabit; what is his name?

**Mr. Denga Recha:** The one who assaulted me was Mr. Amos Cheboi.

**Ms. Nancy Kanyago:** Thank you. You said in your statement that the assault was witnessed by several people including one, Mr. Mugo. Is that correct?

**Mr. Denga Recha:** Yes.

**Ms. Nancy Kanyago:** Who was Mr. Mugo?

**Mr. Denga Recha:** He was the Deputy Provincial Commissioner, Eastern Province, and he is here.

**Ms. Nancy Kanyago:** You also said that Mr. Mugo enabled you to write a statement?

**Mr. Denga Recha:** Yes, he told me to write a statement about my property that was taken.

**Ms. Nancy Kanyago:** Was it an official police statement?

**Mr. Denga Recha:** Yes.

**Ms. Nancy Kanyago:** You mentioned that they went to the offices to search your premises?

**Mr. Denga Recha:** Yes.

**Ms. Nancy Kanyago:** Were you informed why they wanted to search your premises?

**Mr. Denga Recha:** Mr. Mugo told me that they said that I had a firearm in my house. I told him that the only firearm I had, was from the Government, and that it had been issued to me at the police station. I asked him: "If I have a personal firearm, why would I take another firearm from the Government?"

**Ms. Nancy Kanyago:** You mentioned that you appeared before a magistrate. Is that correct?

**Mr. Denga Recha:** Yes.

**Ms. Nancy Kanyago:** In a court?

**Mr. Denga Recha:** Yes.

**Ms. Nancy Kanyago:** What were you charged with? Which was the court and who was the magistrate who presided over your case, if you can remember?

**Mr. Denga Recha:** I appeared before the District Magistrate's Court, but I do not know the name of the magistrate.

**Ms. Nancy Kanyago:** Can you remember the case number?

**Mr. Denga Recha:** No.

**Ms. Nancy Kanyago:** What was the case in regard to?

**Mr. Denga Recha:** I was a complainant about my lost property. There were also other people who were complaining, like mzee Gadhio, who had lost almost 40 animals and others who had lost only a few of them.

**Ms. Nancy Kanyago:** You also mentioned that you were charged with a disciplinary offence in regard to accusing the officer of bribery or corruption. Is that correct?

**Mr. Denga Recha:** Yes.

**Ms. Nancy Kanyago:** What was the offence you were charged with?

**Mr. Denga Recha:** I was charged for insubordinating a senior police officer.

**Ms. Nancy Kanyago:** There was a method of handling official complaints in the Police Force, but you felt that you could not get redress through that channel. Was there only one channel? When you felt that a certain officer was compromised, and you could not go through that officer, there was no alternative or mechanism? You had to go through that channel only?

**Mr. Denga Recha:** Yes, as police officers, we are not allowed to complain to any other institution. If you have any complaint, you have to complain to the Police Department, even if you are complaining about your boss. My appeal had to go to Amos Cheboi. I had to hand it over to him for him to forward it to the Headquarters, through the PPO. He was the same person who had insulted and locked me up in a cell. He denied me justice. Could he really do a favour to me?

**Ms. Nancy Kanyago:** I have no further questions. You will probably be asked some questions by the Commissioners for clarification.

Commissioners, I confirm that we have in the file, the full letter regarding what he did.

**Commissioner Chawatama:** Mr. Recha, I thank you for your testimony. As part of your testimony, there was a time when you said that what was captured, meaning the clip that we watched, was when “he boxed me. I replied”. What did you mean by saying “I replied”?

**Mr. Denga Recha:** When he boxed me, I tried to hold him by the shirt, so that he could not box me again. That was when other officers who were there intervened and separated us. He then said that we should not fight.

**Commissioner Chawatama:** You did not hit him back?



**Mr. Denga Recha:** I tried to throw a blow at him but I do not know whether I hit him.

**Commissioner Shava:** Mr. Recha, you said that you lost your job?

**Mr. Denga Recha:** Yes.

**Commissioner Shava:** You said that you were charged for insubordination. Who charged you?

**Mr. Denga Recha:** I was charged by Amos Cheboi. He instructed an inspector who was below him in the ranking to frame a charge to the effect that I was indisciplined because I told him that he had been bribed.

**Commissioner Shava:** Did you get an opportunity to respond to the charge?

**Mr. Denga Recha:** No, I did not.

**Commissioner Shava:** So, there was no hearing that took place?

**Mr. Denga Recha:** There was not even a subordinate meeting for me to be asked to explain what had happened. I wrote letters to the Commissioner of Police because complaints by officers should always reach the Commissioner of Police, but I never received any reply until I was sacked.

**Commissioner Shava:** You have forgotten your answer. Let us go step by step. You said that you did not have a hearing at all?

**Mr. Denga Recha:** Yes.

**Commissioner Shava:** So, you were charged for insubordination?

**Mr. Denga Recha:** Yes.

**Commissioner Shava:** But you did not respond. Was there ever a hearing?

**Mr. Denga Recha:** There was no hearing.

**Commissioner Shava:** You then appealed?

**Mr. Denga Recha:** Yes.

**Commissioner Shava:** You appealed against what decision?

**Mr. Denga Recha:** I appealed against conviction.

**Commissioner Shava:** Who convicted you?

**Mr. Denga Recha:** The recommendation letter for my sacking was done by the PPO, Eastern Province, Mr. Amos Cheboi. He signed the letter and forwarded it to Police

Headquarters. They only brought a copy to me, informing me that my services had been terminated.

**Commissioner Shava:** Do you know whether your boss, Mr. Cheboi, was ever reprimanded for assaulting you?

**Mr. Denga Recha:** No, he was not.

**Commissioner Shava:** He did not even receive a letter? Are you aware whether he received a letter from his superiors, reprimanding him on the incident that had taken place?

**Mr. Denga Recha:** There was no action taken against him? Mr. Cheboi is still working. Maybe, there were biases by senior officers. I think the reason as to why I was sacked was to protect Mr. Cheboi.

**Commissioner Shava:** So, to your knowledge, Mr. Cheboi is still in employment?

**Mr. Denga Recha:** He is still working. He is now in Bungoma.

**Commissioner Shava:** Mr. Recha, I just want to thank you for the things that you have said here today. It requires a lot of courage to be so plain-speaking about some of the things that go wrong in our country. As a long serving police officer, you are closer than most of us to how such things occur. The fact is that discussions at Serena Hotel resulted in the formation of the Truth, Justice and Reconciliation Commission due to recognising that there are longstanding issues in this country that we need to discuss; the same discussions decided that there must be reforms.

So, I would just like to thank you and re-assure you that we take what you have said very seriously. The information you have given us is very valuable. Our procedures do not allow, as in a court, for cross-examination, but we are also here to recognise that everybody has rights. So, in the same way, you have the right to speak out, those who have been named also will have a forum, where they can give their side of the story. We will then come to a conclusion about everything that has been said. I would just like to thank you for your courage and for coming and speaking out today.

**The Presiding Chair** (Commissioner Dinka): Mr. Recha, I thank you very much for your testimony. As my colleague just said, it takes a lot of courage to come and accuse your former superior officer. What happened to you – dismissal after 23 years of service without benefits – is a very serious, unfair and unjust. Nevertheless, I am going to tell you why I cut you shot while you were speaking. This is a truth-seeking forum and also a victim-centred forum. At the same time, those who are named adversely, have the right to be told that they were mentioned adversely and come and tell us their side of the story.

In your previous statement, what you just said about Kalashnikov, G3 Rifles, and grenades being sold will not make part of it; at least, not to my knowledge. The named persons have not been told, in accordance with natural justice, that this has happened and that they have the right to respond. That is why I cut you shot. The things that we accept without interruptions are only what you have indicated in your

statement when the statement was being taken. A person who has been mentioned adversely also has his right to come and tell us his side of the story. He will have that chance, if he so desires.

As the Chairman of this session, my only concern was not to turn the forum into something where we come and defame individuals who have not been told that they are going to be mentioned on a particular issue. So, I hope you understand. There is nothing else. I have no further questions for you.

Hearing Clerk, please escort the witness to his seat and call in the other witness.

**Ms. Nancy Kanyago:** Honourable Commissioners, I would like to inform the panel that the adversely mentioned persons in that case are present. They have been present as the witness was giving his testimony, and they would be willing to respond or talk in regard to the issues raised. We hope to give them that opportunity tomorrow.

**The Presiding Chair** (Commissioner Dinka): It is so decided.

*(Ms. Bahati Elema took the oath)*

**Mr. Chavangi:** Hon. Commissioners, the witness before you is Marsabit No.011. Mama Bahati Elema, you gave a statement to this Commission about extrajudicial killings concerning your daughter in 1995. Is that true?

**Ms. Bahati Elema:** Yes, it is true.

**Mr. Tom Chavangi:** In your statement, you said that you know the perpetrators?

**Ms. Bahati Elema:** I cannot remember the name but I know that he was an Administration Police officer.

**Mr. Tom Chavangi:** You said that the violation took place at the marketplace, in Marsabit Town, near Adan Sabo Butchery?

**Ms. Bahati Elema:** She died there.

**Mr. Tom Chavangi:** So, kindly, tell the Commissioners what led to the death of your daughter.

**Ms. Bahati Elema:** There was a demonstration. She went there to see what was happening. She was killed there.

**Mr. Tom Chavangi:** Then what happened, mama Bahati?

**Ms. Bahati Elema:** After she went to the demonstration, I found her dead body. That is all I can talk about.

**Mr. Tom Chavangi:** According to your statement, she was killed by AP officers. How did you know that?

**Ms. Bahati Elema:** Most of the people who were in the demonstration were taken by the APs. The OCS was there, and “JJ” was there too. When I went there in the morning, I found that my daughter was not there. So, I concluded that it was the AP who had killed her.

**Mr. Tom Chavangi:** At what time did your daughter go for that demonstration?

**Ms. Bahati Elema:** At around 10.00 a.m., she went to fetch water. She was in the company of her elder sister, who ran away. I can say she died at 4.00 p.m.

**Mr. Tom Chavangi:** Mama Bahati, these must have been very difficult times for you, but I need to ask you a few questions just to get clarification. When this incident took place, did you actually see the people who actually killed your daughter?

**Ms. Bahati Elema:** I was not there but her elder sister, with whom they went to fetch water, was there.

**Mr. Tom Chavangi:** Can you help us to get your elder daughter?

**Ms. Bahati Elema:** She is married. She lives in Narok now.

**Mr. Tom Chavangi:** But what you are confirming to us is that your daughter was killed during those demonstrations?

**Ms. Bahati Elema:** Yes. She went to the demonstration. While going back, carrying some food, she was killed. She was shot at 4.00 p.m. The food that she was carrying was brought to me later.

**Mr. Tom Chavangi:** Was the matter reported to the police?

**Ms. Bahati Elema:** Three of my aunties were there. I do not know whether they reported it.

**Mr. Tom Chavangi:** Is it possible for us to get your aunties?

**Ms. Bahati Elema:** Hussein, who is the chief now, can be seen. The other two are not here.

**Mr. Tom Chavangi:** Was the body of your daughter taken to hospital?

**Ms. Bahati Elema:** No, they took it to the police station, where it stayed overnight. I found it in the morning.

**Mr. Tom Chavangi:** So, you found the body at the police station in the morning?

**Ms. Bahati Elema:** I was just told that she was dead and her body was at the police station.

**Mr. Tom Chavangi:** Did you go to the police station?

**Ms. Bahati Elema:** Yes, to view the body. She was shot from the back. The bullet exited through the chest. I noted everything.

**Mr. Tom Chavangi:** What happened at the police station when you viewed the body?

**Ms. Bahati Elema:** Nobody addressed me. After I viewed the body, they covered it with a blanket.

**Mr. Tom Chavangi:** Was the body taken to the hospital?

**Ms. Bahati Elema:** No, they did not take it to the hospital. They took it home and then, afterwards, she was buried.

**Mr. Tom Chavangi:** Do you remember the OCS at that time?

**Ms. Bahati Elema:** I do not know the name. I am illiterate and nobody wrote it down for me.

**Mr. Tom Chavangi:** Hon. Commissioners, maybe, we can give the witness a few minutes to compose herself.

**Ms. Bahati Elema:** Whenever someone is killed, there is a right. Today I am here to say that I need justice. I cannot give the names. Maybe, the Government will help me.

**Mr. Tom Chavangi:** Commissioners, from the look of things, this is a very credible witness. The only issue is that she was not at the scene when the incident took place, and she is illiterate. She cannot remember the officers who were serving at that time. Therefore, with your kind permission, I would suggest that this is a matter for further investigation. This is a lady who has lost her daughter. She needs to know the truth of the matter. I urge the Commissioners to give direction on that request. I hand over the witness to you.

**Commissioner Chawatama:** Thank you very much for coming and speaking to us. When a child is born, there is so much expectation, part of which is that the child would grow and be able to look after her parents. When that child is growing, she is asked to do so many chores, and life is made easy for the parents. We are so sorry for your loss. We hope that by talking about it before this Commission, you have received a little bit of comfort. The evidence is clear that there was a loss, and that your daughter died as a result of the killing. I do not have any questions, but I just commend and thank you for having come and appeared before us. Despite what happened to you, you have continued to live. Thank you.

**Ms. Bahati Elema:** Hon. Commissioners, I have one thing to say. I have brought up all my kids after fetching firewood and taking them to school. I have taken my three kids to school. One of my elder sisters gave me a kid as consolation for losing my daughter. I do not have a son. I have only daughters. My sister gave me one lady as consolation. I do not even have a house where I can lay my head down.

**Commissioner Slye:** Mama Bahati, I also want to thank you for having the courage to come here and share your story with us. It is a little confusing, given the information we have. Was it your daughter or granddaughter?

**Ms. Bahati Elema:** She was my granddaughter. All the children I am bringing up are my granddaughters. I gave birth to only one daughter. After she died, I took all my grandchildren, so that I can bring them up.

**Commissioner Slye:** Mama Bahati, we have never met your granddaughter. Could you, briefly, describe her for us? Introduce us to who she was.

**Ms. Bahati Elema:** She used to help me so much. She used to fetch water and firewood for me. She used to help me so much. No one has ever stood so firm to help me more than her. She used to wash my feet and remove jiggers. There are lots of jiggers in Marsabit.

**Commissioner Slye:** Mama Bahati, it seems that she was a remarkable and wonderful granddaughter. We are sorry for your loss. As the Leader of Evidence said, we will undertake further investigations, based upon the information that you have to us. Thank you.

**The Presiding Chair (Commissioner Dinka):** Thank you, mama Bahati. I have no further questions for you except to assure you that we will carry out further investigations into the matter, and try to come up with a certain conclusion. Thank you very much for coming and sharing your sorry and pain with us.

Hearing Clerk, lead the witness to her seat and call the next witness.

**Mr. Tom Chavangi:** Commissioners, this is the last witness. We had 14 witnesses today. Elder No. 3 turned up, but he was not well prepared. Witness Marsabit 01 was a no show. Witness Marsabit 13 and 8 did not turn up too. We are informed that Witness Marsabit 9 is not feeling well. Therefore, we have Witness Marsabit 12 before us. He will be taken through by Madam Nancy Kanyago.

*(Mr. Guyo Jillo Dito took the oath)*

**Ms. Nancy Kanyago:** Mr. Guyo, for the record, please, confirm your full names.

**Mr. Guyo Jilo Dito:** I am Guyo Jillo Dito.

**Ms. Nancy Kanyago:** Where do you currently reside?

**Mr. Guyo Jilo Dito:** I live in a place called Dirib Gombo.

**Ms. Nancy Kanyago:** Is that place in Marsabit?

**Mr. Guyo Jilo Dito:** Yes.

**Ms. Nancy Kanyago:** You submitted a statement to the Commission with regard to torture and prolonged detention, a violation that took place on 16<sup>th</sup> August, 2005.

**Mr. Guyo Jilo Dito:** Yes.

**Ms. Nancy Kanyago:** From that violation, you still suffer some injuries and you cannot sit or walk?

**Mr. Guyo Jilo Dito:** Yes.

**Ms. Nancy Kanyago:** Kindly, in summary, tell the Commissioners what happened on that day of 16<sup>th</sup> August, 2005.

**Mr. Guyo Jilo Dito:** What I can say is that on 16<sup>th</sup> October, 1995, the soldiers came in a car. The OCPD was behind the first truck. They came to the manyatta and told everybody to gather at one place and lie down. I stood firm and asked them: “Why should we lie down?” Then the OCPD shouted: “Shoot him! Shoot him!” Look, this is where I was shot. They shot at me and I fell down. He had a cane and said: “Can you insert this cane into his private parts at the back?” He tied my private parts and castrated me. All the police officers from the truck started stepping on me. After they stepped on me, they took 55 of us to the cell where some were murdered. At that moment, I was like a corpse because I was just breathing but I could not even feel my flesh or bones. They took me from the car and then put me down. At 12.00 p.m., they took us to court. After court, they took us to prison and the prison warders told them that they could not take us. They said: “This is almost a corpse, he is just breathing. We cannot take them in. Can you take them back?”

After our Member of Parliament, Abdi Chari and the human rights activists paid the bond, they released us. Afterwards, because I could not even walk, they took me to hospital. I was taken in a car belonging to Hassan Toti. They bought a mattress, placed me on it and took me to hospital. The car was not going fast because they did not want to kill me. We spent four hours before we reached Nairobi. They took me to Kenyatta National Hospital (KNH) when we arrived at Nairobi. They placed me on a stretcher at the KNH because I could not walk. I was taken from one office to the other on the stretcher because I could not walk. I was admitted at 1.00 p.m. After some time, I felt better and they took me back. This is not the body I was born with. Some parts were rectified. I have gone through much because they cut everything. They took us back to the court because we were on bond. I can remember two policemen who were in the car. The day they beat me up, they took Kshs10,000 and my Identification Card from my pocket. Later, they took my fingerprints and I got a new ID. After three years, they asked us to pay Kshs40,000 and then released us to go home. Since that day, I have not sired a child, but I have assigned somebody who can go with my wife and sire babies for me. Since that day, I cannot go out. I am just like a corpse. Whenever I eat, I vomit. If I try walking for a long distance, I faint. Whenever I hear loud noise or see policemen or anybody in uniform, I faint because I remember what I underwent. It is only God who has made me live. If somebody asked me, I would have chosen to be dead by now. Look at my wife; somebody else has to sire children for me. We need rights and justice. That is all I have to say.

**Ms. Nancy Kanyago:** Thank you for sharing what is a difficult experience to share. I am just going to ask you some questions for clarification. When you mentioned that

they assaulted you or came to your house, how did you know that they were police officers?

**Mr. Guyo Jilo Dito:** I know them. I can differentiate their uniforms. I am illiterate but I am a Kenyan citizen.

**Ms. Nancy Kanyago:** You were able to recognize that they were police because of the uniform they had? You mentioned the GSU. Were they GSU or police officers?

**Mr. Guyo Jilo Dito:** They were police officers. I can mention Kasamba. The other one was the OCPD.

**Ms. Nancy Kanyago:** Do you know the OCPD?

**Mr. Guyo Jilo Dito:** I know him but not his name. I can identify him but I do not know his name. I cannot tell his tribe but I can recognize him from the way he talked to me harshly.

**Ms. Nancy Kanyago:** It may be difficult to recall but maybe, can you remember who told you to lie down? Which of the officers told you to lie down?

**Mr. Guyo Jilo Dito:** The OCPD said that everybody should lie down. I refused to lie down and they shot me. Those were the orders given by the OCPD.

**Ms. Nancy Kanyago:** So, you were shot?

**Mr. Guyo Jilo Dito:** They inserted a cane into my rectum. I am so angry. They inserted the cane but it was not able to go to the intestines and that is why they beat me up. I do not fear to die because I do not have kids. Even if he looks at me and decides to kill me I cannot fear him.

**Ms. Nancy Kanyago:** Thanks you for your openness. We appreciate your honesty and assert that you should not be in fear of giving your evidence. Were you informed of what you were charged with?

**Mr. Guyo Jilo Dito:** They did that because we live in the same place with Gabras. Before, there was no conflict but the Gabras tried to move away.

**Ms. Nancy Kanyago:** Were you charged with an offence?

**Mr. Guyo Jilo Dito:** When they took us to court, they told us that we broke the windscreens of Government vehicles. They told the 55 of us that we broke the windscreens of the vehicles which cost Kshs10,000. The judge said that whatever we broke cost Kshs12,000.

**Ms. Nancy Kanyago:** So, you were found guilty and fined Kshs10,000?

**Mr. Guyo Jilo Dito:** The ones who beat us are the ones who took us to court. I can say that there was no justice and that is why they took us to court.



**Ms. Nancy Kanyago:** In your statement, you used to know one of the police officers prior to that day when they arrested you. Who is that officer that you knew?

**Mr. Guyo Jilo Dito:** They are two. One is called Yadhan and the other one is Kasamba.

**Ms. Nancy Kanyago:** Had you had a disagreement before that?

**Mr. Guyo Jilo Dito:** No, we had never been in a conflict.

**Ms. Nancy Kanyago:** Do you know if those officers, either Yadhan, Kasamba or the OCPD are still alive?

**Mr. Guyo Jilo Dito:** I do not know where Yadhan and Kasamba are, but I sometimes meet the OCPD. The OCPD was transferred, but sometimes he comes to Marsabit.

**Ms. Nancy Kanyago:** Thank you very much. Commissioners, in the file, there is also a medical report from Kenyatta National Hospital in regard to the injuries he has spoken about. I have one thing to say. I have finished my questions and now the Commissioners might ask you some questions.

**Commissioner Ojienda:** Thank you very much, Mr. Guyo for your testimony. I am sorry that your life is a living hell from what you have said and the brutality of the police and unclear accusations that you have not understood to date. I want to ask a few questions just to clarify some issues. Were you the only one who was shot when the police rounded you?

**Mr. Guyo Jilo Dito:** I am the only one who was shot. I said that there was no bed and so, I could not lie down. That is why they shot me.

**Commissioner Ojienda:** You have also said that by the time you were shot, you were a married man. Is that the position?

**Mr. Guyo Jilo Dito:** I am the only one who was shot. I said that there was no bed and so, I could not lie down. That is why they shot me. Yes, it is true.

**Commissioner Ojienda:** Did you have any children before that incident?

**Mr. Guyo Jilo Dito:** I had two kids. One was six months old and the other one was four years old. I am not a man anymore and that is why I have given my wife somebody who can give us kids.

**Commissioner Ojienda:** How many kids do you have after that now?

**Mr. Guyo Jilo Dito:** Only one. I have only three kids now; the first two that I had and then this one.

**Commissioner Ojienda:** Apart from the treatment that you got at Kenyatta National Hospital, have you received any counseling or medical help?

**Mr. Guyo Jilo Dito:** I was counseled and told not to go to a crowded place or where there is noise. That is what I am going through. I cannot go to a crowded place or somewhere I can hear loud voices.

**Commissioner Ojienda:** So, you limit your movement to avoid meeting policemen and situations that can make you faint?

**Mr. Guyo Jilo Dito:** Yes.

**Commissioner Ojienda:** Sorry for what you went through. I just want to assure you that we will get to the bottom of this matter.

Thank you very much.

**Commissioner Slye:** Thank you for your testimony. I just have a couple of questions or clarifications. Can you just confirm again what year that happened?

**Mr. Guyo Jilo Dito:** It was on 16<sup>th</sup> October, 2000.

**Commissioner Slye:** The year was 2000. Is that correct?

**Mr. Guyo Jilo Dito:** I cannot remember because I am illiterate. But you can view it on the paper that I have with me.

**Commissioner Slye:** Can we have that for the record?

**Ms. Nancy Kanyago:** Sorry! I just want to confirm that the date of the incident was 16<sup>th</sup> August, 2005.

**Commissioner Slye:** Okay. Thank you. You testified that you had to pay a fine. Can you tell us again how much that fine was?

**Mr. Guyo Jilo Dito:** It was Kshs10,000. They took another Kshs10,000 from my pocket when they beat me up.

**Commissioner Slye:** So, the fine was Kshs10,000 and then another Kshs10,000 was stolen from you?

**Mr. Guyo Jilo Dito:** Yes. They took Kshs10,000 from my pocket and then a fine of Kshs10,000.

**Commissioner Slye:** You mentioned that the OCPD, Marsabit, was involved in that action and, in fact, was present and gave the orders to the other police officers. Is that correct?

**Mr. Guyo Jilo Dito:** Yes, it is true. I have sworn that and I can do it again.

**Commissioner Slye:** Do you know where that individual is now?

**Mr. Guyo Jilo Dito:** I do not know, but I can remember him physically. As I speak, he is around here.

**Commissioner Slye:** So, are you saying that he is present in this room or he is in Marsabit?

**Mr. Guyo Jilo Dito:** He is right here in front of me. I can point at him. He is laughing at me and I can see that.

**Commissioner Slye:** Thank you very much. Again, I want to express my sympathy to you along with the other Commissioners for what you suffered. We will do everything we can, through our investigations and other activities, to try and get to the truth of this matter.

**The Presiding Chair** (Commissioner Dinka): Mr. Guyo, I have one question to clarify. You mentioned that 65 people were taken to prison and some of them were killed right there.

**Mr. Guyo Jilo Dito:** I can say that they did not die. I was the only one who was shot.

**The Presiding Chair** (Commissioner Dinka): Nobody was killed at the police station?

**Mr. Guyo Jilo Dito:** They shot me but the others were beaten, put in a lorry and taken to the police station.

**The Presiding Chair** (Commissioner Dinka): You said that they came at 5.00 on 16<sup>th</sup> August, 2005. Was it 5.00 p.m. or 5.00 a.m.?

**Mr. Guyo Jilo Dito:** It was 5.00 a.m. in the morning.

**The Presiding Chair** (Commissioner Dinka): You were told to lie down and when you refused you were shot. Was it in your village that you were told to lie down and you refused and were shot or at the police station?

**Mr. Guyo Jilo Dito:** It was in the manyatta. We were told to lie down on the road.

**The Presiding Chair** (Commissioner Dinka): So, when you refused, you were shot at the manyatta?

**Mr. Guyo Jilo Dito:** They shot me. Some lay down and others ran away.

**The Presiding Chair** (Commissioner Dinka): I thank you for coming and sharing with us your very painful story. I sympathize with your pain. We empathize with you. As my colleagues have said, we will do everything possible to do further investigation and get to the truth of the story.

Thank you very much. The Clerk will now escort the witness to his seat.

*(The witness was stood down)*

Ladies and gentlemen, this is the last witness for today. I would like to take this opportunity to thank all the witnesses that appeared before us this morning. They are Mr. Abdulkadir Karu, James Forole James Forole Jarso, Ms. Sukulisa, Mare Yero Mare, Umar Boru Kotara, Denga Recha, Bahati Elema and Guyo Jillo Dito. I sincerely thank you on behalf of the Commission and all my colleagues here for your participation and courage.

At the same time, I would like to thank those who assisted the public and had patiently sat through these hearings and showed very serious discipline and high respect for the witnesses. Our thanks also go to the Media for their participation and also by abiding by the rules that were laid down by the Chair at the beginning of the session. I also would like to thank all the secretariat staff of the TJRC as well as the interpreters and the HANSARD, for your hard work and efficiency. Without you, nothing of this would happen. Our records would be very much faulty. Thank you for your diligence and we continue to count on you for your support. I will ask the MC now to lead us in prayer.

*(Closing prayers)*

*(The Commission adjourned at 5.55 p.m.)*